

PRACTICE KIT – MANAGING COVID-19 VACCINATIONS (NO PUBLIC HEALTH ORDER)

VERSION / UPDATED ON	CHANGES MADE
V1 / 3 NOVEMBER 2021 6:00PM	N/A
V2 / 9 NOVEMBER 2021	
V3 / 15 NOVEMBER 2021	NEW APPENDICES; REVIEW OF GUIDANCE
V4 / 6 DECEMBER 2021	VACCINE ASSESSMENT TOOL (CURRENT INFORMATION AND EXPECTED RELEASE TIMEFRAME) DISTINCTION AND RELATIONSHIP BETWEEN HEALTH AND SAFETY ASSESSMENT VS VACCINE ASSESSMENT TOOL NEW NOTICE PROVISIONS FOR TERMINATION OF EMPLOYMENT
V5 / 22 DECEMBER 2021	NEW VACCINATION ASSESSMENT TOOL ADDITIONAL CAUSE OF ACTION FOR TERMINATION (SCHDEULE 3A OF EMPLOYMENT RELATIONS ACT 2000) UPDATES TO TEMPLATE LETTERS

DISCLAIMER – PLEASE READ CAREFULLY

- A. This is a guidance note and whilst due care and diligence has been applied in preparing this, it does not constitute legal advice and does not replace consultation with a legal advisor. We can assist with such advice, should this be required.
- B. The material provided in this guidance note is correct as at the date and time of its last update as noted above. Given the rapidly changing nature of the relevant legislation and issues, it is important to take note of any changes to the accuracy of the content herein after this guidance note is accessed by you. If you are unsure of possible changes, please contact The Chamber and/or your legal advisor without delay.

- C. The following checklist and steps reflect the process an employer is likely to be required to conduct when considering the requirement of certain roles in their business to be performed by a vaccinated person, in the absence of a government mandate requiring vaccination. This guide accordingly includes the management of termination of a person's employment where the person's position/work is not covered by the COVID-19 Public Health Response (Vaccinations) Order 2021 ("the Order"), and/or any other equivalent legal mandate (e.g., My Vaccine Pass mandate). Unlike the situation where statutory vaccination mandate exists (i.e., under the Order), no case law exists to date in relation to employers self-mandating vaccination.
- D. The Appendices to this guide include:
- i. An alternative vaccination assessment template (with guidance note) (**Appendix 0**);
 - ii. Template letters that can be used for the employer's consultation process and, where required, termination of employment (**Appendices 1 to 3**); and
 - iii. A clause that can be used in individual employment agreements for new employees (**Appendix 4**) and for existing employees whose positions are not covered by a legal mandate.

The templates provided reflect our views as set out in this guidance material and follow a low-risk approach. We can also provide alternative template letters as required.

- E. In circumstances where a role within your business is being impacted by client demands/requirements for vaccination (for example, where only vaccinated persons can enter clients' premises) and an unvaccinated employee is unable to perform their full duties as a result, we strongly recommend obtaining professional advice, and we can assist in this respect.

METHODOLOGY OF THIS PRACTICE KIT AND GENERAL COMMENT ON RISK

The circumstances outlined above, in of themselves, create an unavoidable risk to employers in respect of enforcing an employer-driven vaccination requirement, and terminating employment for that reason. There is a higher risk of a personal grievance for unjustified termination in the absence of a statutory vaccination mandate.

One claim we frequently hear about is that a role/specific work that is not covered by the statutory vaccination mandate would unlikely justify requiring vaccination by an employer, as otherwise the New Zealand legislator would likely have made vaccination mandatory for such role/work.

Whilst this may be arguable, we emphasise the following:

- The new Schedule 3A of the Employment Relations Act 2000 specifically provides for an employer to terminate employment outside of a statutory vaccination mandate (detailed further below)
- The Government has provided specific guidance for employers in respect of assessing whether a role requires a vaccinated worker (this is detailed further below), and
- The legislator cannot account for every possible role, work and scenario which may legitimately require vaccination.

These points firmly indicate that it can be lawful for employers to require that certain roles/work be undertaken by a vaccinated person (subject to a vaccination assessment and consultation process, see below).

Methodology

The process outlined in this Practice Kit is based on well-established legal principles and statutory requirements (for example, good faith). Provided the employer abides by these principles and requirements, the degree of risk can be managed and likely mitigated. This Practice Kit seeks to assist and support in this respect, alongside professional legal advice as required.

The Kit is based on a multi-layered approach as follows:

- The first layer is that the employer must conduct a vaccination assessment and consult with affected employees.
- If, as part of the next layer, the employee agrees with this and agrees to be vaccinated, the condition to be vaccinated should then be recorded in the employee's employment agreement (via a variation letter).
- If, however, the employee does not agree with this, then the next layer is to enforce the vaccination requirement unilaterally.
- If the employee elects not to meet this requirement, the next layer is to consider alternatives, such as redeployment into an available and suitable position that does not require vaccination.
- Failing this, the final layer is effect termination of employment. Whilst there are differing opinions in this respect, we consider that the substantive ground for termination of employment in such situation is a stand-alone cause as per (new) section 3 of [Schedule 3A of the Employment Relations Act 2000](#), rather than a redundancy.

The only situation in which this distinction would become relevant is where the employer is contractually liable for redundancy compensation. Should this be your situation, please contact us at EMA Legal to discuss suitable strategies. The below guidance and templates are drafted on the basis of our assessment in this respect.

Please note: this Practice Kit does not address the complex situation where third parties (for example, customers/clients) require your employees to be vaccinated in order to enter their premises. We suggest specific legal advice is sought in such circumstances and we can assist with this as required. Please do not hesitate to contact EMA Legal in this respect.

PROCEDURE

1. STEP 1: Ascertain that the employee is not covered by the Order, i.e., that they are not an “affected person” carrying out “certain work” in accordance with the Order.

If the employee is covered by the Order, do not proceed with this guide, and instead use our Practice Kit for PHO mandated vaccinations.

2. STEP 2: Conduct a vaccination assessment

A “vaccine assessment tool” (accessible [here](#)) has been issued which enables a PCBU to determine whether it is reasonable to require their workers not to carry out work unless either or both of the following apply:

- (a) the workers are vaccinated; and/or
- (b) the workers are required to undergo medical examination or testing for COVID-19.

The assessment tool provides the means for assessing the risk and adverse effects of COVID-19 in respect of ensuring the health and safety of workers and workplaces to support the public health response to COVID-19, and any other matters that the Minister considers relevant for a PCBU to consider when assessing the risk and adverse effects of COVID-19.

The specifics of the tool and instructions as to its use are as follows:

Factor	Lower Risk	Higher Risk
<i>Does the worker work in an indoor space that is less than 100m²?</i>	No	Yes
<i>Is it unreasonable for the worker to maintain 1 metre physical distancing from other people?</i>	No	Yes
<i>Is the worker in close proximity to any other person for more than 15 minutes?</i>	No	Yes

Does the worker provide services to people who are vulnerable to COVID-19?	No	Yes
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- This vaccination assessment tool consists of four factors. You must answer 'yes' to at least three factors before it would be reasonable to require vaccination for workers who carry out that work. When applying the tool to a particular role, employers need to think about all of the tasks involved in that role, including those that are not performed on a daily basis.
- The above assessment tool is not mandatory, and employers may apply their own assessment process/tool (and assessments prior to the release of the above assessment tool on 15 December 2021 will be 'honoured').
- The degree to which an employer utilises the assessment tool and/or modifies it depends on the circumstances at the time. This may include, without limitation, the size of the employer's workforce, the nature of the work environment, the number of anticipated and/or known non-vaccinated workers, and consequence-related considerations, such as the likely impact of a workplace infection on the vaccinated vs. non vaccinated employees; and individual employees' health profiles (for example, age, illnesses and injury concerns, which may make them more vulnerable to a workplace outbreak).
- An alternative assessment tool template that consists of the new tool's criteria, but also guidance previously provided by WorkSafe (please see [here](#) for WorkSafe's previous guidance), is attached as **Appendix 0** (with a guidance note).
- With specific regard to the **retail sector**, there is now more specific guidance provided on these categories as they apply within the new Traffic Light System Framework, set out on the Government's Covid-19 Website. This can be accessed [here](#).

3. STEP 3: Consult with the employee/s who you require to be vaccinated based on your health and safety risk assessment or the vaccine assessment tool

- Once you have conducted a vaccination assessment, you will need to consult with employees on your assessment and any resulting proposals (for example, requiring vaccination for specific roles moving forward).
- Specify which position/s you have assessed as requiring vaccination and why.
- Advise those employee/s who are in such positions of your vaccination requirement, detail the rationale for this, and stipulate a reasonable date from which you propose the requirement to become applicable; effectively, you stipulate that the positive vaccination status becomes a requirement of the position. In this respect, bear in mind

that you must provide a reasonable opportunity to employees to get vaccinated. You are also required to provide reasonable paid time off work for employees to get vaccinated.

- Propose that employee/s who are not vaccinated will not be able to continue employment in their current position(s), and that this may potentially result in termination of employment (if no reasonable alternative employment arrangements, for example, redeployment into role that does not require vaccination, can be identified).
- Ask the employee/s to provide you with their feedback on your proposal and with their vaccination status and corresponding evidence (including evidence of bookings for vaccinations). Please note that the current legal position is that employees are not obligated to disclose their vaccination status. However, if employees do decline to disclose their vaccination status, you should promptly advise them that you will assume that they are not vaccinated.
- Advise employees that they can seek independent advice on your proposal and give them a reasonable period to consider your proposal (in all the circumstances), seek advice, and to respond to your proposal (by a set date). If employees' feedback is that they do not wish to provide their vaccination status or they do not wish to be, or believe they cannot be vaccinated, immediately liaise with them for the purpose of ascertaining the exact reason/s for the employee/s not being able or willing to be vaccinated.
- You can use **Appendix 1** as a template letter for the consultation process.

4. STEP 4: Decide on implementation of vaccination requirement

- Once the consultation process is concluded, you will need to decide whether or not to implement a vaccination requirement. The following is based on the assumption that you do implement the proposed vaccination requirement.
- You will need to notify affected employees of the requirement to be vaccinated. You can use **Appendix 2** as a template letter in this respect.
- As part of this, you must give an employee “reasonable written notice” specifying the date by which the employee must be vaccinated in order to carry out the work of the employee (pursuant to [section 3\(2\) of Schedule 3A](#) of the Employment Relations Act 2000). Accordingly, you may be required to ‘hit pause’ and give the employee more time (i.e., a “reasonable” period) to consider the above matters before issuing a notice of termination.

5. STEP 4: Following Steps 3 and 4, the following options and corresponding consequences may or will arise

a. If the employee is fully vaccinated or will be fully vaccinated within the required timeframe and provides proof of this

- No further steps need to be taken, in that the employee meets the requirement to be vaccinated.
- You should record the requirement for the role to have a vaccinated incumbent by agreeing to the vaccination requirement to be reflected in the employee's employment agreement. A variation letter template is attached as **Appendix B** (enclosed with Appendix 2).

b. If the employee is not yet vaccinated or will not be fully vaccinated within the stipulated timeframe:

1. Liaise with the employee to ascertain when full vaccination will be obtained and what (health and safety) measures can be taken to ensure adequate health and safety in the meantime.

c. If the employee claims that it is not medically safe for them to be vaccinated:

1. Our view is that the employee should apply for an exemption in accordance with the process which is set out for those who occupy roles which require vaccination pursuant to the COVID-19 Public Health Response (Vaccinations) Order 202 (the **PHO**). This process can be accessed [here](#). Unfortunately, there does not appear to be any legislation or regulation which confirms and clarifies this, but considering the documentation which is required to attain an exemption (i.e., the specific application for such), this suggests that the existing exemption process is open to both categories. Namely, those covered by the PHO order and those who are not.
2. If the employee is granted an exemption, then assess what (health and safety) measures can be implemented that could ensure adequate health and safety of the employee (including but not limited to, PPE, remote working arrangements, change of duties, redeployment into different role that is not exposed to an elevated health and safety risk in accordance with the employer's health and safety risk assessment, etc). The employer would be required to make reasonable accommodations to the employee's position, similar of what is expected in respect of accommodating disabilities in employment in respect of sections 29 and 35 of the Human Rights Act 1993.
3. If no adequate alternative arrangements can be agreed on, then the employer may potentially consider termination of employment; please note, however, that this situation would be 'novel territory' and subject to corresponding legal risk (including

additional human rights considerations which may aggravate the risk of a legal challenge to a dismissal).

4. In order to mitigate such risk as much as possible, the robustness of the health and safety risk assessment, or vaccine assessment, the consultation process, and the effort to actively identify suitable alternatives to a dismissal and potential redeployment, will be crucial.

d. If an employee claims their religious or ethical belief prevents them from being vaccinated:

1. The employer should investigate whether there are genuine religious grounds to refuse vaccination (this may be demonstrated, for example, by way of email correspondence with the employee; and/or seeking advice of religious experts/communities, etc to verify claims of religious barriers to vaccination).
2. If the investigation confirms that the employee has reasonable grounds based on genuine religious reasons to refuse vaccination, then assess what (health and safety) measures can be implemented that could ensure adequate health and safety of the employee (including but not limited to, PPE, daily Covid-19 testing (for example, via rapid antigen testing) before commencement of work remote working arrangements, change of duties, redeployment into different role that is not exposed to an elevated health and safety risk in accordance with the employer's health and safety risk assessment, etc). The employer would be required to make reasonable accommodations to the employee's position, similar of what is expected in respect of accommodating religious or ethical belief in employment in respect of [section 28](#) of the Human Rights Act 1993.
3. As with the medical exemption basis above, if no adequate alternative arrangements can be agreed on, then the employer may potentially consider termination of employment. Again, this situation would be 'novel territory' and subject to corresponding legal risk, including taking into account human rights considerations as referred to above.
4. In order to mitigate such risk(s) as much as possible, the robustness of the health and safety risk assessment/vaccine assessment, the consultation process, and the effort to actively identify suitable alternatives to a dismissal and potential redeployment, will be crucial.

e. If an employee is unwilling to be vaccinated (for reasons other than those in step 4.c and/or 4.d, above):

- In order to mitigate such risk as much as possible, check:

- the robustness of the health and safety risk assessment/vaccine assessment tool process;
 - the consultation process; and
 - the effort to ensure that all other reasonable alternatives that would not lead to termination of the employee's employment agreement have been exhausted (section 4, schedule 3A of the Employment Relations Act 2000).
- Continue to liaise with the employee to ascertain the employee's reason for refusing vaccination; offer further information about vaccinations, etc., including consultation with a medical practitioner (at your cost), etc.
 - Ensure that the employee has been given reasonable written notice, clearly specifying the date by which the employee must be vaccinated in order to carry out their work, and the consequences of not being vaccinated by the required date.

6. STEP 6: Termination of Employment (only if no alternative and lawful arrangements regarding reasonable accommodations or redeployments can be made)

In order to mitigate legal risk as much as possible, the robustness of the health and safety risk assessment/vaccine tool assessment, the consultation process, and the effort to actively identify suitable alternatives to a dismissal and potential redeployment will be **crucial**.

- If no adequate alternative arrangements can be agreed on, then the employer may potentially consider termination of employment. Please note that this situation would be 'novel legal territory' and subject to corresponding risk.
- You should offer the employee the ability to retain their position if they agree to vaccination (and later if notice is given, there is a legislated mechanism to potentially require this in any event).
- Alternatively, you should offer the employee redeployment into another available and suitable position, subject to such redeployment opportunity existing (even if the employee has previously communicated to the employer that he/she does not wish to be redeployed into such position).
- It must be communicated to the employee that the employee's employment will be terminated if the redeployment offer will not be accepted.
- At the end of this process, the employer must be able to satisfy the overall test for justification under section 103A of the Employment Relations Act 2000, namely "*whether the employer's actions, and how the employer acted, were what a fair and reasonable employer could have done in all the circumstances at the time the*

dismissal or action occurred". Provided the above steps were taken, it is more likely that an employer may satisfy this test

1. If the employee is unable to comply with the above because they are not vaccinated by the specified date, their employer may terminate the employee's employment agreement by giving the employee **the greater of—**
 - a) 4 weeks paid written notice of the termination: or
 - b) the paid notice period specified in the employee's terms and conditions of employment relating to termination of the agreement.

2. A termination notice given as above is cancelled and is of no effect if, before the close of the period to which the notice relates, the employee becomes—
 - a) vaccinated; or
 - b) otherwise permitted to perform the work under a COVID-19 Public Health Response (Vaccinations) Order 2021.

Unless, cancelling the notice would unreasonably disrupt the employer's business.

3. Nothing in the legislation prevents the parties to the employment relationship from **mutually agreeing—**
 - a) to terminate the employee's employment agreement; and
 - b) that the employer will pay the employee in accordance with the legislation.

If the employment agreement provides for redundancy compensation, then, in our view, this would likely be payable. However, we strongly recommend having this aspect specifically assessed by us/your legal advisor.

APPENDIX 0 – ALTERNATIVE VACCINATION ASSESSMENT TEMPLATE AND GUIDANCE NOTES

Purpose of tool

This risk assessment tool has been developed to assist employers undertake a risk assessment on roles/ jobs/tasks to identify if the role/ task/ job needs to be undertaken by a vaccinated person.

Method

The tool has 3 areas of assessment.

1. The work context;
2. The likelihood of exposure; and
3. The possible consequences of the exposure.

The Tool assesses a worker who is vaccinated, unvaccinated and a vulnerable worker. This to identify the relative risk profile of each group of workers. If you have no known vulnerable workers, then do not complete that section.

Given the process is to assess whether the role task/ job needs to be undertaken by a vaccinated worker a comparison must be undertaken. Risk is defined as, Risk = **Likelihood X Consequences**

Sections **A** and **B** are added and then multiplied by section **C**

Work context

This assessment identifies general workplace criteria that are able to compound exposures and consequences.

Vulnerable workers are those with other illnesses, or are pregnant, on medications, etc., which may impact any Covid-related infections.

Likelihood

This looks at where exposure may occur that may lead to a transmission of the virus. These criteria are known as high risk factors for the transmission of the virus. Public facing is anyone who is not a fellow employee.

Consequences

This section identifies the possible outcome of a positive exposure. It is not intended to be based on medical knowledge or testing but rather on what the Ministry of Health has published.

This is as follows:

- We do know that unvaccinated people are far more prone to be more to severely affected by covid 19 than unvaccinated people; being hospitalised and or in HDU's (high dependency units)

- We also know the vulnerable and unvaccinated people are even more prone to severe life-threatening conditions.
- On the other hand, fully vaccinated people may still become infected but will have only slight to moderate signs and symptoms, sometimes no symptoms at all. They can be hospitalised but unlikely for severe conditions or life threatening conditions.

		Complete for each category.			
Role		Staff Vaccinated	Staff Unvaccinated	Vulnerable workers
	Context				
	Do you have staff over 60 yrs. Y=2, N=0		NA	NA	NA
	Number of people in contact per day Under 50=0, over 50 =2		NA	NA	NA
	Are vulnerable (illness) people in contact with staff Y=2, n=0		NA	NA	NA
	Is there a higher risk of transmission at work than outside of work? Y=2, n=0		NA	NA	NA
	Total A				
	Likelihood	Choose one option	Staff Vaccinated	Staff Unvaccinated	Vulnerable workers
	Mostly outside	0			
Work Environment	Indoor > 100 m ²	1			
	Indoor <100m ²	2			
	No public contact	0			
Nature of work	Public facing easy to identify	1			
	Public facing hard to identify	2			
	Able to keep distancing	0			
Ability to physical distance	Able to maintain 1 m	1			

	Cannot maintain distance, close contact	2			
	Brief < 20 mins	0			
Duration of exposure	20 mins – few hours	1			
	More than a few hours	2			
	Total B				
			Complete over page		
	Consequence		Staff Vaccinated	Staff Unvaccinated	Vulnerable workers
	No Symptoms	0			
	Mild flu like symptoms	1			
	Moderate flu, medical treatment	2			
	Hospitalised	3			
	Serious condition. HDU	4			
	Total C				
	Grand total A+B x B				
		Insert values			
	Total A				
	Total B				
	Total A+B				
	Total C				
	Total risk score				
	If score under 16	<i>Low risk</i>			
	If score between 16-32	<i>Moderate risk</i>			
	If score above 32	<i>High risk</i>			

APPENDIX 1 – TEMPLATE CONSULTATION LETTER/EMAIL TO STAFF

[Date]

Strictly private and confidential

[Employee]

[Address]

By hand/email/courier

Dear [insert name],

CONSULTATION ON REQUIREMENT TO BE VACCINATED

1. To date, [insert name of company] is not covered by the COVID-19 Public Health Response (Vaccinations) Order 2021, and accordingly there is no statutory requirement for our employees to be vaccinated against Covid-19.
2. However, we have carried out a [specify the applicable option: health and safety risk assessment/vaccine assessment] to assess the benefits and necessity of requiring our staff to be vaccinated against Covid-19. [Insert details of the assessment, i.e., the methodology, reasoning, assessment of roles, etc; and attach as **Appendix A** a copy of a corresponding report or matrix.]
3. As you can see from our assessment, we have assessed that your position of [insert position title] is exposed to an elevated risk of contracting and spreading Covid-19. We have arrived at this conclusion because [insert specifics, with particular focus on the risk associated with the position's tasks].
4. Accordingly, we propose that your position be made subject to a vaccination requirement which we propose to implement from [insert date]. Essentially, the requirement to be and remain fully vaccinated against Covid-19 (in accordance with any future applicable COVID-19 vaccination requirements, or best-practice based on Ministry of Health advice) is proposed to become a condition of your employment, pursuant to clause 3(1)(b), schedule 3A of the Employment Relations Act 2000.
5. The condition of employment that we propose to introduce to your terms and conditions of employment as a result of our [health and safety risk assessment/vaccine assessment] is as follows:

“The Employer has assessed that the Employee’s position may be exposed to a more than general risk of contracting or spreading the Covid-19 virus. Based on its

[health and safety risk assessment/vaccine assessment], the Employer therefore requires the Employee to be vaccinated against Covid-19 in accordance with any applicable legislation, regulation, and/or Ministry of Health guidelines that apply at the relevant times. The Employee's obligation to be/remain vaccinated against Covid-19 extends to any booster shots that may become mandatory or recommended (and required by us, subject to availability) at any time during the course of the Employee's employment. the Employee's employment will therefore be at all times conditional on satisfying the applicable vaccination requirements. Any misrepresentation, including but not limited to omissions in respect of the Employee's vaccination status may constitute serious misconduct and may result in termination of employment. The Employee hereby also consents for their vaccination-status-related information to be kept by the Employer and used for all employment-related purposes, including for communication to other employees and/or clients, as far as is necessary.

6. Please consider our [health and safety risk assessment/vaccine assessment], and the corresponding implications, including the proposed variation to your terms and conditions of employment, and provide us with your written feedback by [allow for at least one calendar week].
7. You are entitled to seek independent advice and/or representation in respect of our proposal.
8. We will then give full and genuine consideration to the feedback and the overall circumstances before we make a decision in respect of our proposal, and we will notify you accordingly.
9. I realise that this may be an unsettling time for you, and I emphasise that it is our wish to work together with our employees to do everything we can to ensure the health, safety and wellbeing of our staff and customers.
10. Please do not hesitate to contact me if you have any questions regarding this proposal or the corresponding process.

Yours sincerely,

[Insert name]

[Insert title]

[Insert contact number]

[Insert email address]

APPENDIX 2 – DECISION REGARDING VACCINATION PROPOSAL

[Date]

Strictly private and confidential

[Employee]

[Address]

By hand/email/courier

Dear [insert name],

DECISION REGARDING VACCINATION PROPOSAL

1. I refer to our previous correspondence and consultation in relation to the company's proposal to make it a term and condition of your employment to be and remain fully vaccinated against Covid-19. I am now writing to notify you of the company's decision regarding the outcome of the consultation process.
2. On [insert date], I advised you of the company's [INSERT] proposal and provided you with the relevant information which explained the proposal, its underlying rationale, i.e., our [health and safety risk assessment/vaccine assessment], and the impact of the proposal on your position, should it go ahead.
3. We then undertook a consultation process with affected employees, including yourself, and, as part of this, we sought and received feedback on our proposal. In summary, the feedback we have received related to the following 'themes':
 - [Insert brief summary of the theme of feedback and respond accordingly]
 - [Insert brief summary of the theme of feedback and respond accordingly]
4. We have given full and genuine consideration to the feedback. We have determined that it will be in the best interest of the company, its employees and their health and safety in the workplace, and the company's commercial partners and customers/clients who we interact with, to implement the proposal and accordingly make vaccination a term of employment in respect of those employees whose roles were identified as being exposed to elevated risk in our health and safety risk assessment – including your position.
5. You may have already received one or more vaccinations, in which case we ask you to provide us with proof of your vaccination, i.e., a screenshot of your 'My Covid Record' (see <https://app.covid19.health.nz/>), or a confirmation letter from your General Practitioner.

6. Further, we ask that you return a signed copy of the enclosed variation document (**Appendix B**).
7. Where you have only had one vaccination to date, you will need to provide us with confirmation of when you are scheduled to receive and have received your second vaccination which will be a requirement to be considered fully vaccinated. We would require you to be fully vaccinated and confirm your vaccination status by **[insert reasonable date, which will depend on whether the employee has already received the first vaccination]**.
8. If you are unvaccinated at present, we are willing to assist and work with you to make arrangements to get vaccinated. Should you have concerns regarding the vaccine, please liaise with us without delay, and we would be happy to help you receiving appropriate information or assistance. We would liaise with to identify and discuss any barriers to vaccination.
9. Should you not confirm your vaccination status with us by **[insert date]**, we will have to treat you as being unvaccinated for the purposes of the impact of our decision on your ongoing employment.
10. Subject to the outcome of our discussions in this respect, should you remain unvaccinated as at **[insert date mentioned above]**, we would: issue a formal requirement that the work currently being performed by you **[namely]**, be performed by a vaccinated person. This requirement would be issued pursuant to section 3(1)(b), schedule 3A of the Employment Relations Act 2000.
11. We would then liaise with you to identify any redeployment opportunities within the business into a role that may not require vaccination in accordance with our assessment (subject to such position existing, being available at the time and being suitable, taking into account your qualifications, skills and experience). Please note that any such redeployment may potentially be subject to different terms of employment that those currently applicable to you.
12. If redeployment is not possible, we will consider the termination of your employment. In that case, we would give you notice of termination in accordance with your contractual (or otherwise applicable) notice period.
13. You remain entitled to seek independent advice and/or representation in respect of the processes referred to in this letter.
14. Please do not hesitate to contact me if you have any questions regarding this letter, or if you would like the company to assist with arranging support services through our Employee Assistance Programme **[delete if not applicable]**.

Yours sincerely

[Insert name]

[Insert title/position]

[Insert a contact number]

[Insert email address]

APPENDIX B (enclosed to Appendix 2) – SAMPLE VARIATION TO IEA LETTER

[Insert company letterhead]

[Insert date]

Private and Confidential

[Insert employee name]

[Insert employee address]

Dear [insert name],

VARIATION OF TERMS AND CONDITIONS OF EMPLOYMENT

1. Further to our correspondence to date, we confirm that your position and its associated tasks are now covered by the requirement to be and remain vaccinated against Covid-19 throughout your employment (unless/until agreed otherwise). This comes following our consultation on our health and safety risk assessment.
2. To reflect this new requirement and the corresponding implications on the terms and conditions of your employment, the following new term/condition of employment will form part of your individual employment agreement with immediate effect:

“The Employer has assessed that the Employee’s position may be exposed to a more than general risk of contracting or spreading the Covid-19 virus. Based on its health and safety risk assessment, the Employer therefore requires the Employee to be vaccinated against Covid-19 in accordance with any applicable legislation, regulation, and/or Ministry of Health guidelines that apply at the relevant times. The Employee’s obligation to be/remain vaccinated against Covid-19 extends to any booster shots that may become mandatory or recommended (and required by us, subject to availability) at any time during the course of the Employee’s employment. the Employee’s employment will therefore be at all times conditional on satisfying the applicable vaccination requirements. Any misrepresentation, including but not limited to omissions in respect of the Employee’s vaccination status may constitute serious misconduct and may result in termination of employment. The Employee hereby also consents for their vaccination-status-related information to be kept by the Employer and used for all employment-related purposes, including for communication to other employees and/or clients, as far as is necessary.”

3. You are entitled to seek independent advice in relation to this clause, noting, however, that the vaccination requirement itself is not subject to negotiation. We also encourage you to address any questions you may have directly with us.
4. Please sign the below declaration (or alternatively respond accordingly via email to me) to confirm this amendment.

Declaration – Your Acknowledgement and Agreement

I acknowledge that I have read and acknowledge the amendment to my terms and conditions of employment as per the above provision. I have been advised of my right to seek independent advice on the content of the variation. I have been provided with a reasonable opportunity to seek and obtain independent advice.

[Insert name of authorised person]

for and on behalf of [insert Employer]

Date

[Insert name of the Employee]

Date

APPENDIX 3 – TERMINATION LETTER TEMPLATE

[Insert date]

Strictly private and confidential

[Employee]

[Address]

By hand/email/courier

Dear [Employee]

NOTICE OF TERMINATION OF YOUR EMPLOYMENT

1. As you know, the Company provided you with a health and safety risk assessment and the resulting proposal that the ongoing performance of the tasks related to your position of [insert position title] requires (ongoing) vaccination against Covid-19.
2. We actively consulted with you regarding our proposal, and I refer you to our correspondence in this respect.
3. On [insert date], we notified you of our decision to implement the proposal to make it mandatory for your position to be fully vaccinated against Covid-19.
4. We then asked you to confirm your vaccination status by no later than [insert date]. We also asked you to return a signed copy of the variation letter, confirming the implementation of vaccination requirement.
5. You did not return a signed copy of the variation letter and you did not confirm your vaccination status. Accordingly, we treated you as not satisfying the vaccination requirement.
6. We then issued you with an instruction that the work currently being performed by you [namely], be performed by a vaccinated person, pursuant to section 3(1)(b), schedule 3A of the Employment Relations Act 2000.
7. We then tried to identify available and suitable redeployment opportunities within the business in respect of roles that do not require vaccination in accordance with our assessment (subject to such position existing, being available at the time and being suitable, taking into account your qualifications, skills and experience). We could not identify any such available redeployment opportunities.

8. Accordingly, this letter serves as notice of termination of your employment in accordance with section 3(3) of Schedule 3A of the Employment Relations Act 2000. In accordance with your contractual notice period [insert - contractual notice period vs statutory minimum of 4 weeks, whichever is the longer period], your last day of employment will be [insert date]. Should you wish to leave sooner, please let me know and we can discuss options for managing your notice period. All outstanding entitlements up until the termination date will be paid immediately following the end of your employment. Please note that you are not entitled to redundancy compensation.
9. I appreciate that the company's decision and this letter will come as a disappointment to you. I wish to reiterate that this decision was not made lightly, and I thank you for your work, your contribution to our business and your professionalism throughout your employment and particularly during this unsettling time. On behalf of the company, I wish you all the best for your professional and personal future.
10. Please do not hesitate to contact me if you have any questions regarding this letter, or if you would like the company to assist with arranging support services through our Employee Assistance Programme.

Yours sincerely

[Insert name]

[Insert title/position]

[Insert a contact number]

[Insert email address]

APPENDIX 4 – SAMPLE IEA CLAUSE (FOR NEW EMPLOYEES)

With regard to new employees applying for positions that the employer's health and safety assessment identifies as necessitating vaccination, the employer may ask for the applicant's vaccination status as part of the recruitment process (the employee may refuse to answer this question; the employer may discontinue the application process if the applicant's answer is not satisfactory to the employer).

The employer may use the following clause in the employee's (individual) employment agreement:

“The Employer has assessed that the Employee’s position may be exposed to a more than general risk of contracting or spreading the Covid-19 virus. Based on its health and safety risk assessment, the Employer therefore requires the Employee to be vaccinated against Covid-19 in accordance with any applicable legislation, regulation, and/or Ministry of Health guidelines that apply at the relevant times. The Employee’s obligation to be/remain vaccinated against Covid-19 extends to any booster shots that may become mandatory or recommended (and required by us, subject to availability) at any time during the course of the Employee’s employment. the Employee’s employment will therefore be at all times conditional on satisfying the applicable vaccination requirements. Any misrepresentation, including but not limited to omissions in respect of the Employee’s vaccination status may constitute serious misconduct and may result in termination of employment. The Employee hereby also consents for their vaccination-status-related information to be kept by the Employer and used for all employment-related purposes, including for communication to other employees and/or clients, as far as is necessary.”