



COVERSHEET

Minister	Hon Michael Wood	Portfolio	Workplace Relations and Safety
Title of Cabinet paper	Supporting COVID-19 vaccination requirements in the workplace	Date to be published	1 April 2022

List of documents that have been proactively released

Date	Title	Author
October 2021	<i>Supporting COVID-19 vaccination requirements in the workplace</i>	<i>Office of the Minister for Workplace Relations and Safety</i>
26 October 2021	<i>Supporting COVID-19 vaccination requirements in the workplace</i> <i>CAB-21-MIN-0436</i>	<i>Cabinet Office</i>

Information redacted

YES

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Some information has been withheld for the reasons of Legal professional privilege.



Cabinet

Minute of Decision

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Supporting COVID-19 Vaccination Requirements in the Workplace

Portfolio **Workplace Relations and Safety**

On 26 October 2021, Cabinet:

Background

1 **noted** that on 4 October 2021, Cabinet invited the Minister for COVID-19 Response, the Minister of Health, the Attorney-General and the Minister for Workplace Relations and Safety, in consultation with the Prime Minister, to consider issues concerning COVID-19 vaccinations and workplaces [CAB-21-MIN-0406];

Strengthening our approach to government vaccination and testing mandates

- 2 **noted** there is a significant volume of calls for the government to mandate vaccination in work settings and workforces beyond those for which decisions have been made thus far;
- 3 **noted** that decisions on mandatory use of COVID-19 vaccination certificates (CVCs), and public health advice that workers should have to be vaccinated in the same settings where the public would have to show a CVC for entry, suggest vaccination mandates will be needed for a very broad range of work in the future;
- 4 **agreed** to mandate vaccination for work in any settings where a CVC may be required;
- 5 **noted** that the Minister for Workplace Relations and Safety will consider whether the mandate in paragraph 4 should be expressed in a way so that it does not apply in situations under the Green level where a business decides not to use CVCs;
- 6 **invited** the Minister for the Public Service, Minister for Economic and Regional Development and Minister for Workplace Relations and Safety to consider whether any additional work should be subject to vaccination or testing mandates;
- 7 **agreed** to amend the COVID-19 Public Health Response Act 2020 to support future vaccination or testing mandates where there is strong public interest in doing so, with additional detail such as specific reasons (eg preserving overseas market access) potentially specified in regulations;
- 8 **agreed** to include a provision that vaccination can be required for work where the Director-General of the Ministry for Primary Industries has determined this is necessary in order to facilitate access for specific products or classes of products to specific overseas markets;

9 Legal professional privilege

10 **noted** that the Minister of Workplace Relations and Safety considers the process for mandating vaccination or testing for work can be strengthened, particularly ahead of it being used for a much wider range of work;

11 **authorised** the Attorney-General and Minister for Workplace Relations and Safety to have Power to Act to take decisions on whether to:

11.1 create future vaccination or testing mandates for work through regulations under the COVID-19 Public Health Response Act; or

11.2 continue to mandate vaccination or testing for work through COVID-19 Orders under the COVID-19 Public Health Response Act;

12 **agreed** to further strengthen our legal framework for vaccination and testing requirements by:

12.1 setting clear duties and obligations on workers and PCBUs subject to requirements, including a duty on PCBUs to collaborate where they have overlapping duties;

12.2 authorising the relevant Minister to allow for exemptions, which could incorporate testing as an alternative to vaccination in some circumstances;

12.3 requiring a suitably qualified decision-maker to grant case-by-case exceptions from vaccination or testing requirements in exceptional or rare circumstances;

12.4 requiring any worker to provide proof of vaccination or testing to their employer or PCBU; and

12.5 requiring employers and PCBUs to keep records about workers' vaccination status, with a view to doing this in the most privacy-enhancing manner;

Creating a process to guide workplace decisions about vaccination or testing

13 **noted** that the current approach for deciding whether COVID-19 vaccination or testing can be required to do certain work, outside government mandates, is based on individualised health and safety risk assessments, which is complicated for employers and workers to navigate without specialist public health expertise;

14 **noted** that there is also uncertainty about when it can be reasonable to require vaccination for certain work, and in the absence of clarity, these issues are likely to be the subject of litigation;

15 **agreed** to prescribe a risk assessment process, with clear, simple, and easy to use criteria, that employers and persons conducting a business or undertaking (PCBU) must follow when determining whether certain work requires vaccination or testing;

16 **agreed** that employers and PCBUs must consult workers and their representatives when using the risk assessment process referred to in paragraph 15;

- 17 **noted** that this risk assessment process will reflect health and safety and public health reasons for requiring vaccination or testing, and could also encompass other reasons such as planning for future Alert Levels or settings in the COVID-19 Protection Framework;
- 18 **invited** the Minister for Workplace Relations and Safety to report back to Cabinet on the proposed criteria to be used in the risk assessment process as soon as possible;
- 19 **authorised** the Attorney-General and Minister for Workplace Relations Safety to have Power to Act to take decisions on whether to:
- 19.1 prescribe the risk assessment process referred to in paragraph 15 through regulations;
or
- 19.2 prescribe the risk assessment process referred to in paragraph 15 through COVID-19 Orders under the COVID-19 Public Health Response Act;

Providing paid time off for employees to be vaccinated

- 20 **noted** that requiring employers to allow employees to be vaccinated during work hours without loss of pay or leave could improve access to vaccination;
- 21 **agreed** that employers should provide reasonable paid time for employees to be vaccinated against COVID-19, with breaches of this enforced by Labour Inspectors;

Clarifying notice periods when employment ends because employees are unvaccinated and their work requires them to be vaccinated

- 22 **noted** there is uncertainty about what processes and entitlements apply when unvaccinated employees are doing work that requires vaccination, and there are no alternatives (eg redeployment) that would allow them to continue working for their employer without being vaccinated;
- 23 **agreed** to require employers to provide a minimum of four weeks' paid notice in situations described in paragraph 20 before someone can be terminated for being unvaccinated, during which time they could become vaccinated
- 24 **noted** that an option to provide a minimum amount of compensation was also considered but is not recommended because it could inadvertently incentivise remaining unvaccinated, but employees and unions could test if any contractual compensation entitlement is triggered in these situations in court;
- 25 **noted** that all other employment law obligations would remain as they currently are, such as the duty of good faith and ability for employees to raise a personal grievance;

Funding for WorkSafe's COVID-19 compliance and enforcement activities

- 26 **noted** that on 11 May 2020, Cabinet agreed to establish tagged operating and capital contingencies of \$50 billion to support a response to and recovery from COVID-19, called the COVID-19 Response and Recovery Fund [CAB-20-MIN-0219];
- 27 **agreed** to fund WorkSafe's COVID-19 compliance and enforcement role, charged against the COVID-19 Response and Recovery Fund;

28 **approved** the following changes to appropriations for funding for WorkSafe’s COVID-19 compliance and enforcement role, with a corresponding impact on the operating balance net core Crown debt:

	\$m - increase/(decrease)			
Vote Labour Market	2021/22	2022/23	2023/24	2024/25 & Outyears
Minister for Workplace Relations and Safety				
Non-Departmental Output Expense:				
Workplace Relations and Safety - Workplace Health and Safety	3.533	-	-	-
Non-Departmental Capital Expense:				
Workplace Relations and Safety – Capital for WorkSafe New Zealand	0.840	-	-	-
Total Operating	3.533	-	-	-
Total Capital	0.840	-	-	-

29 **agreed** that the changes to appropriations above be included in the 2021/22 Supplementary Estimates and that, in the interim, be met from Imprest Supply;

30 **noted** that, as an initiative funded by the COVID-19 Response and Recovery Fund, there will be associated reporting mechanisms;

Drafting of legislation

31 **agreed** to add a bill to the 2021 Legislation Programme with Category 2 (must be passed in the year) priority to give effect to the above policy decisions and the decisions on the paper titled “COVID-19 Vaccine Certificates: Implementation in Domestic Settings” [CAB-21-MIN-0438];

32 **invited** the Minister for Workplace Relations and Safety, in consultation with the Minister for COVID-19 Response, to issue drafting instructions to Parliamentary Counsel Office giving effect to the above policy decisions;

33 **authorised** the Minister for Workplace Relations and Safety, in consultation with the Minister for COVID-19 Response, to make decisions on any issues that arise during the drafting process;

34 **invited** the Minister for Workplace Relations and Safety to advise Cabinet of any decisions under paragraph 30 above when seeking approval to introduce the legislation;

35 **agreed** that legislation drafted to give effect to the above policy decisions will bind the Crown;

Communications

36 **noted** that an appropriate communications plan will be developed and agreed with the Prime Minister's office.

Michael Webster
Secretary of the Cabinet