

## The new COVID-19 vaccination legislation and traffic light system explained

**The Government has passed legislation outlining the process for terminating unvaccinated employees employment agreements for failing to comply with vaccination requirements. The amendments relate to the termination of unvaccinated employees who have a duty not to perform work unless vaccinated under the COVID-19 Public Health Response Act 2000, and whose employers have imposed a workplace vaccination requirement.**

### Key aspects of the new legislation

The COVID-19 Response (Vaccinations) Legislation Act 2021 makes amendments to the Employment Relations Act 2000 in relation to vaccination status dismissals. The legislation requires employers to provide for reasonable paid time off for employees to be vaccinated. An employer may only refuse to allow an employee paid time off if satisfied, on reasonable grounds, that providing the paid time off would unreasonably disrupt the employer's business or the performance of the employee's employment duties.

Where an employer determines the employee must be vaccinated to carry out the work of the employee, the employer must give the employee reasonable written notice specifying the date by which the employee must be vaccinated in order to carry out the work.

If the employee is unable to comply with a duty imposed by law not to perform work unless vaccinated, or a workplace vaccination requirement, or they are not

vaccinated by the specified date, the employer may terminate the employee's employment agreement. The employer must terminate the agreement by giving the employee the greater of 4 weeks paid written notice, or the paid notice period specified in the employee's terms and conditions. Before terminating the employment however, the employer must ensure that all other reasonable alternatives that would not lead to termination of the employee's employment agreement have been exhausted.

If the employee gets vaccinated during the notice period, the termination notice is cancelled and of no effect, unless cancelling the notice would unreasonably disrupt the employer's business.

The employee will still be able to bring a personal grievance in relation to the ending of the employment agreement and can terminate their employment early by mutual agreement with their employer.

### Risk assessment process

The Government has announced it will provide a clear, legal framework (vaccination assessment tool) to help businesses make decisions about vaccinations in the workplace. It will be optional for business to use the tool, and will not override any risk assessments that have already been done. The tool will include four factors of which three must be met before it would be reasonable to require vaccination for particular work.

### COVID-19 Protection Framework

The COVID-19 Protection Framework comes into effect on 3 December 2021. The framework involves a traffic light system, with red, orange and green levels. In each level, different rules will apply to businesses.

The requirements apply by activity. Ministry of Business, Innovation & Employment (MBIE) recently released guidance on what this means for specific businesses. Each sector has its own guidance with information on whether businesses can operate at each level, and if so, how.

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The industries MBIE has provided specific guidance for are:

- Accommodation services
- Close contact services
- Entertainment, recreation and exercise
- Events
- Food and drink services
- Manufacturing, supply or processing of goods and packaging
- Primary Industries
- Public facilities
- Retail
- Services
- Transport, freight and logistics

The rules of some sectors change depending on whether My Vaccine Pass verification is used by the business or not. For detailed guidance on how specific sectors can operate at each level head to MBIE's website.

**Want to know more?**

If you have any questions about the upcoming changes, please contact our specialist [Employment Team](#).