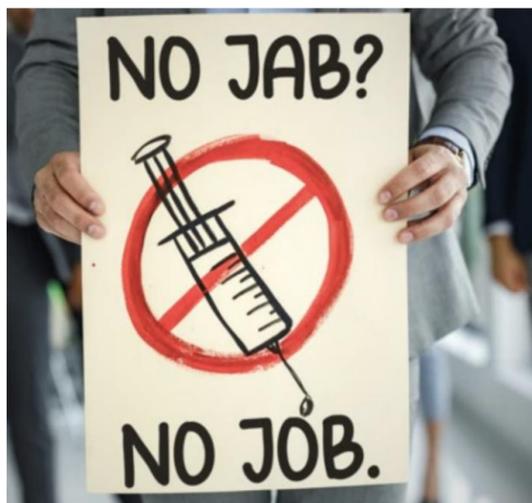


## Freedom of choice, boundary testing & more!

### Public safety versus freedom of choice!

By Emma Monsellier

This is the dilemma that Ports of Tauranga (POT) currently face with their workers following a directive that it issued to the workforce last week.



The POT issued the directive following the COVID-19 scare it received last month when a cargo ship's entire crew tested positive for the virus grinding Port operations to a halt.

Yet, Stevedore Dwayne Hika (worker at the POT for over 30 years) has openly stated his dismay at the directive and claims that as many as 230 POT workers feel the directive is a serious breach of their human rights.

Hika is just one of many POT workers refusing to comply with the directive and is not intending to get vaccinated any time soon risking his employment.



Hika feels that the POT stringent protocols already in place are more than sufficient to protect the workers. Protocols such as sterilizing, sanitizing, mask wearing and social distancing are already strictly enforced, but the POT want to take no chances. So, it has instructed all workers to receive the vaccination by the end of September 2021 otherwise they are "out of

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a job". Hika's argument is that the mandate for compulsory vaccination is stripping a person of their biggest human right - the right to say, 'yes' or 'no'.

Interestingly, Hika's position has garnered considerable support with many people agreeing that a 'no jab no job' mandate is totally unreasonable particularly when clinical trials for the vaccination are still incomplete.

One question that reverberates is - how can a vaccine that is still undergoing clinical trials (as stated by the Ministry of Health) where its long-term safety is not confirmed, be mandated for the public? Many supporters of Hika's position are deeply concerned that workers are being told to get vaccinated when its overall safety is not yet determined. Also, forcing a person to get vaccinated is breaching the most basic of human rights - the freedom of choice.

Only a minority of the public seem to support the POT directive. Those in support feel the directive is a reasonable attempt to make the community feel safer and that widespread vaccination is likely to see our borders open sooner rather than later.

Unsurprisingly, the Maritime Union has intervened and intends to engage in (no doubt) heated discussions with the POT over the next few days. However, the Union has indicated that it supports the need for workers to be vaccinated but argues that the time frame of 30 September 2021 is a "hard deadline" to meet and the directive will "lead to many job losses".

It'll be interesting to see how this legal argument unfolds over the next few days. It may be necessary to consider alternative options and offer redeployment to less "riskier roles" rather than a straight job loss. However, trying to accommodate a workforce of 230 POT workers into less riskier roles is probably a complete impossibility. I'm very interested to see how this unfolds!

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### Crossing the Border

By Sheridan Climo

With Auckland currently tied off in its own alert level 4 bubble, there have been questions from businesses around the

essential movements between differing alert levels.

### Covid boundary



Source: Prime Minister's Office / Herald Network graphic

The Director General of Health, Ashley Bloomfield, in a 1pm press conference last Thursday, mentioned that essential travellers should be tested several days after crossing the Auckland region border, even if they do not have symptoms. Essential travellers were also told that they should monitor symptoms and if they felt unwell, to stay home.

Many essential travellers, particularly those in the transport industry, felt blindsided by these comments and as a result, uncertainty has swelled over what is actually required of those who would be moving in and out of the region for essential work.

Following the Government's latest announcement today, Monday 6 September, it has been confirmed that as of 11:59 PM on Thursday 9 September 2021, those crossing the boundary into Auckland will be required to have been tested within the past 7 days (and further, be tested on a weekly basis) and carry evidence of this. While the details are still being finalised, it has been suggested that this evidence would most likely be in the form of an email or text message. It is also thought that spot checks at the boundary may be put in place to help monitor this.

Dr Bloomfield also asserted that the testing required was only surveillance testing which means that those who are travelling, are not required to stand down while they await results (unless you are symptomatic).

The message still remains though, that if you have symptoms or feel unwell, to stay home and do not travel.

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# COVID TODAY

For those workers travelling from the Northland region through to the Waikato (or beyond), travelling through Auckland will be allowed, however travellers must pass directly through Auckland and are urged not to stop. It is also expected that you carry with you evidence for the reasons of your travel. Again, if you fall into the category of an essential worker, travelling for this purpose, you are required to be tested weekly and may be asked for evidence of this if spot checked.

This effectively gives those affected travellers 3 days to get tested before the requirement officially comes in to affect. While it may be an inconvenience to workers, the Government assures this will be effective in helping to eliminate COVID-19 in the community, especially while Auckland remains at an alternative alert level setting to the rest of New Zealand.

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## Can I ask my employees to pay for their own face mask?

By Shazreen Hussain



As a business, you are liable for the health and safety of your employees at work. It is important that you supply all employees with appropriate personal protective equipment (PPE), and ensure they wear, use and maintain the essential PPE. This consists of face coverings under COVID-19 rules.



**Please note** that PPE required by health and safety at work law and face coverings required by COVID-19 rules are different. As an employer, you cannot pass PPE costs to your employee and cannot make the employee provide their own PPE as a condition of employment.

## COVID-19 Contact Record Rule

Businesses and services have a vital role in helping prevent the spread of COVID-19. They can prevent the spread by meeting COVID-19 alert level regulations, including the contact record rule (from 8 September 2021) if it applies. Businesses and services can also support customers, workers and visitors to meet their requirement to wear a face covering when appropriate.

During COVID-19 alert levels, it is expected that businesses and services to do what is reasonable to comply with the contact record rule and to support its customers, workers and visitors to wear a face covering when necessary.

### Contact Record Rule - Specified Businesses

Specified businesses and services from 8 September 2021, have to meet extra requirements to support contact tracing. This means, they must have processes and systems in place to safeguard, so far as is reasonably practicable, everyone over the age of 12 who enters the workplace and:

- provides particulars in a contact tracing record, or
- scans the QR code or makes their own contact record.

This condition is additional to the requirement on all businesses and services to display a QR code and have a different method accessible for visitors and customers to record their attendance if they don't have the COVID-19 tracer application.

If visitors or customers refuse to use contact record processes and systems, it is not mandatory on businesses or services to try to make them do so.

The contact record rule simply means that businesses and services have to put improved processes and systems in place, which may take some time to get these right.



Worksafe, suggest an education-first technique for businesses/services that aren't meeting these COVID-19 requirements. However, if a business/service fails to make the changes as expected of them, Worksafe will consider taking an enforcement action against the business/service.

## Face Coverings - Requirements by Law

The COVID-19 legislation requirements are up to date on wearing a face covering to stop the spread of the virus. For latest information on face covering requirements visit: <https://covid19.govt.nz/health-and-wellbeing/protect-yourself-and-others-from-covid-19/wear-a-face-covering/>

In contrast to the contact record rule, individuals are held responsible for meeting face covering requirements. It is essential that customers, workers and visitors must wear a face covering in certain circumstances. Some people will be exempt from wearing a face covering. Hence, businesses and services do not have to stop people without face coverings from boarding their transport service or entering their premises.

As part of encouraging visitors or customers to comply with face covering requirements, businesses and services may choose to provide face coverings to people who don't have one. Likewise, businesses and services should also ensure their workers wear face coverings when required to do so under COVID-19 guidelines. If required, businesses and services should provide the face coverings. The only exception are the workers who are exempt from wearing a face covering.

As a business, it is your primary duty of care under of the Health and Safety at Work Act 2015 (HSWA), to ensure, so far as is reasonably practicable, the health and safety of your workers and any other workers who are influenced or directed by the business. You must ensure that your workers have face coverings and wear them when required to meet your requirements under the HSWA.

**Please note** that PPE required under HSWA and face coverings required under COVID-19 rules are not similar. Businesses and services cannot substitute PPE required under HSWA, such as respirators to protect a worker from dust, with other forms of PPE, such as face coverings.

When selecting PPE, you must ensure it is:

- compatible with any other PPE your worker is required to wear or use
- suitable for the nature of the work and any risks associated with the work
- a suitable size and fit and reasonably comfortable.



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