



BRIEFING

COVID-19 vaccination: Work in settings where CVCs must be used

Date:	29 October 2021	Priority:	Urgent
Security classification:	In Confidence	Tracking number:	2122-1586

Action sought		
	Action sought	Deadline
Hon Michael Wood Minister for Workplace Relations and Safety	Agree that at the Orange and Red levels of the COVID-19 Protection Framework, all work in settings where CVCs must be used to operate (or operate with fewer restrictions) requires vaccination, regardless of whether a PCBU decides to require CVCs from customers or attendees. Note MBIE will consult stakeholders in the coming week on matters in this briefing.	1 November 2021

Contact for telephone discussion (if required)				
Name	Position	Telephone	Privacy of Natural Persons	1st contact
Anna Clark	General Manager, Workplace Relations and Safety Policy			✓
[Redacted]				

The following departments/agencies have been consulted
Department of the Prime Minister and Cabinet, Ministry of Education, Ministry of Health

Minister's office to complete:

- | | |
|---|--|
| <input type="checkbox"/> Approved | <input type="checkbox"/> Declined |
| <input type="checkbox"/> Noted | <input type="checkbox"/> Needs change |
| <input type="checkbox"/> Seen | <input type="checkbox"/> Overtaken by Events |
| <input type="checkbox"/> See Minister's Notes | <input type="checkbox"/> Withdrawn |

Comments



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Purpose

This briefing:

- Provides advice on whether a vaccination mandate should apply for work at the Green level of the COVID-19 Protection Framework in settings where CVCs must be used,
- Clarifies Cabinet's decisions in relation to a vaccination mandate for work done where CVCs must be used at the Orange and Red levels, and
- Provides potential implementation timeframes.

Executive summary

We recommend mandating vaccination for work done at the Green level of the COVID-19 Protection Framework in settings where CVCs must be used. In our view, this provides the simplest approach, and would likely be the outcome of PCBUs applying the risk assessment process we recommend in our counterpart briefing (2122-1530 refers).

We seek your confirmation that at the Orange and Red levels, all work in settings where PCBUs could choose to require CVCs to operate (or operate with fewer restrictions) requires vaccination, regardless of whether a PCBU decides to require CVCs from customers or attendees.

We suggest that workers covered by any mandate in these settings should have at least four weeks from a clear, unambiguous announcement to have had their first dose. This announcement can either coincide with the COVID-19 Protection Framework coming into effect (end-November 2021), or happen before then. A second dose could then be required by mid-January 2022 at the earliest, if an announcement is made imminently. This will allow the necessary time for support and encouragement to be provided in workplaces to ensure all workers are vaccinated by the relevant deadlines.

We will engage with stakeholders over the coming week on these details, and will provide you with further advice at the end of next week. Your decisions will then be reflected in the drafting of any Orders needed.

Recommended action

The Ministry of Business, Innovation and Employment recommends that you:

- a **Note** Cabinet's decisions in relation to work in settings where COVID-19 Vaccination Certifications (CVCs) must be used (CAB-21-MIN-0436):
 - i. Cabinet agreed to mandate vaccination for work in any settings where a CVC may be required, and
 - ii. Noted you would consider whether the mandate above 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.

b **Agree** that at the Orange and Red levels of the COVID-19 Protection Framework, all work in settings where CVCs must be used to operate (or operate with fewer restrictions) requires vaccination, regardless of whether a PCBU decides to require CVCs from customers or attendees.

Agree / Disagree

c **Note** MBIE will consult stakeholders in the coming week on the following:

- i. Whether a similar vaccination mandate should also apply at the Green level, regardless of whether a PCBU decides to require CVCs from customers or attendees,
- ii. The practical issues workers and businesses would have to resolve at the Green level in the absence of a vaccination mandate, and
- iii. When workers need to have had their first and second doses by to comply with the vaccination mandate, and whether any additional controls are needed between workers' first and second doses.

Noted

d **Provide feedback** on the matters in this briefing.

Feedback provided / No feedback



Anna Clark
General Manager, Workplace Relations and Safety Policy
Labour, Science and Enterprise, MBIE

29/10/2021

Hon Michael Wood
Minister for Workplace Relations and Safety

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Background

- Under the COVID-19 Protection Framework, COVID-19 Vaccination Certificates (CVCs) must be used to operate in certain settings or operate with fewer restrictions. These settings are outlined below:

	CVC use	Green	Orange	Red
Hospitality	Yes	No limits.	No limits.	Up to 100 people based on 1m distancing, seated and separated.
	No	Up to 100 people based on 1m distancing, seated and separated.	Contactless operation only.	Contactless operation only.
Gatherings	Yes	No limits.	No limits.	Up to 100 people based on 1m distancing.
	No	Up to 100 people based on 1m distancing.	Up to 50 people based on 1m distancing.	Up to 10 people.
Events	Yes	No limits.	No limits.	Up to 100 people based on 1m distancing, seated and separated.
	No	Up to 100 people based on 1m distancing, seated and separated.	Cannot operate.	Cannot operate.
Close contact businesses	Yes	No limits.	No limits.	Public health requirements in place.
	No	Face coverings for workers, 1m distancing between customers.	Cannot operate.	Cannot operate.
Gyms	Yes	No limits.	No limits.	Up to 100 people based on 1m distancing.
	No	Up to 100 people based on 1m distancing.	Cannot operate.	Cannot operate.
Tertiary education	Yes	(Not applicable)		Capacity based on 1m distancing for onsite delivery.
	No			Distance learning only.

Note: in all other settings, PCBUs may choose to require CVCs, but do not need to do so to operate (or operate with fewer restrictions).

- On 26 October 2021, Cabinet (CAB-21-MIN-0436):
 - Agreed to mandate vaccination for work in any settings where a CVC may be required, and
 - Noted you would consider whether the mandate above 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.

3. This briefing provides advice on mandating vaccination for work in settings where a CVC must be used at the Green level, and when any mandate could come into effect. It also seeks to clarify the decision mandating vaccination for the Orange and Red levels.

Terminology

4. Under the COVID-19 Protection Framework, the six types of businesses/settings in the table on the previous page are subject to bifurcated restrictions on the basis of whether they require CVCs from customers, attendees and any other people in those settings. To operate (or operate with fewer restrictions), CVCs must be used in these settings. In this briefing, we refer to these as settings where CVCs must be used. PCBUs could choose not to use CVCs in these settings, and as a consequence either operate with more restrictions or not operate.
5. The CVC requirement also only applies to work done on premises where high-risk gathering, mingling and activities may take place. The nature of most of the settings where CVCs must be used is that work generally cannot be done remotely, except for tertiary education at the Red level.

Other settings

6. Other than where CVCs must be used, PCBUs *may choose* to require CVCs, but do not need to do so to operate (or operate with fewer restrictions). A key example is the retail sector.
7. Where PCBUs' choice to use CVCs is entirely optional, it will not result in them facing fewer restrictions on their operation. Guidance will be provided on how they should decide whether to use CVCs. PCBUs in this category can separately use the risk assessment/decision-making framework prescribed in regulations (briefing 2122-1530 refers) to decide whether it is reasonable to require work only be done by vaccinated workers.
8. PCBUs in this optional category may therefore have different vaccination requirements for workers and customers. This is a key difference to settings where CVCs must be used, reflecting public health advice that if vaccination is required from customers/attendees in those settings because of the risks associated with people movement, contact and mingling, workers should have to be vaccinated as well.

Green level: whether to mandate vaccination

9. You are considering whether, at the Green level, vaccination for work need not be mandated if businesses choose to operate without requiring CVCs.
10. Unlike the Red and Orange levels, businesses can still maintain some level of operation at Green without requiring CVCs, although the 100-person limit in most settings may mean it is financially unviable for most events and gatherings to proceed.

If PCBUs choose to require CVCs

11. If PCBUs choose to use CVCs to be able to operate at the Green Level with no/fewer restrictions, they would need a clear legal basis to be able to require (enough of) their workers to be vaccinated. There are two ways to do this:
 - a. State that a PCBU can require work to be done by vaccinated workers if this is necessary to give effect to a decision to use CVCs to be able to operate with fewer restrictions.
 - b. The Order establishing the COVID-19 Protection Framework will not distinguish between workers and other people in settings where CVCs must be used. This would effectively require workers to show a CVC if customers had to.

12. Relying solely on the Order establishing the COVID-19 Protection Framework could carry greater risk of legal challenge than using the risk assessment/decision-making framework. That is because it may leave some legal uncertainty in relation to unvaccinated employees, who may be able to argue they would be ready, willing and able to work but for a circumstance out of their control. This circumstance would be their PCBU choosing to require CVCs, rather than operating without. We can seek feedback from stakeholders on whether they consider this risk of legal challenge material, and how they envisage making these decisions (eg whether they intend to consult workers).

If PCBUs choose not to require CVCs

13. If PCBUs choose not to require CVCs, they would need to operate with restrictions, and therefore the work would not be subject to a vaccination mandate. They would then be able to use the risk assessment/decision-making framework to decide whether it is reasonable to require workers to be vaccinated.

We recommend mandating vaccination for work at the Green Level

14. We recommend mandating vaccination for work done in settings where CVCs must be used at the Green level. This would create the simplest and most clear approach to vaccination requirements in all settings where CVCs could be required (ie across Green, Orange and Red levels).
15. We do not expect a significant proportion of businesses or organisers of settings where CVCs must be used to choose to operate without CVCs. Mandating vaccination for work at this level would avoid any grey areas and create a consistent approach to the same work across all levels of the COVID-19 Protection Framework. (For the reasons noted above, vaccination requirements for onsite TEO provision would only apply at the Red level.)
16. We also note that in the absence of a mandate, the current formulation of the risk assessment part of the decision-making framework (2122-1530 refers) would likely be able to be relied on by most PCBUs responsible for work in these categories (ie hospitality, gatherings, events, close contact businesses, gyms) to require vaccination.
17. In the coming days, if you wish to consult on this, we can seek stakeholders' views on the above. Specifically, we can ask:
 - a. Should work done in settings where CVCs must be used be subject to a vaccination mandate at all levels, ie across Green, Orange and Red Levels?
 - b. What practical issues would businesses and workers have to resolve if there was no vaccination mandate for work at the Green level?

Red and Orange levels: implications of vaccination mandate

18. The mandate agreed by Cabinet for work done in settings where CVCs must be used at Orange and Red levels has the following implications:
 - a. If PCBUs choose to require CVCs from customers/attendees, workers must be vaccinated. This applies to hospitality businesses, gatherings, events, close contact businesses, gyms and tertiary education (at Red level only).
 - b. If PCBUs choose not to require CVCs from customers, workers must still be vaccinated.
 - i. This would apply to hospitality businesses, which would be operating in a contactless way. This would also apply to gatherings, which would have a limit of

either 50 people based on 1m distancing at the Orange level, or a limit of 10 people at the Red level.

- ii. Events, close contact businesses and gyms would not be able to operate at Orange and Red levels without requiring CVCs. In practice, if these businesses chose not to operate, the mandate would have no effect on their workers. This is because no work that would be subject to the mandate would be taking place.
 - iii. Tertiary education organisations (TEOs) would not be able to operate *onsite* at Red without requiring CVCs. In practice, if TEOs chose not to operate onsite at this level, the mandate would have no effect on their workers who work remotely for the same reasons as above.
19. There may be calls for differentiation at Orange and Red, similar to what may be possible at Green. In other words, for businesses to be able to choose how/whether they will operate at Orange and Red, and the result of that determining whether their workers need to be vaccinated. The only two settings this would make a difference for are hospitality and gatherings, which can operate at Orange and Red levels without requiring CVCs. However, given the dramatic difference in ability to operate at Orange and Red levels compared to the Green level, we do not expect many hospitality businesses or gathering organisers to want to operate with restrictions, when they could instead require CVCs. This has been our observation from engagement to date on CVCs with businesses. We therefore do not recommend revisiting Cabinet's decision in relation to work at Orange and Red levels where CVCs must be used (CAB-21-MIN-0436 refers).
20. As noted above, events, close contact businesses and gyms retain the ability to close at Orange and Red levels. If they do not operate, the mandate would have no effect on their workers. The position is slightly different for TEOs. In most cases, at Red level TEOs would be choosing between onsite provision (or dual provision) and online provision, rather than onsite provision or closure. TEOs will need to plan for how they intend to operate at Red level, as the mandate will only apply to staff expected to be working onsite during this time.
21. We seek your confirmation that our understanding in paragraph 18 is correct to inform drafting instructions and communications with stakeholders about impending changes. At this stage, we also intend for the risk assessment/decision-making framework to allow PCBUs to require vaccination for work done in settings where CVCs must be required once those regulations come into force, ahead of any move to the COVID-19 Protection Framework (briefing 2122-1530 refers), which we will convey to stakeholders in conversations.

Timing

22. While your announcement with the Prime Minister on 26 October 2021 provided advance notice to workers and businesses in sectors where CVCs must be used, we consider any vaccination mandate should only apply to work four weeks after it is clearly and unambiguously announced (eg on the date any Order comes into force). Like with other sectors so far, we suggest a staged implementation:
- a. A first dose must be required four weeks after announcement. Care will need to be taken to avoid this overlapping with the mid-December to mid-January period that is particularly busy for some sectors.
 - b. Assuming the first dose requirement is in place in early-December 2021, the second dose requirement should apply from mid-January 2022. From then, workers covered by this mandate need to have had two doses to continue working in these settings.
23. It is essential that workers are given sufficient time to get vaccinated. So far, second doses have generally been required 6 – 7 weeks after the first dose deadline. We would not recommend setting a second dose deadline before the latter half of January 2022.

24. This could be seen as inconsistent, because until mid-January next year, workers will only need to have had one dose, while customers/attendees will need to be fully vaccinated to be in these settings. However, we think this is justifiable because the consequences of a worker not being able to work are significantly greater than a person not being able to go to a bar or a festival.
25. During the period between the first and second dose deadlines (December 2021 to mid-January 2022), it may be possible to require additional controls in relation to workers who have not yet had two doses, such as testing or use of face coverings.
26. We propose consulting stakeholders on the implementation timeframe above for any vaccination mandate. We will also seek public health input from the Ministry of Health on whether any additional controls should be required for workers who have only had one dose until the latter deadline to be fully vaccinated.
27. If you instead want to require all workers subject to a mandate to have had two doses from the time any Order comes into force at the end of November 2021, this needs to be immediately and unambiguously signalled, given the potential consequences for workers and businesses.

Next steps

28. Subject to your feedback, we will consult stakeholders on the proposals in this paper. To allow for smooth drafting and implementation, we will seek your final decisions on the scope and timing of this mandate through further advice around 5 November 2021.

Annexes

Annex 1: COVID-19 Protection Framework

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New Zealand COVID-19 Protection Framework

Factors for considering a shift between levels: vaccination coverage; capacity of the health and disability system; testing, contact tracing and case management capacity; and the transmission of COVID-19 within the community, including its impact on key populations.

Localised lockdowns: will be used as part of the public health response in the new framework across all levels, and there may still be a need to use wider lockdowns (similar to the measures in Alert Level 3 or 4).

Vaccination certificates: Requiring vaccination certificates will be optional for many locations. There are some higher-risk settings where they will be a requirement in order to open to the public. Some places won't be able to introduce vaccination requirements, to ensure everyone can access basic services, including supermarkets and pharmacies.

GREEN

COVID-19 across New Zealand, including sporadic imported cases.

Limited community transmission.

COVID-19 hospitalisations are at a manageable level.

Whole of health system is ready to respond – primary care, public health, and hospitals.

General settings

- Record keeping/scanning required
- Face coverings mandatory on flights, encouraged indoors
- Public facilities open
- Retail open
- Workplaces open
- Education (schools, ECE, tertiary) open

- Specified outdoor community events allowed

No limits if vaccination certificates are used for:

- Hospitality
- Gatherings (e.g. weddings, places of worship, marae)
- Events (indoor/outdoor)
- Close contact businesses

- Gyms

If vaccination certificates are not used, the following restrictions apply:

- Hospitality up to 100 people, based on 1m distancing, seated and separated
- Gatherings (e.g. weddings, places of worship, marae) up to 100 people, based on 1m distancing
- Events (indoor/outdoor) up to 100 people based on 1m distancing, seated and separated
- Close contact businesses face coverings for staff, 1m distancing between customers
- Gyms up to 100 people, based on 1m distancing

ORANGE

Increasing community transmission with increasing pressure on health system.

Whole of health system is focusing resources but can manage – primary care, public health, and hospitals.

Increasing risk to at risk populations.

General settings

- Record keeping/scanning required
- Face coverings mandatory on flights, public transport, taxis, retail, public venues, encouraged elsewhere
- Public facilities open with capacity limits based on 1m distancing
- Retail open with capacity limits based on 1m distancing

- Workplaces open
- Education open with public health measures in place
- Specified outdoor community events allowed

No limits if vaccination certificates are used for:

- Hospitality
- Gatherings (e.g. weddings, places of worship, marae)
- Events (indoor/outdoor)
- Close contact businesses

- Gyms

If vaccination certificates are not used, the following restrictions apply:

- Hospitality contactless only
- Gatherings (e.g. weddings, places of worship, marae) up to 50 people, based on 1m distancing
- Close contact businesses, events (indoor/outdoor) and gyms are not able to operate

RED

Action needed to protect health system – system facing unsustainable number of hospitalisations.

Action needed to protect at-risk populations.

General settings

- Record keeping/scanning required
- Face coverings mandatory on flights, public transport, taxis, retail, public venues, recommended whenever leaving the house
- Public facilities open with up to 100 people, based on 1m distancing
- Retail open with capacity limits based on 1m distancing
- Workplaces working from home encouraged

- Education schools and ECE open with public health measures and controls
- Specified outdoor community events allowed with capacity limits

With vaccination certificates, the following restrictions apply:

- Hospitality up to 100 people, based on 1m distancing, seated and separated
- Gatherings (e.g. weddings, places of worship, marae) up to 100 people, based on 1m distancing
- Events (indoor/outdoor) up to 100 people based on 1m distancing, seated and separated
- Close contact businesses public health requirements in place
- Gyms up to 100 people, based on 1m distancing
- Tertiary education vaccinations required for onsite delivery, with capacity based on 1m distancing

If vaccination certificates are not used, the following restrictions apply:

- Hospitality contactless only
- Gatherings (e.g. weddings, places of worship, marae) up to 10 people
- Close contact businesses, events (indoor/outdoor) and gyms are not able to operate
- Tertiary education distance learning only