



Covid-19 Vaccinations

Client Services:

- General advice in relation to all employee-related issues
- Resolving Personal Grievances and Workplace Disputes
- Employment Agreements - drafting and negotiation
- Employment Relations Authority/Employment Court and Mediation Representation
- Employment Relations Strategies
- Training
- Monthly newsletter

There have been an increasing number of questions asked and articles written in New Zealand and overseas as the world ramps up Covid-19 vaccination programmes. Our take on some of these issues:

1. ***Can employers require existing employees to be vaccinated?***

Opinions seem clear that mandatory vaccination is a potential breach of human rights, particularly the right to refuse medical treatment. It may however be reasonable in limited situations; for example if overseas travel is a requirement of the job and vaccination (e.g. vaccination passports) becomes a requirement of such travel. However employees may still have legitimate grounds to refuse to be vaccinated and the employer will then have to determine whether it is reasonable to dismiss in such circumstances.

Assuming that vaccinations are accepted as the most reasonably practicable way of mitigating the risk of catching Covid-19, employees who refuse to be vaccinated could, in theory be justifiably dismissed for breaching the employer's (and their own) health and safety obligations. That will, as with all dismissals, require a consideration of the reasons for the refusal and whether there are reasonable alternatives to dismissal. Claimed exceptions will fall into two main areas, medical (e.g. allergies, severe medical problems, or pregnancy) or belief reasons.

Requiring mandatory vaccination may be seen as discriminating against those who have the protected (medical) characteristics; or who do so for belief-based reasons. Genuine religious belief, although restricted, will provide a reasonable ground for refusal to accept vaccination.

It is also apparent that in some English and European cases ethical veganism may give protection under discrimination legislation. The cases do however suggest that being an anti-vaxxer is not a protected philosophical belief. An employer who is considering whether to terminate an employee who refuses to be vaccinated, will therefore have to consider first whether the reasons given by the employee are based on genuine medical or belief reasons and then whether such an action would discriminate against the employee for one of the protected grounds of discrimination under the Human Rights and Employment Relations Acts.

Employers who require vaccination will need to consider alternatives to dismissal if the employee refuses to be vaccinated such as:

- accepting the exception;
- redeploying the employee to an alternative role;
- implementing other safety measures as an alternative to vaccination;
- allowing the employee to work from home.

2. ***Can employers require employees to reveal their vaccination status?***

Employers cannot automatically assume that a refusal to disclose vaccination status is the equivalent of refusing to be vaccinated. Employers will therefore need to go through a reasonable formal process before requiring this information. Information gathered will need to be treated as personal information under the Privacy Act 2020. Specifically employers will need to consider and inform staff of why the information is needed, how and for how long it will be stored and who can access it.

Disclaimer:

This newsletter is not intended as legal advice but is intended to alert you to current issues of interest. If you require further information or advice regarding matters covered or any other employment law matters, please contact **Peter Zwart, Dean Kilpatrick, Jane Taylor or David Appleton.**

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3. *Can employers require vaccination as a condition of recruitment?*

This is potentially less risky than for existing employees although the issues around discrimination will still apply under Human Rights legislation. In addition, employers will need to consider whether the applicant has had an opportunity to be vaccinated as we go through the roll-out process.

In conclusion, when considering whether to require vaccination of employees or prospective employees, employers will need to ensure that vaccination is a legitimate requirement for some or all employees. If vaccination is refused, the employer will then need to determine whether the reasons given were reasonable and whether refusal to accept those reasons would amount to discrimination. Lastly, if dismissal was being considered, alternatives must be explored.

In New Zealand, the majority of frontline Covid-19 workers are employed or contracted by the State, and the risk of catching Covid-19 is statistically safer than in most other countries. The State has not required vaccination of these workers. It is therefore likely to be very unusual for an employer to be able to justifiably require an employee to be vaccinated.

We suggest that employers seek advice before considering the implementation of such a policy.

Don't Miss Out!

Our next Employment Relations Practice Course has been set down for **Tuesday 16 and Wednesday 17 March 2021.**

Topics covered include:

- Pre-employment
- Dealing with absences from the workplace
- Discipline and Termination
- Performance Management
- Holidays Act
- Parental Leave
- Negotiations and Good Faith
- Redundancy and Restructuring
- Introduction to Health and Safety
- Policies
- Legislative Updates

Further information in regard to the course content and registration details can be found on our website – www.mgz.co.nz/training

End of an Era!

Peter Zwart is retiring from MGZ on 31 March 2021 after some 26 plus years as a founding Director and almost 35 years in 'the trade'.

David Appleton who joined MGZ last year will take responsibility for Peter's clients. David worked in Employment Law as a Senior Partner with Lewis Silkin LLP in London before moving to New Zealand in 2009. His employment law work in New Zealand included nearly 8 years as an Authority Member in the Employment Relations Authority. Having headed back to the UK in 2019 his return to New Zealand in October 2020 gave MGZ the opportunity to offer him employment. We welcome his breadth of experience and knowledge into MGZ.

New Employment Law Service For Employers



Neil McPhail
B.Sc., Dip. IR



Raewyn H. Gibson
LL.B.



Peter Zwart
MA (Hons), LL.B.

Today is the first day for Canterbury's new Employment Law Services Company...McPhail Gibson & Zwart Ltd.

The three directors have extensive local experience and will be providing a full range of employment related services.

- Personal grievance resolution.
- Dispute resolution.
- Representation in Employment Tribunal and Employment Court.
- Employment contract drafting.
- Employment contract negotiation.
- Specialist training.
- Labour relations strategies.
- Wage arrears claims.

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