

# COVID-19 VACCINATIONS AND WORKPLACE RIGHTS

As an employer, you are responsible for the health and safety of your employees, and any customers visiting your premises.

In the context of a pandemic, it may be desirable for your employees to be vaccinated. However, there is no simple 'yes' or 'no' answer as to whether you can compel employees to have the COVID-19 vaccine.

This fact sheet sets out key questions and answers you need to consider before directing employees to take the vaccine.

## Important Note

The legal landscape in relation to the COVID-19 vaccine could change rapidly. Employers should vigilantly monitor updates and guidance from relevant government bodies (such as the Fair Work Ombudsman and Safe Work Australia), as well as any changing law in this area.

## 1. CAN I COMPEL EMPLOYEES TO HAVE THE VACCINE?



Do not assume that you can direct employees to take the vaccine.

Employers can only compel an employee to take the COVID-19 vaccine where it is a lawful and reasonable direction. This means the direction complies with the law and is reasonable under the circumstances.

As an employer, you will need to demonstrate on a case-by-case basis that any directions to employees to take the vaccine are both lawful and reasonable.

## 2. WHAT IS A 'LAWFUL AND REASONABLE' DIRECTION?



In some circumstances, it may be obvious when a direction to take the vaccine is lawful and reasonable.

For example, if your employees are in close contact with vulnerable classes of people, such as in direct care roles.

However, for the vast majority of Australian businesses, the determination will not be this clear. You will need to carefully consider the relevant factors.

## 3. WHAT FACTORS DO I NEED TO CONSIDER?



Before issuing a directive, you need to consider the nature of the work carried out by your business, and whether:

- the vaccine is needed for your business to meet work health and safety obligations;
- vaccination is an inherent requirement for employees;
- it would be discriminatory to require certain employees to take the vaccine (for example, due to religious beliefs); and
- alternative arrangements are possible for employees who do not want to be vaccinated (e.g. working from home).

## 4. ARE THERE ALTERNATIVES TO PROVIDING A DIRECTIVE?



If you prefer not to issue a directive to take the COVID-19 vaccine, or if a directive will not be lawful and reasonable, there are other options you can consider. For instance:

- incentivising employees to willingly take the vaccine (e.g. providing paid time off to take the vaccine);
- offering alternative working arrangements to employees who do not want the vaccine; and / or
- increasing other COVID-19 safety measures to account for employees who do not want to be vaccinated.