

## MinEx backs 90%-plus vaccination

Simon Hartley - Wed, 27 Oct 2021



Extractives sector health and safety regulator MinEx is backing the push to have employees vaccinated and has provided a legal opinion scrutinising issues over the mandatory vaccination of staff.

MinEx chief executive Wayne Scott tells *Inside Resources* the presence and risk of Covid-19 remains top of any health and safety agenda.

“Obviously there’s people either vaccine-hesitant or with limited access to vaccination, but we want to support them with good science around vaccination,” he says.

Anecdotally, Scott understands vaccination rates for the extractives sector are “quite high”, with the main issue for quarries having been the processing of exemptions for those travelling across the Auckland “border” between levels - largely quarry staff and those handling explosives.

“Getting exemption certificates to cross the border has been problematic. They now need a Covid-19 test every seven days,” Scott says.

### Backing 90%-plus

He says the way forward is for vaccination rates to reach or exceed the 90 per cent sought by health authorities across the country's various health boards.

On the question of whether an employer can require its workforce to have a vaccination, Scott says they “probably” can.

He says the Government has indicated it has no plans to force people to have vaccinations, beyond those in roles currently covered by the recent vaccination order.

Last Sunday, the extended Covid-19 Public Health Response (Vaccinations) Amendment Order 2021 came into effect, requiring workers who face a high risk of exposure to Covid-19 and who work in the health, disability, education sectors or prisons to be fully vaccinated.

Yesterday, Minister for Workplace Relations and Safety Michael Wood went a step further announcing that vaccination will be required for all workers at businesses where customers need to show Covid-19 vaccination certificates, such as hospitality and other close-contact businesses.

Non-vaccinated workers in roles requiring vaccination will be given a new four-week notice period to get vaccinated before employment can be terminated, the minister says.

### Employers unsure

The legal advice [Can we vaccinate? Yes we can](#), from MinterEllisonRuddWatts notes that many employers are still unsure of what they can do.

However, the emergence of the more infectious Delta variant has changed the issue, the firm says.

“For this reason, we consider that it is open to employers to implement mandatory vaccination requirements for both existing and new employees,” the law firm says.

The firm highlights that neither the Employment Relations Authority nor the Employment Court have ruled on the legality of mandatory vaccination.

However, “on balance we remain of the view that such an approach is legally permissible, so long as privacy rights, health and safety considerations, and individual employee cases are considered as part of an employer complying with consultation obligations and statutory duties of good faith.”

### **Practical steps**

New Zealand's health and safety legislation requires all persons conducting a business or undertaking (PCBU) to take all reasonably practical steps to eliminate or minimise harm to workers and others in the workplace.

Employers must perform a health and safety risk assessment, MinterEllison says.

The assessment requires PCBUs to consider two factors: the likelihood of a worker being exposed to Covid-19 while performing the role and the potential consequences of that exposure for others.

If an employer determines that there is a “high” risk associated with these factors, it is reasonable to require that employees who perform the work are vaccinated, the firm says.

### **Refusal?**

However, if a current employee refuses to be vaccinated, an employer must consider whether it could temporarily or permanently redeploy that person to another lower-risk role, or whether they could feasibly work from home, before thinking about taking a dismissal route.

To combat the risk of unjustifiable dismissal claims, employers should be thorough in their risk assessment and transparent with all employees during any consultation process on a vaccination requirement, the firm says.

MinterEllison The firm's view is that vaccinations will become a key tool in managing the health and safety risks Covid-19 creates, as well as ensuring business continuity and New Zealand's reintegration back into the global economy as borders reopen.