

WHS AND BUSINESS AS (COVID) NORMAL



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INTRODUCTION

Business owners and managers are facing ongoing changes and challenges as we continue to deal with the COVID-19 pandemic.

As business owners, we all have a duty of care under the Work Health and Safety Act to identify hazards and minimise the risk of harm. Protecting your staff, yourself and your customers from COVID exposure falls under your duty of care.

So, what are some practical ways to make sure you are meeting your duty of care? Follow current advice from Queensland Health as to cleaning & sanitizing, patron density limits, physical distancing measures, ensure check in app is used, employees have ready access to hand washing facilities and sanitizer and masks where necessary.

It's also important to consult with your employees about the ever changing COVID situation and ensure they have the information they need, they have an opportunity to express their opinion and be heard.

The information contained in this package is general in nature and does not take into account your personal or business situation. You should consider whether the information is appropriate to your needs, and where appropriate, seek professional and / or legal advice.

Although every effort has been made to verify the accuracy of the information contained in this package, Virtual Safety Manager, its officers, employees and agents disclaim all liability (except for any liability which by law cannot be excluded), for any error, inaccuracy in, or omission from the information contained in this package or any loss or damage suffered by any person directly or indirectly through relying on this information.

The information may also be updated on a regular basis in order to reflect current Queensland Government directives and mandates.

MANDATORY VAX – YES OR NO



- All employers have a legal duty under the WHS Act 2011 to eliminate or minimise risks of harm including exposure to COVID 19.
- Reasonable practicable measures need to be implemented to minimise the risk.
- Vaccination should be considered as a control measure and employees should be encouraged to get fully vaccinated.
- Unless your industry is subject to Public Health Orders for mandatory vaccinations, you **must undertake a risk assessment** to determine all controls including the viability and reasonableness of mandating vaccinations in your workplace.
- The risk assessment will consider effectiveness of available control measures, you **must consult with workers** and determine what control measures are reasonably practicable to implement in your workplace.

*Managing
exposure to
COVID is
part of your
WHS duty of
care.*

VAX FAQs

As well as many other case-by-case factors, the test of reasonableness when deciding on a mandatory vaccination policy depends on which broad work tier your operations fall under.

What tier does my business fall into?

Tier 1 - Employees interact with people with an increased risk of COVID-19 exposure (e.g. border control, hotel quarantine)

Tier 2 - Employees have close contact with vulnerable people (e.g. health care, aged care)

Tier 3 - Employees have interaction with other employees, customers in their normal course of employment (e.g. stores providing essential goods and services)

Tier 4 - Employees have minimal face-to-face interaction with other people

If you are in tier 4, it is unlikely that mandatory vaccinations will be a reasonable course of action. Tier 3 employers are in quite a grey area, with extra considerations about the extent of community transmission to be considered.

What happens if a mandatory vaccination policy is not agreed / warranted

If the risk assessment and consultation process has determined that a mandated vaccination policy is not required or warranted, but you still want to encourage your workforce to be vaccinated, you can include Government issued posters and other materials in your worker communications and display the materials in staff rooms or on noticeboards.

Customers and members of the public – can I ask them to be vaccinated for entry?

If your workplace is subject to Public Health Orders for mandatory vaccinations, then yes, you can require vaccinations (and ask for proof) as a condition of entry.

If not subject to Public Health Orders, then it is unlikely that WHS legislation will require you to ask customers and members of the public for proof of vaccination. Legal advice is highly recommended if you want to pursue this requirement.

Human Resource / Industrial Relations / Legal Advice

If you are considering mandating vaccinations for your workforce, it is strongly advised to get human resource, industrial relations and legal advice to ensure all associated legal requirements (discrimination, industrial relations, privacy etc.) are known, considered and an important part of the final decision making process.

Policy

If you have followed this process and determined that a mandatory vaccination policy is a reasonably practicable control measure, a Policy is to be documented and communicated to your workers.

RISK ASSESSMENT

A risk based approach to deciding on a mandatory vaccination policy or putting other measures in place to protect your staff from exposure to COVID-19 is required. This is a 4 step process to identify the hazards, assess the risk (likelihood and consequences), implement effective controls and then monitor the controls for ongoing effectiveness.



Identify

What hazards in relation to COVID-19 are your staff exposed to?
Are you subject to Public Health Orders / Directives?
Do you have contact with many others, including vulnerable people (very young, very old or very sick)?



Assess

How likely is it that exposure will occur? Is it daily or less frequent?
What are the consequences for your staff and your business if there is an exposure at your workplace?



Controls

A range of controls are to be considered including the potential effect of mandatory vaccinations, ensuring strict cleaning and sanitising protocols, limiting numbers of people in areas, mask wearing etc.



Monitor

Are your controls still effective? Are they protecting staff and others from exposure?
Is there new technology or better ways of protecting people?
Have Government directives or mandates changed which affects how you operate your business?

CONTROLS TO CONSIDER

- Restricting how many people are in the workplace at any given time
- Incentives to encourage employees to get vaccinated
- Physical distancing
- Improving or increasing ventilation
- Encouraging good hygiene (providing hand washing facilities, hand sanitisers, masks, disposable gloves where warranted)
- Increasing cleaning and sanitizing of surfaces in the workplace
- Mask wearing
- Work from home strategies and protocols
- Staggering working hours for groups of employees
- Ensuring workers do not come to work when unwell
- Ensuring workers do not come to work if waiting on COVID test results
- Check In app use for workers, contractors, visitors and customers

Can you ask for proof of vax?

- Vaccination status for an individual is considered sensitive information under the Privacy legislation
- The worker must provide consent for the employer to collect information about their vaccination status. The employer cannot pressure an individual to provide consent – it must be freely given.
- You must provide the worker with the relevant reasons for obtaining this information.
- All vaccination records are to be treated as sensitive medical information and be stored securely.

What if an employee refuses?

- Employees may refuse to be vaccinated for a variety of reasons
- You can ask their reason for the refusal
- If the employee has a legitimate reason such as a valid medical exemption, you can have a conversation with them about other ways of protecting their health including working from home
- If the employee doesn't have a legitimate reason for getting vaccinated and a specific law applies, or a lawful and reasonable direction has been provided by the employer, you may be able to take disciplinary action. Always seek advice before taking any action.

CONSULTATION

Consultation with your workers is vital (and is also a legal WHS obligation).

Workers are to have the opportunity to have their say on the implementation of a mandatory vaccination policy in the workplace (whether you are subject to public health orders or not). This consultation needs to be documented and the findings taken into consideration.

A consultation template has been included in this package.

You must, under the WHS legislation, consult with your workers on WHS matters that affect them. If you already have consultation procedures in your workplace (such as health and safety representatives, Safety Committees, team meetings, noticeboards etc.), use these mechanisms to consult on this issue. Consultation is about allowing workers to raise and express their views on WHS issues. You must genuinely take the views of workers into account when making decisions and then advise them of your decision.

Consultation can be done face to face or via email, online meetings, phone calls or other means.

The consultation should also provide workers with information on any COVID policies that you've implemented, changes to emergency response plans, how to report incidents, when not to come into the workplace and who to talk to if they have concerns.

Consultation may also be needed with your suppliers and contractors who come to your workplace or even businesses that may share common areas with your space to work out how to keep everyone as safe as possible. If there are changes to the way things are done, it's always best to document this and communicate it widely. This may include changes to how deliveries are made, how contractors present to site, induction requirements and cleaning schedules.

Risk assessment template – Determining if a mandatory vaccination policy is reasonable to consider

Workplace:

Date of Risk Assessment:

People involved in the risk assessment:

Risk Level Rating (this is the *reasonable* level of risk associated with each element)

High	Medium	Low
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Risk Element	Findings	Risk level
What is the extent of community transmission in your workplace / where your workers perform their work?		
How likely is it that your workers will be exposed to the virus? (taking into account local situation)		
Is a vaccine available for your workers?		
Are you subject to a Public Health Order re: vaccinations?		
Based on available evidence, is the vaccine likely to reduce transmission or improve health outcomes for those at your workplace?		
Are the vaccines effective at reducing the serious health effects, taking into account current virus variants?		
Are your workers likely to be exposed to the virus as part of their work?		
Do your workers work with people who would be vulnerable to severe disease if exposed to COVID 19?		
What is the likelihood that COVID could spread in the workplace? Consider close proximity with other workers or customers, members of the public.		
Do your workers interact with large numbers of other people in their work that may contribute to a super spreader event if your workers contract COVID?		
What other control measures are available and in place in your workplace?		

Risk Element	Findings	Risk level
Do these other control measures effectively minimize the risks of COVID?		
Would a requirement to be vaccinated by unlawful in the circumstances?		
Other issues:		

CONSULTATION RECORD			
Workplace:		Date:	
Name of person facilitating the consult:		Time:	
What is the WHS element being discussed / consulted on?			
List the feedback and questions raised by employees			
What risk level does this issue present? (<u>circle</u> one)			
Low	Medium	High	Extreme
What actions / controls need to be implemented or considered to prevent this issue causing harm?			
What	Who	When	Completed date