

Article Information

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Service: Employment & Labour

Webinar Q&As: Employment Relations National Seminar Series | Decision Time: Re-opening, Restructuring & Navigating Vaccination Restrictions

Piper Alderman provides the Answers in response to the Questions received during our Employment Relations National Seminar Series | Decision Time: Re-opening, Restructuring & Navigating Vaccination Restrictions webinar on 13 October 2021.

To view the on demand webinar, please register via email to events@piperalderman.com.au.

Q1: If we want all our staff to return to the workplace (at least some of the time) and we know that some staff are not vaccinated, what is the best option?

A1: If you want to have staff return to the workplace and you are concerned about having unvaccinated staff in the workplace (and you should), then you should implement a process to introduce a policy addressing the issue of staff being vaccinated. This will involve, consulting with your workforce and your contractors, customers and clients about the introduction of a policy. You will need to conduct a risk assessment as part of the process and this will assist you in determining the approach the business should take. Please reach out to our [Piper Alderman team](#) if you would like assistance with the implementation of an appropriate policy.

Q2: Can we make it a condition of employment that a prospective employee be vaccinated?

A2: Generally yes, it can be a requirement that a prospective employee must be vaccinated, provided there is some scope to consider genuine medical exemptions (which may or may not be able to be accommodated).

Q3: Can our customers/clients make it a condition of business that our staff must be vaccinated before attending their worksites or engaging with their staff?

A3: Generally yes, although it would be important for both parties to comply with the contract and to ensure accommodations and arrangements were in place to manage discrimination issues.

Q4: Will control measures like masks, temperature checks, social distancing, limiting headcount in the office, rapid antigen testing and rules around remaining home when symptomatic or positive, be enough to manage the risks in the absence of a mandatory vaccination requirement?

A4: It will depend on the outcome of the risk assessment conduct. It is important to note that a number of large companies have determined that the combination of these control measures is not enough. Please reach out to our [Piper Alderman team](#) if you would like advice about your workplace specifically.

Q5: Can you Stand Down an employee who is unable or unwilling to comply with a government or workplace

mandatory vaccination requirement?

A5: It is unlikely that the Stand Down provisions of the Fair Work Act could be used to do this as they are limited in scope. The policy should contemplate managing an employee in these circumstances and emphasises the need for each business to have a well drafted and thought out policy. Please reach out to our [Piper Alderman team](#) if you would like assistance with the implementation of an appropriate policy.

Q6: Can we require our employees to disclose their vaccination status and certificate?

A6: Where it is reasonably necessary for the employer to seek the vaccination status and certificate of an employee, the employer will need to seek the employee's consent where this is under a workplace policy. Where the employer seeks this information due to a government mandate, they do not need to first seek the employee's consent.

Q7: Our staff regularly attend a client's/customer's site. Can the client/customer require us (or our staff) to provide copies of the staff vaccination certificates?

A7: Your clients/customers have the same privacy obligations as you do. We would recommend that you engage with your clients/customers about both your and their vaccine policies before this becomes an issue. Most will agree that a broad based undertaking or statement that all your staff are vaccinated (when they are) will usually be enough.

Q8: Is the issue of having a mandatory vaccination policy going to be tested in the Fair Work Commission? It is difficult to manage the changing rules in the different States and Territories when you are running a national business?

A8: The issue of mandatory vaccination policies is likely to again be entertained by the Fair Work Commission in one way or another. Provided an employer has a reasonable and lawful basis for implementing a mandatory vaccine regime, the Fair Work Commission should endorse that approach. However, the issue of specific State or Territory public health orders will need to be complied with in that particular State or Territory and will not, on their own, justify implementing a national regime that applies to States and Territories where there are no public health orders in place in relation to mandatory vaccination.