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UPDATE ON CHANGES FOR MANAGING COVID-19

Purpose

This Advisory updates operators on changes to legislation regarding vaccination of workers and the shift to the Covid Protection Framework, or “traffic light system”, tomorrow. We hope this advice helps you understand the requirements and plan to ensure compliance.

We are awaiting formal guidance from the Ministry of Transport for freight operators and will distribute that when it comes to hand. We believe it will be on the MoT website this afternoon.

Vaccination legislation

Below is a summary of the obligations that the [COVID-19 Response \(Vaccinations\) Legislation Act 2021](#) imposes on operators. This legislation was passed last week.

Duties imposed on PCBUs (person conducting a business or undertaking) and workers

To keep a record of whether workers have been vaccinated (to ensure unvaccinated workers don't do work for which they are required to be vaccinated).

- To update records as soon as practicable if a worker provides updated information (that they have subsequently been vaccinated, exempted, or authorised)
- Not to allow workers to do work for which vaccination is required unless satisfied they are vaccinated and tell them they must either be vaccinated, exempt, or authorised (see first bullet point above).

Failure to comply with any of the above is an infringement offence and carries a substantial fine.

- To allow workers to be vaccinated during normal working hours if vaccinations are available then. Workers must also comply with the requirement not to do work for which they must be vaccinated unless they are vaccinated. As with PCBUs, failure to comply is an infringement offence. Workers with updated information (as, for example, if subsequently vaccinated) must ensure their information is updated as soon as practicable.

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Exempt person means a person who has been granted a COVID-19 vaccination exemption

Authorised person, in relation to COVID-19 vaccinations, means a person who is authorised by a COVID-19 order to carry out work despite being unvaccinated

Providing information on vaccination status

- A PCBU can ask for information, either electronically or in writing, that confirms the worker has been vaccinated, is exempt, or is authorised
- PCBUs must inspect the documents provided and take such copies or images, or extracts needed to verify compliance.
- A worker who doesn't provide the requested information is treated as unvaccinated and can't be allowed to do 'specified' work, that is, work for which vaccination is required.

Enforcement measures

- Authorised enforcement persons (the Director General, medical officers, the police, or anyone authorised to carry out the enforcement role), can go anywhere or do anything to ensure unvaccinated workers are not doing work for which vaccination is required. Evidence must be produced, electronically or in writing, to confirm that workers are not working when they shouldn't be.

Work assessments and the use of personal information

- Regulations may prescribe an assessment tool that PCBUs can use to establish whether they should prevent their workers from carrying out work unless they are either vaccinated or have undergone a medical examination or testing for Covid-19 (or both)
- PCBUs may use the assessment tool (when available) to decide whether or not a worker can do the particular work, but they are not bound to use it. PCBUs who do use the assessment tool must first consult their workers and involve any union representative, although a union representative can only be given personal information with the worker's consent (unless it does not identify the worker)
- Personal information collected for contact tracing purposes (via QR scans or in writing) may be used only for contact tracing, to enforce the Act, or a Covid-19 order, or for Health Act reasons
- Personal information relating to whether a worker has been vaccinated or has complied with the Act or an order may also be disclosed only to demonstrate compliance or for enforcement or Health Act purposes

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- Workers can access information held about them
- Misuse of personal information attracts a maximum fine of \$12,000 or a 6-month prison term for an individual, or \$15,000 for anyone else (unspecified).

Employment Relations Act amendments

A new Schedule 3A concerns Covid-19 vaccinations and the consequences of not being vaccinated and the key points are:

- Employees are to be given a reasonable amount of paid time off work (paid as if for their ordinary duties) to be vaccinated if that doesn't unduly disrupt the employer's business or the performance of the employee's work duties
- Before taking time off work, employees must notify the employer and say how much time, including travelling time, they are likely to need
- Time off work can be refused on reasonable grounds (as first bullet point)
- Employees legally required to be vaccinated, or whose employer has determined must be vaccinated. must be given reasonable written notice of the date by which they are to be vaccinated if they are to carry on working
- If an employee is unable to comply with the legal requirement to be vaccinated, or whose employer has determined they must be vaccinated, by a certain date, the employer may terminate the employee's agreement by giving the employee:
 - An amount equivalent to 4 weeks' salary or wages (or any greater amount specified in the employment agreement) and any service-related entitlements, legislative or otherwise
- Before giving notice of termination the employer must first ensure reasonable alternatives that would avoid termination have been exhausted
- Termination is cancelled if the employee is vaccinated or otherwise permitted to perform the work under a Covid-19 order before the close of the notice period (unless cancelling the notice would unreasonably disrupt the employer's business)
- Although the employment has been terminated, nothing prevents an employee from bringing a personal grievance or legal proceeding in respect of the dismissal (in other words, a claim of procedural unfairness)
- The employee and employer can agree to employment termination, in which case the employer must pay the employee an amount equivalent 4 weeks' salary or wages (or any greater amount specified in the employment agreement) and any service-related entitlements, legislative or otherwise.

Any employee can raise a grievance at any time, whether or not they have grounds for doing so. The main deterrent to frivolous or vexatious proceedings is the cost that the employee must bear to commence the proceedings, as well as the risk of having costs awarded against

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them. All an employer can do to mitigate against these types of proceedings is to take steps to ensure they are acting lawfully (i.e. they have substantive justification for their decisions and are undertaking their decision-making process in a fair manner).

The traffic light system

New Zealand will move into the new COVID-19 Protection Framework (the traffic light system) at 11.59pm on Thursday, 2 December 2021.

The framework, summarised below, introduces a flexible 3-level approach to managing COVID-19 in the community. This replaces the previous Alert Level Framework used under the COVID-19 elimination strategy.

Red Action needed to protect health system and at-risk populations – different levels of restrictions on hospitality/gathering/event sizes and types of businesses and facilities that can open depending on use of vaccine certificates. Localised protections and lockdowns could be used as part of the public health response in the 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).
Orange Increasing community transmission with increasing pressure on health system – no restrictions on hospitality/gathering/event sizes and types of businesses and facilities that can open if vaccines certificates are used. Restrictions and many businesses cannot open if vaccines certificates are not used.
Green Limited community transmission – no restrictions on hospitality/gathering/event sizes and types of businesses and facilities that can open if vaccines certificates are used. Restrictions if vaccines certificates are not used.

Twelve North Island locations are currently red:
Northland, Auckland, Taupo and Rotorua Lakes, Kawerau, Whakatane, Opotiki, Gisborne, Wairoa, Rangitikei, Whanganui and Ruapehu districts.

The rest of the North Island and the whole of the South Island are currently orange.

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The Government will review these settings on Monday 13 December and then they will be set until the next review on 17 January 2022.

The Government has signaled the country will not be in green for several weeks therefore, the requirements for red and orange status have been taken from the current draft Ministry of Transport advice for the Freight and Logistics category and are summarised below. Please note this is still a draft and we will release the final advice when it comes to hand.

Can I operate at Orange	Does the Government require my workers to be vaccinated or tested	Can I operate my service to a different colour area
<p>Yes</p> <p>Wearing of face coverings is encouraged.</p>	<p>The Government has not mandated vaccination or testing for workers servicing domestic operations at this time <u>unless</u> a worker is travelling between Auckland and other parts of New Zealand during the period 3 December 2021 to 17 January 2022. These workers will need to be fully vaccinated; or tested before they travel out of Auckland.</p> <p>Operators can assess whether to require their workers to be vaccinated and are recommended to review the assessment tool available on the MBIE site.</p>	<p>Yes. There are no requirements or restrictions on reasons for travel out of Orange to another area of any colour. You can also operate the return journey. <u>The only exception to this</u> is if you are operating between Auckland as part of your service during the period 3 December to 17 January 2022.</p> <ul style="list-style-type: none"> • For the period 3 to 15 December, there will be restrictions on the reason for travel between Auckland and other parts of New Zealand and these travellers may be tested. • For the period 15 December 2021 until 17 January 2022 there are no restrictions on the reason for travel, but your workers and passengers will need to be fully vaccinated or tested before they travel out of Auckland. This vaccination and testing requirement does not apply to transit through Auckland during the period 15 December 2021 to 17 January 2022.

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Can I operate at Red	Does the Government require my workers to be vaccinated or tested	Can I operate my service to a different colour area
<p>Yes</p> <p>Face coverings are recommended whenever leaving the house.</p>	<p>The Government has not mandated vaccination or testing for workers servicing domestic operations at this time <u>unless</u> a worker is travelling between Auckland and other parts of New Zealand during the period 3 December 2021 to 17 January 2022. These workers will need to be fully vaccinated; or tested before they travel out of Auckland.</p> <p>Operators can assess whether to require their workers to be vaccinated and are recommended to review the assessment tool available on the MBIE site.</p>	<p>If you are operating to or from Auckland as part of your service during the period 3 December 2021 to 17 January 2022</p> <ul style="list-style-type: none"> • For the period 3 to 15 December, there will be restrictions on the reason for travel between Auckland and other parts of New Zealand and these travellers may be tested. • For the period 15 December 2021 until 17 January 2022 there are no restrictions on the reason for travel, but your workers and passengers will need to be fully vaccinated or tested before they travel out of Auckland. This vaccination and testing requirement does not apply to transit through Auckland during the period 15 December 2021 to 17 January 2022.

Testing for workers crossing the Auckland boundary

For the period 15 December 2021 until 17 January 2022, people travelling out of Auckland (transit travel through Auckland excluded) must be fully vaccinated (and have evidence of this); OR

- If they are crossing for work reasons, they must carry evidence of having taken a COVID-19 test within seven days of their travel (but will not be required to have had their test result before they travel); OR
- A negative COVID-19 test received within 72 hours before crossing the boundary.

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For operators who have been working on the seven day testing regime, this remains the same between 15 December 2021 and 17 January 2022.

Testing options for workers

- Generally, employees can currently choose to undertake one of two types of tests: a nasopharyngeal swab or an oropharyngeal bilateral anterior nares swab. A range of additional testing services are being progressed to help improve access to testing.
- Dedicated testing facilities at easy to access locations near the boundary will be stood up to ensure testing can be undertaken as easily and efficiently as possible. This will include the set-up of both dedicated pop-up testing centres near the boundary and on-site testing at some larger workplaces.
- Saliva testing is available to give permitted workers different options to comply. It is self-administered and available 24/7. Workers can collect tubes beforehand and drop their sample at multiple collection points. Saliva testing is one test within a 7-day period. For those using saliva testing (initially), they need to download and install the APHG saliva testing app. The app will also record your tests and results which can be used as evidence when crossing the Alert Level boundary. You can find out more at covid19salivatesting.co.nz.
- It is important to note that where saliva testing is utilised, it is the employer's responsibility to ensure the requirements of testing are met. An employee will be compliant at the boundary if they provide evidence of completing a single test within the past 7 days.
- Rapid antigen testing is now available for businesses, the information is available here <https://www.business.govt.nz/news/rapid-antigen-testing-available-for-business/>

Other recommendations

It will be vital that operators keep in close and frequent contact with their customers and key operational stakeholders as requirements may change. For example, there is no Government requirement for vaccination or testing to cross the Cook Strait, however the InterIslander has been reported as advising passengers over 12 years old will be required to show proof of either double-vaccination (My Vaccine Pass) or a negative Covid-19 test that was performed within the previous 72 hours when checking in.

A My Vaccine Pass, or proof of a negative Covid-19 test that was performed within the previous 72 hours, is likely to be required for accommodation and to access restaurants – operators will need to consider this when sending drivers on long-haul.

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We anticipate other parties involved in our supply chain will advise similarly, as is their right. The Order covering the Covid-19 Protection Framework is available [here](#).

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