

PRACTICE KIT – MANAGING COVID-19 VACCINATIONS (PUBLIC HEALTH ORDER)

DISCLAIMER

This is a guidance note only 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.

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 provided to you. If you are unsure of possible changes, please contact EMA and/or your legal advisor without delay.

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. This includes managing the termination of a person's employment where this is covered by the COVID-19 Public Health Response (Vaccinations) Order 2021 ("the Order"). The Appendices to this guide include template letters that can be used for the employer's consultation process and, where required, termination of employment (**Appendices 1 to 4**), and a clause that can be used in individual employment agreements for new employees whose positions are covered by the Order (**Appendix 5**).

1. STEP 1: Ascertain whether the employee works in an identified mandated sector, and, whether the employee is an "affected person" in accordance with Schedule 2 the Order.

- a) Is the employee an "affected person" in accordance with sections 7 and 4 of the Order (which then refers to Schedule 2 of the Order)?
 - An "affected person" is defined in section 4 of the Order as "*a person who belongs to a group (or whose work would cause them to belong to a group)*" that is specified in Schedule 2 of the Order (see below).

- b) Schedule 2 of the Order can be accessed [here](#). At present, the groups of affected persons are (each of the below is also further broken down within Schedule 2 in conjunction with section 4 of the Order):
 - Groups in relation to managed quarantine facilities
 - Groups in relation to managed isolation facilities
 - Groups in relation to affected airports

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- Groups in relation to affected ports
 - Groups in relation to aircraft
 - Groups in relation to affected items
 - Groups in relation to health and disability sector
 - Groups in relation to prisons, and
 - Groups in relation to affected education services.
- c) Section 4 of the Order states that “*certain work*” means “*work that the affected person carries out (whether paid or unpaid) in respect of a group specified in Schedule 2*”. The employer therefore needs to carefully assess and ascertain whether the Order captures the particular position and/or associated tasks the employee is employed to perform (rather than the employee merely belonging to a ‘group of workers’ mentioned in the Order).

Note that despite an employee’s role or position title, the actual work they undertake, may mean that they are part of a specified group within Schedule 2 of the Order.

The above assessment will primarily be guided by the relevant definitions in section 4 of the Order in conjunction with the relevant section in Schedule 2 of the Order.

2. STEP 2: Consult with the employee/s in relation to the vaccination requirement

- a) Communicate to your employees which position/s you have assessed to be covered by the Order.
- b) Notify those employee/s of the vaccination requirement and the date from which the requirement will apply. Current mandates and timeframes are as follows:

Vaccination deadlines for affected workers under the Order	First vaccination by 11.59pm on	Second vaccination by 11.59pm on
MIQ, Border Control, and Airport Workers	Past event	Past event
Corrections Sector	6 November 2021	8 December 2021
Health & Disability Sector	15 November 2021	1 January 2022
Education Sector	15 November 2021	1 January 2022

- c) Advise that the employee/s will not be legally allowed to perform the duties of their position past that date (see [sections 7](#) and [8](#) of the Order in this respect), and that in the absence of available and suitable alternatives at the time, termination of employment may occur.
- d) Ask the employee/s to provide you with their vaccination status and corresponding evidence (this can include evidence of bookings for vaccinations); this step corresponds with the employer's obligations regarding the employees' vaccination status under [section 10](#) of the Order (please note that the heading of section 10 currently only refers to groups specified in Parts 1 to 6 of Schedule 2 and omits Parts 7 to 9; this appears to be a mere drafting error, as everything else indicates that all mandated categories would be covered by section 10 of the order). "Affected persons" who carry out "certain work" must disclose their vaccination status to the employer, see [section 11](#) of the Order.
- e) Require employees who are covered by the Order and who have any concerns with the vaccination requirement to immediately liaise with you for the purpose of ascertaining the exact reason/s for the employee/s not being able or willing to be vaccinated.
- f) Provide education, resources, and support to enable employees to get vaccinated. Such resources and information can be sourced, for example, from www.covid19.govt.nz or www.health.govt.nz. Do not prevent any worker from being vaccinated if their appointment to be vaccinated falls within their working hours, and if possible, pay employees their usual pay if they are being vaccinated during working hours.
- g) Repeat the above steps, if needed, to ensure that the message is received and understood by everyone.
- h) A letter template to commence the consultation with your employees is attached as **Appendix 1**.

3. STEP 3: Subject to the outcome of Step 2 the following scenarios may arise:

- a. **SCENARIO 1: The employee is fully vaccinated or will be fully vaccinated within the required timeframe and provides appropriate proof of this:**
 - In this case, no further steps need to be taken in respect of that employee
 - Ensure that correct contact details of workers are recorded *before* they carry out certain work
 - Provide accurate worker information to the Ministry of Health for inclusion in its centralised register if required by the Ministry of Health

- Provide information (factsheet) to workers which outline the information that the employer will share about them
 - Suitable evidence can be, for example, a copy of the employee's COVID-19 immunisation status from [My Covid Record](#).
- b. SCENARIO 2: The employee is not yet fully vaccinated or will not be fully vaccinated within the required timeframe, or if the employee has not provided appropriate proof of their vaccination:**
- Assess whether an exemption from the duty to be vaccinated under section 9B or section 12A of the Order, or an exception pursuant to sections 9 or 9A of the Order, is applicable.

EXEMPTIONS AND EXCEPTIONS TO THE VACCINATION REQUIREMENT:

(1) Exception under [section 9](#) of the Order

- (a) This exception is *about the business* in which the affected worker operates.
- (b) This exception does not apply in respect of workers in the health and disability sector, prisons, and education services!
- (c) As far as it is applicable, a Chief Executive (categories specified in section 9(5) of the Order) may authorise affected persons who are not vaccinated to carry out certain work, if that work is “unanticipated, necessary, and time-critical and cannot be carried out by a person who is vaccinated” and is necessary to prevent the ceasing of operations. This effectively means that this exception is extremely narrow.

(2) Exception under [section 9A](#) of the Order

- (a) The Director-General *may* authorise affected persons who are not yet fully vaccinated to carry out certain work if the affected person has received at least one dose of a Covid-19 vaccine (other than the Janssen vaccine) and the person's vaccination status and the work they carry out limit the risk of an outbreak or the spread of Covid-19.
- (b) The PCBU must apply for this exception.
- (c) The granting of an exception under this clause is in the sole discretion of the Director-General.

(3) Exemption under section 9B of the Order (see Appendix 0):

- (a) An exemption under this clause relates to the affected worker's personal circumstances. Workers who receive a health exemption in accordance

with this section may continue to work in their role despite not being vaccinated.

- (b) The exemption is only applicable in relation to workers in the health and disability, education, and corrections sectors, and workers who handle affected items in relation to MIQ and managed isolation facilities, aircrafts, and ports.
- (c) Any previously obtained 'exemptions' from 'suitably qualified health practitioners' are now obsolete and will have no effect.
- (d) The exemption process under section 9B of the Order works as follows:
 - (i) A suitably qualified medical practitioner or nurse practitioner may apply for a COVID-19 vaccination exemption on behalf of a person who is not vaccinated and who belongs to the aforementioned groups (see paragraph (b)). In this sense, a medical practitioner is a health practitioner who is registered with the Medical Council of New Zealand (continued by section 114(1)(a) of the Health Practitioners Competence Assurance Act 2003) as a practitioner of the profession of medicine, and who holds a current practicing certificate. A nurse practitioner is a health practitioner who is registered with the Nursing Council of New Zealand (continued by section 114(1)(a) of the Health Practitioners Competence Assurance Act 2003) as a practitioner of the profession of nursing and whose scope of practice permits the performance of nurse practitioner functions, and who holds a practicing certificate.
 - (ii) An application for an exemption may only be made on the basis of specified exemption criteria which are published and approved by the Director General. Essentially, these will be criteria that render it medically unsafe for the affected person to receive the vaccination. The criteria will be extremely narrow.
 - (iii) The application must be accompanied by a certificate signed by the applying medical/nurse practitioner.
 - (iv) The Director-General may seek further information and evidence from the applying medical/nurse practitioner, or the affected person him/herself.
 - (v) If granted, an exemption will be valid for a maximum of 6 months. However, an application for a new exemption may be made.
 - (vi) If the application is rejected, the relevant worker will not be able to return to work and the employer should consult with them at that

stage to discuss redeployment (if appropriate) and/or termination of their employment/contract.

- (e) An exempt worker must notify and provide written confirmation of the exemption to the PCBU, and the PCBU must ensure there are appropriate control measures in place to (for example, PPE) mitigate risk.

(4) Exemption under [section 12A](#) of the Order

- (a) The PCBU (e.g., the employer) may apply to the Minister for Covid-19 Response for an exemption of (named) persons specified in such application from the vaccination requirement (or any other provision of the Order). Whilst an employer may make an application in respect of more than one person, the Minister will not consider applications for a class or group of persons. Before an employer may apply, they must have the person's agreement regarding the application for an exemption and be able to demonstrate that the criteria for an exemption are being met.
- (b) The granting of an exemption under this section is discretionary.

FURTHER COMMENTARY ON EXEMPTIONS AND EXCEPTIONS:

- **If an employee claims that it is not medically safe for them to be vaccinated**, then the employee must seek an exemption under section 9B of the Order (see the above). A claim of discrimination under the Human Rights Act 1993 would likely fail, particularly in the absence of a confirmation from a suitably qualified health practitioner, as a discrimination would likely be justifiable. If such claim is made, however, refer the employee to the process under section 9B of the Order.
- **If an employee says their religious or ethical belief prevents them from being vaccinated**, then note that in contrast to the Human Rights Act 1993 in respect of discrimination, the Order does not identify religious and/or ethical belief as a reason that warrants an exemption from the vaccination requirement. The Order as it stands does not specifically address how religious or ethical beliefs may impact the ability to seek an exemption. Given the basis of the ability to seek these exemptions has been specifically set out expressly without any mention of religion or ethics, our interpretation is that such concerns would not enable the granting of an exemption. We recommend that employers seek specific advice to address any such concerns, if they arise, as these will need to

be treated on a case-by-case basis due to the uncertainty of the law and the multiple variables which may apply. It may be recommendable that employers at least turn their mind towards this potential issue to demonstrate that this has been at least considered if it ever got challenged by an employee; this may be demonstrated, for example, by way of email correspondence with the employee; or seeking advice of religious experts/communities, etc to very claims of religious barriers to vaccination.

FINAL NOTE:

A person who is not vaccinated may enter a workplace without approval if they need to enter to preserve or protect a person's life, health, or safety in an emergency; or they are authorised or required to by law.

- If an exemption applies, the employer should:
 - conduct and record in writing any risk assessment with the exempted workers, together with agreed outcomes to address all possible risks and what health and safety measures you are taking in response.
 - If it is not reasonably possible to address all possible risks **and** the employer considers that permitting the unvaccinated person to continue in the relevant role poses an acceptable risk (and redeployment is not possible), then step 4 below applies, **subject to a clearly documented health and safety risk assessment**. The Government has announced that more specific guidance in respect of such assessments (generally) will be provided shortly.
- If no exemption or exception is applicable, then the employer must not allow the unvaccinated employee to carry out their role. In that case, the employer must consider whether the employee can be (at least temporarily) redeployed into a different available and suitable position that is not covered by the Order.
 - If such different and suitable position (meaning that the employee can learn the duties of such position within a reasonable timeframe and the position is actually meaningful for the employer as well) is available, and redeployment can be agreed on, then such agreement must be recorded in writing (including any specific terms that may differ from the employee's IEA, e.g., remuneration, hours of work, place of work, duration of the arrangement (i.e., temporarily, or permanently), etc.). Effectively, this amounts to a variation of the terms of employment.
 - If no agreement can be reached, then the employer must offer the employee redeployment into the different position, even if the employee

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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.

- If no exemption or exception is applicable and no redeployment can be achieved, the employer may proceed to STEP 4, see below.

4. STEP 4: If no exemption or exception is applicable and no redeployment can be achieved, and the employee remains unvaccinated

- a. The employer must not allow the affected worker to carry out their work. Effectively, this constitutes a stand-down.
- b. At present, it is our view that such stand-down would be without pay, in that the employee is not ready and able to work due to the employee's personal decision not to satisfy the vaccination requirement (assuming that no exemption under section 9B of the Order applies).
- c. The employer should reiterate with the employee the requirement to be vaccinated and produce proof of this and provide the employee with a further reasonable opportunity to get vaccinated (or proof thereof) whilst the employee is stood down. Such reasonable opportunity could be providing the employee with one week's notice. During that period, the employee remains stood down without pay, however, the employee may query with the employee whether they wish to utilise their annual holiday entitlement, if any.
- d. If the employee still does not satisfy the vaccination requirement after this, the employer may give notice of termination. It is our view that termination would be on notice rather than without notice. However, it may not be possible for the employee to work out their notice period because of their vaccination status and the clear wording of the Order. In that case, the employee would not be "able" to perform the work and consequently, the employee would technically not be entitled to be paid. Employers can therefore either agree to pay them salary/wages in lieu of notice, based on the employee's previous remuneration, or they can require the employee to 'sit out' their notice period at home without pay. In contrast to the approach followed in **Appendix 4**, the employer may elect not to commence the termination process straight away, but instead agree with the employee on a period of annual leave or even leave without pay in order to retain the employee (at least initially) and try and find alternative arrangements (for example, agreed changes to terms of employment and duties that would not require vaccination), or to provide the employee with an extended 'grace period' to get vaccinated, in which case, the employee would then be allowed to perform 'certain work again'. If you wish to apply this approach, **Appendices 3 and 4** would need to be tailored accordingly.

- e. 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.

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APPENDIX 0 – Vaccine Temporary Medical Exemption Clinical Criteria, Clinical Guidance and Resources (Taken from the ministry of health and copyrights in respect of appendix 0 are owned by the ministry of health)

Vaccine Temporary Medical Exemption Clinical Criteria, Clinical Guidance and Resources

New Zealand COVID-19

Vaccine and Immunisation Programme

Version 1.1

Principles of Temporary Medical Exemption

- There are very few situations where a vaccine is contraindicated and, as such, a medical exemption is expected to be rarely required.
- Exemptions should be limited to situations where a suitable alternative COVID-19 vaccine is not readily available for the individual.
- Exemptions should be for a specified time, reflecting, for example, recovery from clinical conditions or the availability of alternate vaccines.
- Vaccination should be completed as soon as clinically safe within the exemption timeframe. This is particularly relevant for criteria 1C where it is unlikely that a full six months is required.
- It is likely that most people who are not medically exempt can be safely vaccinated, with some requiring extra precautions.
- The practitioner completing the application form should have an existing clinical relationship with the consumer and will support them for completing their vaccinations going forward.

Those not medically exempt

- People who had an otherwise negative experience that is not mentioned above, with other vaccines in the past.
- Disabled people once adequate resources are available to support safe delivery. People with disabilities are generally at higher risk from COVID-19, and therefore are a priority for vaccination.
- Pregnant people. Pregnancy is not a valid reason for exemption in the absence of any of the criteria listed in the above table. Pregnancy is associated with higher risk from COVID-19 compared to the general population and therefore this group are a priority for vaccination.
- A vaccination may reasonably be deferred for individuals with some acute major medical conditions, such as undergoing major surgery or hospital admission for a serious illness.

Medical exemption duration

The medical exemption duration is 6 months, with the ability to apply for a new exemption if required. This time period will allow individuals who can safely be vaccinated, with either the same vaccine or an alternative vaccine, as appropriate, to be protected against COVID-19 in a timely way.

			<ul style="list-style-type: none"> Has been determined following review by, and/or on the opinion of, a relevant medical specialist to be associated with a risk of recurrence of the serious adverse event if another dose of the same vaccine is given. 	<input type="checkbox"/>		1B. <input type="checkbox"/> (4 of 4 criteria required)
			Examples of serious AEFIs may include but are not limited to a medically significant illness (eg, immune thrombocytopenia purpura (ITP), myocarditis, potentially life-threatening events (eg, anaphylaxis), severe ME/CFS, or persistent or significant disability (eg, Guillain-Barré Syndrome). These reactions do not include common expected local or systemic reactions known to occur within the first few days after vaccination.			
		1C. Unable to tolerate administration due to risk to self or others.	<ul style="list-style-type: none"> Unable to tolerate vaccine administration with resulting risk to themselves or others (eg, due to severe neurodevelopmental condition such as autistic spectrum disorder). 		Letter of support from a medical specialist within the relevant scope practice	1C. <input type="checkbox"/>
2	Pfizer Vaccine	2A. Anaphylaxis	<ul style="list-style-type: none"> Anaphylaxis to the first dose of the vaccine or known severe allergy to the excipients of the vaccine as per the datasheet provided to Medsafe. <p>This criterion will be removed as an exemption when there is an alternative vaccine available in New Zealand.</p>		CARM report Discharge summary Letter of support from a medical	2A. <input type="checkbox"/>

			Many of these individuals will be able to be safely vaccinated in a controlled environment, and we recommend clinical immunologist/specialist assessment.	specialist within the relevant scope practice	
		2B. Myocarditis / Pericarditis	Myocarditis/pericarditis following the first dose of the vaccine.		2B. <input type="checkbox"/>
		2C. Inflammatory Cardiac Illness	Inflammatory cardiac illness within the past 6 months including: acute myocarditis, pericarditis, endocarditis, acute rheumatic fever or acute rheumatic heart disease (ie, with active myocardial inflammation).		2C. <input type="checkbox"/>
		2D. Acute Decompensated Heart Failure	<ul style="list-style-type: none"> • Acute decompensated heart failure. <p>Although myocarditis and/or pericarditis is very rare following vaccination, if such an event were to occur, then it may exacerbate a patient's pre-existing heart failure.</p>		2D. <input type="checkbox"/>
3	Trial Vaccine	3A. Non-Placebo participant in a vaccine trial	<ul style="list-style-type: none"> • Those who are confirmed as having the vaccine (ie, non-placebo) in any COVID-19 vaccine trial in Aotearoa New Zealand (for example, the Valneva COVID-19 vaccine trial NCT04956224). 	Letter of confirmation from the Vaccine Trial Clinical Lead	3A. <input type="checkbox"/>

Other adverse events that have been reported to the Centre for Adverse Reactions Monitoring (CARM), the Immunisation Advisory Centre (IMAC), or have been observed internationally include shingles, appendicitis, lymphadenopathy with or without fever, exacerbation of myalgic encephalomyelitis/chronic fatigue syndrome (ME/CFS), regional pain syndrome, and neurological events with localised arm pain. These events **may or may not** be related to the vaccine and it is generally advised to defer the second dose until the symptoms have fully resolved.

Additional Support

If you or your patient are uncertain about the criteria, please consider contacting IMAC for clinical decision-making support on **0800 IMMUNE (466 863)**.

Ministry of Health Application

COVID-19 Vaccine Temporary Medical Exemption

Please send the completed application to temporarymedicalexemption@health.govt.nz

Consumer Details				
Full Name				
Contact Phone				
Contact Address				
Contact Email				
Address				
Vaccine Order Status	Yes <input type="checkbox"/>	or	No <input type="checkbox"/>	Date of Birth <input type="text"/>
NHI				
I [_____], consumer, certify that the information I have provided to the practitioner for the purposes of making this application is true.				
Consumer Signature			Date Signed	
Applicant Details				
Full Name				
Contact Phone				
Contact Email				
Clinic Address				
Registration number				
Health Practitioner Index Number				
Category exemption criteria (please tick those that apply)	<input type="checkbox"/> 1A <input type="checkbox"/> 1B (4 of 4 criteria required) <input type="checkbox"/> 1C	<input type="checkbox"/> 2A <input type="checkbox"/> 2B	<input type="checkbox"/> 2C <input type="checkbox"/> 2D	<input type="checkbox"/> 3A
The duration of the clinical relationship with the consumer is _____ years _____ months				

I [] nurse practitioner/medical practitioner [select] certify that I:
Have reviewed the consumer's medical history and assessed the person's state of health. Yes / No
Have clinical evidence supporting the person meets the specified COVID-19 vaccination exemption criteria. Yes / No

The attached supporting clinical evidence is:

I certify that I provide this information believing it to be true.

Applicant Signature

Date

Signed

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COVID-19 Vaccine Temporary Medical Exemption Ministry of Health Approval Record

Consumer Details			
Full Name			
Contact phone			
Contact email			
Contact Address			
Vaccine Order Status	Yes <input type="checkbox"/>	or	No <input type="checkbox"/>
NHI			
Exemption start date			
Exemption expiry date			
Category exemption categories	<input type="checkbox"/> 1A <input type="checkbox"/> 1B <input type="checkbox"/> 1C	<input type="checkbox"/> 2A <input type="checkbox"/> 2B	<input type="checkbox"/> 2C <input type="checkbox"/> 2D <input type="checkbox"/> 3A
Name		Role	
Signature		Date Signed	

APPENDIX 1 - TEMPLATE LETTER/EMAIL TO ALL STAFF WHO ARE AFFECTED WORKERS

(NOTE: A SLIGHTLY VARIED VERSION OF THIS TEMPLATE CAN BE USED IN RESPECT OF THE SECOND VACCINATION)

[Date]

Strictly private and confidential

[Employee]

[Address]

By hand/email/courier

Dear [insert name],

COVID-19 Public Health Response (Vaccinations) Order 2021 – Requirement to be vaccinated

In accordance with the COVID-19 Public Health Response (Vaccinations) Order 2021 (“the Order”), affected workers who carry out certain work must receive their first Covid-19 vaccination by 11.59pm on 15 November 2021, and their second vaccination by 11.59pm on 1 January 2022.

I am writing to you for the purpose of setting out the requirements, the relevant processes and also the implications in relation to the vaccination requirement.

Our business operates in the [refer to the group in Schedule 2 that applies to you] sector. We have assessed that your position of [insert position title] is within the group of “affected workers” to which the Order applies, and we have also assessed that the work tasks and responsibilities that are associated with your position mean that you are performing “certain work” within the meaning of the Order.

Accordingly, the vaccination requirement and the corresponding timeframes apply to you. You can access a copy of the Order at:

https://www.legislation.govt.nz/regulation/public/2021/0094/latest/LMS487909.html?search=ts_act%40bill%40regulation%40deemedreg_vaccination_resele_25_a&p=1

You may have already received one or more vaccinations, and you may have notified us accordingly and provided proof of vaccination, in which case you may already satisfy the vaccination requirement under the Order.

If you have not already done so, please provide us with proof of your vaccination (for example, a screenshot of your 'My Covid Record' (see <https://app.covid19.health.nz/>), or a confirmation letter from your General Practitioner).

Should you not have received the first vaccination to date, you have until 15 November 2021 to receive the first vaccination and to provide us with proof of this. Please do so without delay.

If you are unvaccinated, we are happy to help you with making arrangements to be vaccinated in order for you to comply with the Order. Should you have any concerns regarding the vaccine, please liaise with us without delay, and we would be happy to help you receiving adequate information or assistance.

Should you remain unvaccinated as at 11.59pm on 15 November 2021 or if you have not provided us with written confirmation and proof in respect of your receipt of the first vaccination, we will have to proceed on the basis that you are unvaccinated. In this case, we will be legally prevented from allowing you to perform your role from 11.59pm on 15 November 2021.

From this date you would be stood down from your duties. This would generally be without pay as you would be unable and not ready to perform your role in accordance with the legal requirements.

In view of our timely consultation with and communication to you, we put you on notice that your employment will be terminated on 16 November 2021 (or 2 January 2022 in respect of the required second vaccination), should you not satisfy your obligations under the Order at that time.

The period between now and that date provides sufficient opportunity for you to consider vaccination, seek independent and adequate advice, and get vaccinated. Again, we are willing to assist you with this, should you require assistance, and I urge you to immediately liaise with us if you do require any assistance.

Please note that you are entitled to seek independent advice in respect of the Order, and this letter, including any actions that we may take, as proposed in this letter.

If you have any queries about the content of this letter, including our assessment regarding the coverage of the Order, please feel free to contact me immediately.

I realise that this may be an unsettling time for you, and I emphasise that it is our wish to work with you to resolve any queries you may have to ensure your ongoing employment.

Yours sincerely,

[Insert name]

[Insert title]

[Insert contact number]

[Insert email address]

APPENDIX 2 – REMINDER LETTER TEMPLATE (TO BE SENT BY 12 NOVEMBER 2021)

(NOTE: A SLIGHTLY VARIED VERSION OF THIS TEMPLATE CAN BE USED IN RESPECT OF THE SECOND VACCINATION)

[Date]

Strictly private and confidential

[Employee]

[Address]

By hand/email/courier

Dear [insert name],

Our letter dated [insert date] - Warning

On [insert date], we explained the impact of the COVID-19 Public Health Response (Vaccinations) Order 2021 (“the Order”) on your position and our related obligations.

We identified you as being covered by the Order and accordingly we notified you of your obligation to confirm your vaccination status with us.

To date, you have not confirmed your vaccination status with us. Please contact me immediately if this is not correct, or if you wish to discuss your situation.

We have to reiterate with you that we will not be permitted to allow you to work after 11.59pm on 15 November 2021, unless you provide us with proof of your vaccination (for example, a screenshot of your ‘My Covid Record’ (see <https://app.covid19.health.nz/>), or a confirmation letter from your General Practitioner) prior to that time.

Again, we are happy to help you with making arrangements to be vaccinated in order for you to comply with the Order. Should you have any concerns regarding the vaccine, please liaise with us without delay, and we would be happy to help you receiving adequate information or assistance.

Should you remain unvaccinated as at 11.59pm on 15 November 2021 or if you have not provided us with written confirmation and proof in respect of your receipt of the first vaccination, you will be stood down from your duties, and this will be without pay due to you being unable and not ready to perform your role in accordance with the legal requirements.

Further, we again put you on notice that your employment is in jeopardy and will be terminated on 16 November 2021, should you not satisfy your above obligations under the Order at that time.

As mentioned before, you are entitled to seek independent advice in respect of the Order.

If you have any queries about the content of this letter, including our assessment regarding the coverage of the Order, please contact me immediately.

Yours sincerely,

[Insert name]

[Insert title]

[Insert contact number]

[Insert email address]

APPENDIX 3 – STANDDOWN NOTICE

16 November 2021

Strictly private and confidential

[Employee]

[Address]

By hand/email/courier

Dear [Employee]

STANDDOWN FROM DUTIES

On [insert date], we notified you of your obligation to confirm with us by 11.59pm on 15 November 2021 that you have received your first Covid-19 vaccination, and to provide proof of this. We refer you to that letter.

We offered you assistance and urged you to liaise with us in this respect. We also put you on notice that you would be stood down without pay and your employment be terminated if you were not complying with your obligations by the above date, due to us being legally prevented from allowing you to perform the duties of your position.

On [insert date], we again notified you of your obligation to confirm with us by 11.59pm on 15 November 2021 that you have received your first Covid-19 vaccination, and to provide proof of this, and we reiterated the potential consequences in relation to your employment. We refer you to that letter.

Regrettably, you have not confirmed with us by 11.59pm on 15 November 2021 that you have received your first Covid-19 vaccination, and you have not provided proof in this respect.

Accordingly, we hereby confirm and notify you that you are stood down from duty without pay. You are not permitted to enter the workplace and to perform your duties.

We will now commence the process of terminating your employment on the basis that you are not capable of performing the duties of your position due to you not satisfying the requirements of the COVID-19 Public Health Response (Vaccinations) Order 2021 (“the Order”). Accordingly, we will serve you with notice of termination of your employment, unless a suitable alternative arrangement can be identified.

Please do not hesitate to contact me if you have any questions regarding this letter.

Yours sincerely,

[Insert name]

[Insert title]

[Insert contact number]

[Insert email address]

APPENDIX 4 – TERMINATION LETTER TEMPLATE

17 November 2021

Strictly private and confidential

[Employee]

[Address]

By hand/email/courier

Dear [Employee]

TERMINATION OF YOUR EMPLOYMENT

On [insert date], we notified you of your obligation to confirm with us by 11.59pm on 15 November 2021 that you have received your first Covid-19 vaccination, and to provide proof of this. We refer you to that letter.

We offered you assistance and urged you to liaise with us in this respect. We also put you on notice that your employment would be terminated if you were not complying with your obligations by the above date, due to us being legally prevented from allowing you to perform the duties of your position.

On [insert date], we again notified you of your obligation to confirm with us by 11.59pm on 15 November 2021 that you have received your first Covid-19 vaccination, and to provide proof of this, and we reiterated the potential consequences in relation to your employment. We refer you to that letter.

Regrettably, you have not confirmed with us by 11.59pm on 15 November 2021 that you have received your first Covid-19 vaccination, and you have not provided proof in this respect. We therefore stood you down from duties.

We have considered whether any suitable, alternative arrangements could be available, for example, redeployment into an available position that is not covered by the COVID-19 Public Health Response (Vaccinations) Order 2021. However, we could not identify any such alternatives.

Accordingly, this letter now serves as notice of termination in accordance with clause [insert relevant number] of your individual employment agreement.

The termination of your employment is on the basis that you are not capable of performing the duties of your position due to you not satisfying the requirements of the COVID-19 Public Health Response (Vaccinations) Order 2021.

Whilst the termination of your employment is with notice, and your last day of employment will therefore be [insert date], we are of the view that you are not contractually entitled to be paid during the notice period, in that you are not ready and able to perform your duties. Accordingly, your final pay will not include any payment during or in lieu of your notice period.

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This has been prepared for the Business NZ Network, of which Canterbury Employers' Chamber of Commerce is a member, by Employers and Manufacturers Association (EMA) Northern Inc.

Please return any company property including [insert details, e.g., laptop, mobile phone, swipe/access card, keys, etc.] by [insert date and time]. You may make a time with me to collect your personal belongings.

I appreciate that this is a disappointing outcome for you, and I also appreciate that you may disagree with this outcome. Please note, however, that we were forced to make this decision on the basis of the COVID-19 Public Health Response (Vaccinations) Order 2021 and the lack of available alternatives to the termination of employment at the time. I regret that our employment relationship is coming to an end, but I wish to thank you for your service, and I wish you all the best for your professional and personal future.

Yours sincerely

[Insert name]

[Insert title]

[Insert contact number]

[Insert email address]

APPENDIX 5 – SAMPLE IEA CLAUSE

1. With regard to new employees applying for positions that are covered by the Order, the employer may ask for the applicant's vaccination status as part of the recruitment process (and discontinue such process if the applicant's answer is not satisfactory to the employer).

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

“The Employee acknowledges that their position and the associated duties are subject to the Covid-19 Public Health Response (Vaccinations) Order 2021 (or any substituting Order or legislation) and that it is therefore mandatory for the Employee to be vaccinated against Covid-19 in accordance with the legislation, regulation, and/or MoH guidelines that apply at the relevant times. 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, by the Employee may constitute serious misconduct and may result in termination of employment by the Employer. 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 inclusion in an internal vaccination-status register that can be viewed by the Employer's employees and clients, if needed.”