



**siag**

industrial relations : human resources : employment matters : training

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**CIRCULAR:** GEN/160/NAT/160/21  
**DATE:** 8 October 2021  
**SUBJECT:** Victorian COVID-19 Mandatory Vaccination of Workers  
**ATTENTION:** Chief Executive Officer

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Formal Directions have been issued by the Victorian Government giving effect to the Premier's announcement to expand the reach of mandatory COVID-19 vaccination in the workplace – *COVID-19 Mandatory Vaccination (Workers) Directions* (available [here](#) – **the Directions**). The directions are in force, having taken effect 11.59pm last night, 7 October 2021, and require employers to:

- collect, record and hold 'vaccination information' about 'workers' (these terms defined in the Directions are summarised below); and
- not permit a worker who is unvaccinated (i.e., the worker has not received a dose of a COVID-19 vaccine and is not an 'excepted person') to work for that employer outside the worker's ordinary place of residence, unless an exception applies under the Directions.

Further details, including timelines imposed by the Directions to carry out the above, are set out below.

### Who is covered by the Directions?

The Directions define 33 separate classes of workers – see clause 9 of the Directions. This Circular will not summarise all classes however we note that:

- the Directions:
  - cover '**real estate workers**' who are defined to include a person who works in connection with the provision of services by an estate agent (as defined in the Estate Agents Act 1980);
  - cover '**retail workers**' who work at or in connection with a 'retail facility'. 'Retail facility' means a premises, or part of a premises, at which a business operates to provide for the sale or hire of goods by retail, or the provision of services by retail, and includes a 'food and drink facility' which is defined to mean:
    - *a café, restaurant, fast-food store, cafeteria, canteen, winery, food truck or food court,*

**\*\* please note** that we are seeking clarity as to how the definition of 'food and drink facility' is intended to apply to licensed premises / registered clubs as the definition is not expressly clear that it covers such venues (unless they would meet the definition of a restaurant). Until such further clarity is obtained, we are unable to provide any further guidance on the application of the Directions to such facilities. We will publish a further Circular when we have further information or in the event that the Directions are updated to provide greater clarity;
  - cover '**accommodation workers**' who are defined to mean persons who work at or in connection with specified accommodation facilities, including hotels, bed and breakfast, motels and caravan parks;
  - cover '**physical recreation workers**' who are defined to mean persons who, amongst other things, work at or in connection with a facility used or partly used for sport, sport racing or physical recreation;

- cover **‘social and community service workers’**, meaning a person who works in connection with:
  - disability services;
  - services provided to an NDIS participant in any setting;
  - child protection services;
  - family violence and sexual assault support services;
  - homelessness support services;
  - public housing support services;
  - mental health services;
  - any social services provided or contracted by the government to support members of the community who have a particular need because of family violence, homelessness, illness or a chronic health condition, infirmity, disability, contact with the justice system or other essential support service;
  - or
  - interpreter, cultural, or support services.

Healthcare facilities and residential aged care facilities (and other specified industries / facilities) will continue to be covered by relevant *COVID-19 Mandatory Vaccination (Specified Facilities) Directions*.

### **I am covered. What do I have to do?**

The obligation to collect, record and hold ‘vaccination information’ applies to any worker who will or may work for you outside their ordinary place of residence on or after 15 October 2021.

For such a worker, you must collect *‘information about a person’s vaccination status and includes information that is derived from a record of information that was made under, or in accordance with, the Australian Immunisation Register Act 2015 of the Commonwealth’*. Such information could be recorded in a variety of documents, such as a letter from a medical practitioner, a certificate of immunisation or an immunisation history statement obtained from the Australian Immunisation Register. A statement from a worker that they are vaccinated is not sufficient.

Vaccination information will allow you to determine a person’s vaccination status as:

- fully vaccinated;
- partially vaccinated;
- unvaccinated (i.e., has not received a dose of a COVID-19 vaccine and is not an ‘excepted person’); or
- excepted person (i.e., a person with a medical contraindication).

### Who is an ‘excepted person’?

A person is an ‘excepted person’ if they provide certification (evidence) from a medical practitioner that they are unable to receive a dose / further dose of a COVID-19 vaccine due to a medical contraindication, or due to an acute medical illness (including where the person has been diagnosed with severe acute respiratory syndrome coronavirus 2. The medical evidence is effective until the date specified in the certification, or the date that is six months from the date the certification was given.

A medical contraindication is defined to mean one of the following contraindications to the administration of a COVID-19 vaccine:

- anaphylaxis after a previous dose;
- anaphylaxis to any component of the vaccine, including polysorbate or polyethylene glycol;
- in relation to AstraZeneca:
  - history of capillary leak syndrome; or
  - thrombosis with thrombocytopenia occurring after a previous dose;
- in relation to Comirnaty or Spikevax:

- myocarditis or pericarditis attributed to a previous dose of either Comirnaty or Spikevax; or
- the occurrence of any other serious adverse event that has been attributed to a previous dose of a COVID-19 vaccine by an experienced immunisation provider or medical specialist (and not attributed to any another identifiable cause), and been reported to State adverse event programs and/or the Therapeutic Goods Administration.

An excepted person is not a conscientious objector to vaccination / COVID-19 vaccines.

Who is permitted to work outside of their ordinary place of residence?

In order to **work** (other than from their ordinary place of residence), your workers must (unless they are an excepted person – see above) have received a first dose by 22 October 2021 and a second dose by 26 November 2021.

If the vaccination information collected by you indicates that a person is unvaccinated, you must collect, record and hold information about whether that worker has a booking to receive their first COVID-19 vaccine by the deadline of 22 October 2021. If:

- the worker is unvaccinated but has made a booking to receive their first COVID-19 vaccine by the deadline of 22 October 2021, then they will be permitted to work outside of their ordinary place of residence between 15 and 22 October 2021.
- the worker is unvaccinated and has not made a booking to receive their first COVID-19 vaccine by the deadline of 22 October 2021, then they will not be permitted to work other than from their ordinary place of residence on or after 15 October 2021.

If the vaccination information collected by you indicates that a person is partially vaccinated, you must also collect, record and hold information about whether that worker has a booking to receive their second vaccine by the deadline of 26 November 2021.

There may be an exception for a worker who is unable to meet the deadlines due to a requirement to self-isolate and has made a booking to receive a first dose within 7 days of the end of the self-quarantine period.

If you do not hold vaccination information for a particular worker (for whatever reason), you must treat that worker as if they are unvaccinated, and therefore they will not be permitted to work (other than from their ordinary place of residence) on or after 15 October 2021.

**What do the Directions require?**

As soon as reasonably practicable after the commencement of the Directions, you must inform each worker of your requirement to collect, record and hold vaccination information about the worker and that you are unable to permit any worker who is unvaccinated to work outside their ordinary place of residence unless they are an excepted person (i.e., evidence of a medical contraindication as explained above).

The obligation will apply to any new employee and must be met as soon as reasonably practicable after engaging the worker. Accordingly, you may wish to update your pre-employment documentation.

The Directions require that you must not permit a worker who is unvaccinated to work outside their ordinary place of residence on or after 15 October 2021.

There is an exception for an unvaccinated person to perform work in the event of an emergency / in order to protect health and safety of workers or members of the public – see clause 6 of the Directions.

## Penalties

Failure to comply with the Directions will constitute a breach of the Public Health and Wellbeing Act and significant monetary penalties can be imposed on organisations / individuals for such contraventions.

### What to do if an employee refuses to be vaccinated?

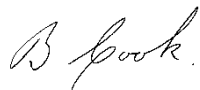
Employers can give lawful and reasonable directions to their employees. Failure to follow a lawful and reasonable direction can result in a valid reason for disciplinary action, including summary termination of employment.

The Directions requiring mandatory COVID-19 vaccination apply to workers (other than those who are medically exempt) for work performed outside of their ordinary place of residence.

If a worker does not have a lawful exemption under the Directions to the vaccination requirement and cannot perform their work from their ordinary place of residence, then a direction requiring the worker to be vaccinated may be lawful and reasonable in the circumstances.

Please note that the above is a summary only and you should review the Directions closely in order to ensure that you comply.

If you have any questions or if you require further information, please contact the SIAG National Advisory Service on 03 9644 1400 or 1300 (SIAG HR) / 1300 742 447. The Information provided in this email is generic advice. For advice in respect of your specific situation please contact us.



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