

SA: COVID-19 VACCINATION FOR HEALTHCARE WORKERS

3 November 2021.

The SA Government has introduced mandatory vaccination requirements for a person engaging in work or performing duties in certain healthcare settings under the *Emergency Management (COVID-19) (Healthcare Setting Workers Vaccination No 2) Direction 2021 (Direction)*.

Below is a high-level summary of the mandate and Direction made relevant to Optometry. It is not intended to contain all the relevant information which can be found in the Direction.

The Direction applies to:

- a person who works in or performs duties at a phase 2 healthcare setting which includes specialist outpatient facilities where optometry services are provided by allied professionals in person to another person (**Healthcare Setting**); and
- operators of the Healthcare Setting.

DIRECTION

[Emergency Management \(COVID-19\) \(Healthcare Setting Workers Vaccination No 2\) Direction 2021](#)

VACCINATION REQUIREMENTS

A person must not engage in work or perform duties in a Healthcare Setting from **8 November 2021**, unless:

- the person is fully vaccinated (received 2 doses of a COVID-19 vaccine); or
- the person is partially vaccinated (received 1 dose of a COVID-19 vaccine) and has a booking for the second dose within the approved interval after the first dose.

A person subject to the above requirement must provide the operator of the Healthcare Setting with proof of their vaccination status upon request.

EXCEPTIONS

Despite the above requirements, a person may engage in work or perform duties in a Healthcare Setting if:

- they have a medical exemption which complies with the following requirements:
 - the person has a medical certificate from a legally qualified medical practitioner certifying that the person has a medical exemption from receiving the COVID-19 vaccine on either a permanent or temporary basis in accordance with the guidelines published from time to time by ATAGI; and
 - the certificate specifies the nature of the exemption and the basis on which it applies; and
 - the Chief Public Health Officer or her delegate has endorsed the exemption; and
 - Complete an [SA Health Chief Public Health Officer Immunisation Exemption Application Form](#) and submit along with your medical certificate signed by a legally qualified medical practitioner, to Health.NJNPExemptions@sa.gov.au.
 - the person provides the operator of the Healthcare Setting with a copy of the endorsement provided above.
- the person is responding to a non-medical emergency or urgent maintenance task (e.g. Responding to a lift breakdown or a fire).

SUMMARY OF OPERATORS OBLIGATIONS

An operator of a Healthcare Setting must ensure that any excepted person engaging in work or duties at the Healthcare Setting:

- complies with the COVID Safe Plan for the healthcare setting; and
- wears appropriate personal protective equipment which they have been trained how to use.

VACCINATION INFORMATION EVIDENCE AND RECORD KEEPING

In accordance with the Direction, a person who intends to engage in work or perform duties in a Healthcare Setting from 8 November 2021 must provide the operator of the Healthcare Setting with proof of their vaccination status upon request. Operators should request the vaccination status of such persons prior to them attending the Healthcare Setting on or after 8 November 2021.

NO VACCINATION STATUS OR REFUSING TO BE VACCINATED

A worker who cannot or will not provide proof of vaccination on request, must not engage in work or perform duties in a Healthcare Setting from 8 November 2021 until such time that they can provide evidence of their vaccination status in accordance with the Direction.

If the worker refuses to be vaccinated, they must not engage in work or perform duties in a Healthcare Setting from 8 November 2021. The Direction places an individual obligation on the worker to comply with the Direction. It is not an obligation on the employer to enforce the vaccinations. Non-compliance with the Direction by a worker is an offence and employers should not aid in the committal of an offence.

If a worker refuses to be vaccinated, an employer should, as a first step, ask the worker to explain their reasons for refusing the vaccination. If the worker gives a legitimate reason for not being vaccinated (for example, the worker has an existing medical condition that means vaccination is not recommended), the worker and their employer should consider whether there are any other options available instead of vaccination. This could include alternative work arrangements, such as asking the worker to perform different duties or to work from home.

Otherwise, if a public health order prevents a particular worker from working because they haven't met a requirement to get vaccinated, then the employer doesn't have to pay the worker (unless the employer agrees to the worker taking paid annual leave or long service leave if available).

CAN AN EMPLOYER TAKE DISCIPLINARY ACTION AGAINST A WORKER?

Whether employers can take disciplinary action (including termination of employment) against a worker for refusing to be vaccinated, will depend on the individual facts and circumstances. An employer may be able to take disciplinary action against a worker if the worker's refusal to be vaccinated is in breach of a specific law (such as a public health order) or a lawful and reasonable direction requiring vaccination.

Workers have various protections against being dismissed and other adverse action. Before dismissing a worker, an employer must follow a fair process (i.e. provide procedural fairness including making it clear that non-compliance may lead to dismissal, providing an opportunity to respond and, if requested, permitting a support person to attend any meetings) and have a valid reason for termination. Otherwise, employers may be in breach of unfair dismissal or adverse action laws.

If you are considering taking disciplinary action, we recommend that you contact Industry Legal Group for advice prior to taking any action.

CONTACT US

If you require further advice, please contact Industry Legal Group on **1300 101 391** or email oa@industrylegalgroup.com.au.

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