

# COVID TODAY

Latest news and bulletin updates

## Global airlines taking a stance – jab versus job!

### Corporations are pushing for more vaccinations!

By Shazreen Hussain

The US position.....



United Airlines in its latest announcement on 1 October 2021, said it would terminate the employment of any workers who would refuse to get the COVID-19 jab. Of the airline's more than 67,000 workers, only 320 have not been jabbed.

In a statement United Airlines said: "Our vaccine policy continues to prove our requirements work - in less than 48 hours, the number of unvaccinated employees who began the process of being separated from the company has been cut almost in half, dropping from 593 to 320". This means 99.5 percent of United Airlines employees have now chosen to get jabbed, excluding staff who sought an exemption.

In its statement, United Airlines said any employees who want to seek an exemption based on either health or religious grounds will need to provide documents to back-up their claim. If an employee fails to comply with the mandate, their employment will be subsequently terminated.

So far, the list of big US businesses compelling employees to choose between getting vaccinated or face termination continues to rise, as the Delta variant prompts cities to reinstate measures to control the spread of the virus.



On 3 August 2021, Tech giant, Microsoft said it would require proof of vaccination status for all employees and visitors entering its US workplaces.

On the same day, Tyson Foods said it required all employees to be vaccinated by 1 November 2021 as a "condition of employment."

Likewise, Google said it would require staff who returned to their offices to be vaccinated, while Disney announced a mandate for workers who work on site.

Other US businesses, such as Walmart, Lyft, and Uber, have taken a less forceful style, by mandating vaccinations for white-collar employees but not for frontline workers.

The Aussie position.....



The Flying Kangaroo Qantas has said all its staff must be vaccinated against the Delta variant, making it the latest international airline to mandate jabs for employees. Qantas says vaccinations are the only way out of lockdown and is telling its employees to make a decision: either jab or job?

Qantas has been hit harder by COVID-19 than perhaps any other Australian corporate. It has also been the biggest beneficiary of Government support payments - expected to be an estimated AU\$2bn by the end of 2021.

But making vaccinations mandatory is a highly controversial policy for the airline. The recent outbreak in Sydney has made COVID-19 an extremely serious issue for Australia. While this issue has eased some vaccine hesitancy, there are still an abundant number of people who do not want to be vaccinated.

Scott Morrison, the Prime Minister has been adamant that, with the exemption of those in specific industries such as aged care, no one will be forced to be vaccinated. Therefore, if Aussie employers want to mandate it - the law does not support them and employers will be "own their own".

Australian Unions in support of workers' rights say that decisions about mandatory vaccinations must be made by Public Health officials and not employers! The Unions will be taking a dim view of employers trying to compel vaccinations for their Australian employees.



So, what's our position here in New Zealand?

As the Delta variant rampages through the nation, the country's biggest, most high-profile company Air New Zealand (Air NZ) is proposing to introduce a mandatory vaccination policy.

Air NZ plans to make COVID-19 vaccines mandatory for 4000 employees, roughly half its workforce, with baggage handlers and other customer-facing staff being compelled to vaccinate. The airline is requiring these employees to be fully vaccinated by early November 2021.

Air NZ's Chief Operational Integrity & Safety Officer, Captain David Morgan, said the airline must protect the health and safety of its employees from the risk profile of the Delta variant. Morgan said, there are plenty of openings for other roles within the organisation which will not require vaccination.

Chief Executive Officer, Greg Foran said Air NZ did not take the decision lightly. Foran said that Air NZ's employees have been on the frontline through the pandemic, helping Kiwis get home safely and, as a result, are at a greater risk of getting COVID-19. "Extensive PPE, isolation, and testing have helped protect our people, but we need another layer of protection which the vaccines provide," Foran said.

But is the 'no jab no job' mandate really lawful?

Well, this is definitely new territory for employment law.

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In non-COVID times, an employer would never ask an employee if they have taken advantage of a flu vaccine or inquire about a disease if it doesn't affect job performance. Generally speaking, it's none of an employer's business??

However, business owners are now navigating the uncharted waters of COVID-19 and with the lack of clarity in employment law or Government recommendations, it's no wonder employers feel that they're treading into the unknown.



The 'no job no job' stance is gaining momentum globally. But will this make its way to New Zealand and become legal?

Well, the simple answer is 'no' - not for now at least, unless you gain employee consent via a fair consultation process. But then again, this is not clear cut either and confusion still remains. For example, if an employer doesn't implement a mandate compelling employees to vaccinate, they could then potentially face claims from vaccinated employees who are worried about returning to work with colleagues and customers who are not jabbed. So, an employer will be accountable regardless. It either compels employees to vaccinate and risk grievances from the anti-vaxers or doesn't compel vaccination and risks grievances from those fully vaccinated.



If an employer implements a mandatory vaccination programme, then this may expose the business to claims from employees for unjustified dismissal or disadvantage such as the one in *GF v New Zealand Customs Service* [2021] (although the claim was unsuccessful because the mandate for her to be vaccinated was reasonable as she was a border worker).

Also, if the employee's refusal is based on religious grounds, then they may also pursue a claim in defamation.

On the other hand, if an employer does not mandate vaccination, there is a potential risk that some employees may raise a grievance asserting that the employer is failing to comply with health and safety measures.

Everyone has the right to refuse medical treatment including vaccines. An employee's vaccination information is protected by the Privacy Act 2020 (Act) thus is vital for an employer not to breach their legal obligations under the Act.

### So, what's the solution?

You can't force employees to vaccinate unless there is a Government mandate in place which governs a particular role/industry. But there are practical steps available to employers to consider in their business:

- a) A formal health and safety risk assessment of the workplace and roles must be undertaken to minimize the risk and spread of COVID-19. There is further guidance on [WorkSafe's](#) website on risk management.
- b) Conduct a consultation process to consider all employees' views before implementing any vaccination policy. This should be done formally where the employer provides reasons for implementing the policy and allowing time for discussions and feedback.
- c) If the employer wants to make vaccination mandatory for new employees, then the recruitment processes will need to be amended to explain this to new recruits outlining the reasons from a health and safety perspective. There needs to be compelling reasons as to why that role requires the incumbent to be fully vaccinated.

One the last point, this isn't a one-size-fits-all solution when it comes to COVID-19. Many employment issues start with the assessment question "what would a reasonable employer" do in similar circumstances. The Court will then assess the situation based on what a reasonable employer would have done in its own unique situation before determining whether an employer's actions were lawful or not.

### On another note!

**Tourist operators want wage subsidy extended after Auckland finally descends into Alert Level 2.**

Tourism Industry Aotearoa (TIA) is asking for wage subsidies to continue even once Auckland moves to Alert Level 2 (whenever that will be).

The Government has confirmed that the wage subsidy scheme will continue for the duration of Alert Level 3 (even with the easing of restrictions). But the TIA want the scheme to continue beyond these restrictions.



TIA Chief Executive Chris Roberts said: "For tourism businesses in Auckland and around the country, the restrictions (particularly the boundary restriction) will have the same impact as Auckland remaining at Alert Level 3". With the international borders closed, 42 percent of the total visitor market is not available. Aucklanders provide an additional 20 percent of total visitor spend across Aotearoa. However, this 20 percent is also unavailable due to the Delta outbreak.

Robert says, while the borders are closed including the restriction placed on entering/exiting Auckland, the tourism market is about a third of what it formerly was making it tougher to survive.

TIA said that even with Auckland at Alert Level 2, it would mean tourism businesses in Auckland will not have any tourists from the rest of the country and vice versa for tourism businesses outside Auckland. Many businesses were hoping for increased bookings during the October school holidays however the Alert Levels are not helping. Also, now that other regions (parts of the Waikato) are affected by COVID-19, this has further compounded the problem. Whilst many businesses in the region were hoping for a rebound in bookings and spying an opportunity to recover financial losses, they have now been thrown into turmoil with imminent closures brought on by Alert Level 3.

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