

IR POLICY AND GOVERNANCE UPDATE



INTRODUCTION

This week we look at the Fair Work Ombudsman's approach to mandating COVID vaccinations in workplaces, a brief overview of Australia's and New Zealand's lockdown conditions and provide an updated version of the TRMC Business Support Report.

MANDATORY WORKPLACE VACCINATIONS: FWO OFFERS GUIDANCE ONLY

The federal workplace regulator, the Fair Work Ombudsman (FWO), has stated that in some circumstances it would be legitimate for businesses to mandate vaccinations for employees. They have advised that employers can direct their employees to be vaccinated if the direction is lawful and reasonable. Whether a direction is lawful and reasonable will be fact dependent and needs to be assessed on a case-by-case basis.

The FWO have advised that when employers undertake their assessment it may also be helpful as a general guide to divide work into 4 broad tiers:

- > **Tier 1 work** - where employees are required as part of their duties to interact with people with an increased risk of being infected with coronavirus (for example, employees working in hotel quarantine or border control).
- > **Tier 2 work** - where employees are required to have close contact with people who are particularly vulnerable to the health impacts of coronavirus (for example, employees working in health care or aged care).
- > **Tier 3 work** - where there is interaction or likely interaction between employees and other people such as customers, other employees or the public in the normal course of employment (for example, stores providing essential goods and services).
- > **Tier 4 work** - where employees have minimal face-to-face interaction as part of their normal employment duties (for example, where they are working from home).

The FWO's view is that an employer's direction to employees performing Tier 1 or Tier 2 work is more likely to be reasonable, given the increased risk of employees being infected. For employees performing Tier 3 work:

- > where no community transmission of COVID has occurred for some time in the area where the employer is located, a direction to employees to be vaccinated is in most cases less likely to be reasonable.
- > where community transmission of COVID is occurring in an area, and an employer is operating a workplace in that area that needs to remain open despite a lockdown, a direction to employees to receive a vaccination is more likely to be reasonable.

Whereas a direction to employees performing Tier 4 type work is unlikely to be reasonable, given the limited risk of transmission of the COVID.

TRMC View On FWO Guidance

The FWO is a regulatory prosecuting agency, and do not make law, so their 'guidance' should be taken as considerations only. Given most businesses within our industry have a mix of workers

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performing different duties within the FWO's suggested tiered framework, and given workplace policies are meant to be applied consistently to an entire workforce, there is little to be gained from such a tiered approach.

Although we appreciate the framework that the FWO has applied to its views, unless a public health order is given by government (such as with health, aged care and construction in NSW) or other legislated basis is enacted there remains no clear right to automatically direct employees to be vaccinated. The Collective continues to recommend members strongly promote and recommend to employees that they get vaccinated. Make the issue part of the conversation in the workplace. You may find your employees may already be one shot down or already fully vaccinated?

VARIABLE LOCKDOWN CONDITIONS ACROSS AUSTRALIA

Conditions across Australian states and territories are variable and we provide members with a copy of [TRMC's current advisory](#) on these conditions.

NEW ZEALAND LOCKDOWN

New Zealand has entered a three-day lockdown with Level 4 restrictions for the entire country as at 11:59pm Tuesday, 17 August 2021. Additionally, Auckland and the Coromandel peninsula lockdown will likely last for seven days. Based on a review of the [NZ governments guidelines](#) for workplace operations at COVID-19 alert levels, essential supply chain related print production can operate during an Alert Level 4, or if their work is necessary to maintain other Alert Level 4 businesses or services.

A review of Public Health Response (Alert Level Requirements) Order also permits the delivery of key communications including newspapers for non-English-language material audiences or communities that have limited access to digital connectivity and are hard to reach due to their physical location. However, this is subject to a business having safe work systems and processes in place including QR scanning. However, magazine publishers cannot have their offices open under Level 4 restrictions and work must be undertaken remotely on a work from home basis.

TRMC AS/NZ BUSINESS SUPPORT REPORT

The Collective regularly update the Business Support Report that provides an overview of the variously available business support packages and opportunities being offered by Australian and New Zealand governments. We make the [current version of that report](#) available to members.

CONTACT

Any Industrial Relations Member who has a related query should contact Charles Watson, GM – IR, Policy and Governance at The Real Media Collective via email charles@thermc.com.au or mobile:+61 428 568 032.

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