MANDATORY VACCINATION DIRECTIONS FOR VICTORIAN WORKERS

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Australia Labour, Employment and Workplace Safety Alert

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On Friday 1 October 2021, an announcement was made by the Premier of Victoria that all Authorised Workers will be required to receive a COVID-19 vaccine to continue working on-site. The Directions which give effect to this announcement were released late on Thursday 7 October 2021.

The Directions are some of the broadest that we have seen to date and impose onerous obligations on employers to prevent workers from working outside their usual place of residence when not vaccinated, and require employers to collect information about workers' vaccination status.

The first dose deadline is now **22 October 2021**, however, the practical effect of the Directions is that an employer cannot allow a worker into the workplace from **15 October 2021** if they have not provided proof of receiving a first dose, or have not provided booking information showing they will receive a first dose by 22 October 2021.

TO WHOM DOES IT APPLY?

The Directions only apply to specific categories of workers as set out in the Schedule to the Directions. The categories are not identical to the authorised worker categories and employers should review the definitions for applicable categories of workers carefully. With some limited exceptions, these Directions have been drafted to require most Victorian workers who have to attend work on-site to receive a vaccination. As well as employees, the Directions cover contractors, self-employed and unpaid workers.

It is important to note that the previous directions published regarding specific industries including workers who perform work at residential aged care facilities, construction sites, education facilities and healthcare facilities continue to apply and the dates for vaccination compliance for those sites have not been impacted by the new Directions.

WHAT MUST EMPLOYERS DO AND WHEN DOES IT APPLY?

As soon as reasonably practicable	By 15 October 2021	By 22 October 2021	By 26 November 2021
▪ Employers of workers who are scheduled to work outside their	Employers must take all reasonable steps to ensure that	Employers must take all reasonable steps to ensure that workers	Employers must take all reasonable steps to ensure that workers

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home after 15 October 2021 have a duty to collect, record and hold vaccination information (or information regarding a booking to receive a vaccine). ▪ Employers have a duty to inform relevant workers of the obligation to collect, record and hold vaccine information, and that workers will not be permitted to work outside their ordinary place of residence from the specified dates.	unvaccinated workers do not work outside their ordinary place of residence unless they have received a first dose of a COVID-19 vaccine, or have a booking to receive a first dose by 22 October 2021. For the purpose of the Directions, when an employer does not hold vaccine information about a worker it must treat the worker as unvaccinated.	who have not received a first dose of a COVID-19 vaccine do not work outside their ordinary place of residence.	who have not received two doses of a COVID-19 vaccine do not work outside their ordinary place of residence.

WHO IS EXEMPTED FROM THESE REQUIREMENTS?

The directions do not apply to workers that hold certification from a medical practitioner that the person is unable to receive a dose, or a further dose, of a COVID-19 vaccine due to:

- a medical contraindication (with specific examples of adverse reactions set out in the Directions); or
- an acute medical illness (including where the person has been diagnosed with SARS-COV-2).

This position represents a slight broadening of the exceptions from previous directions but in reality the exceptions are still very limited and it is expected that exemption will not be broadly available to workers.

There are some further limited exceptions that apply, such as in emergency situations and for Commonwealth workers and people who work in connection with court proceedings.

WHAT ARE THE PENALTIES FOR NOT COMPLYING?

Failure to comply with these directions can lead to a penalty of AU$21,808.80 for individuals, and AU$109,044 for body corporates. There is also a penalty of AU$10,904.40 for individuals, and AU$54,522 for body corporates for providing false or misleading information.

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WHAT ARE THE CONSEQUENCES FOR WORKERS IF THEY REFUSE TO COMPLY?

Workers who are required to be vaccinated under the Directions and who are not vaccinated by the required dates, without a valid exemption, are unable to lawfully perform their work outside of their home. Employers are unable to allow those workers to attend work and are not required to pay those workers.

Ultimately if workers continue to be unvaccinated, this may amount to a lawful reason to terminate their employment or engagement. This should be carefully assessed on a case by case basis.

PRIVACY REQUIREMENTS

While employers of workers are required to collect, record and hold vaccine information, there are privacy obligations concerning collecting and retaining evidence of a person's vaccine status (or medical exemption status), as such information is considered health information and thus sensitive information, affording the information considerable protections under State and Federal privacy laws.

Employers should ensure that they are equipped to comply with those requirements including securing the information collected, having appropriate provisions in their privacy policies, and where required, use collection statements to address these issues.

WHAT SHOULD YOU DO NOW?

The Directions require that employers, **as soon as reasonably practicable after 7 October 2021**, inform all affected workers that they are obliged to collect, record and hold vaccination information. Employers must also inform workers that after 15 October 2021 unvaccinated workers are not permitted to work outside their ordinary place of residence unless an exception applies.

We are able to assist you with communications to workers and ensuring compliance with privacy requirements.

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