

Vaccine Checklist

A checklist for employers regarding the COVID-19 vaccine



The roll out of COVID-19 vaccines in Australia creates a complex situation for employers, who must consider their legal obligation to provide a safe workplace for employees and a safe environment for clients/customers.

Willis Towers Watson's Vaccine Checklist highlights a range of matters that all Australian employers should consider.

Preparation

- Have you determined if you are going to make the vaccine mandatory or strongly encourage it?
- Have you considered a COVID-19 vaccine workplace health and safety (WHS) and/or HR policy and procedure?
- If you have considered a policy:
 - Who will draft the policy?
 - Is the policy drafted by an Employment Lawyer?
 - Does it link with the Employment Contract?
- Are there other industrial instruments to consider, for example, Modern Award, Enterprise Agreement or even other policies and procedures?
- Does the policy (as it is drafted) provide for contractual or other workplace rights for the employee? If so, how can you mitigate this risk and liability?
- Have you considered your WHS obligations?
 - If so – what are they?
 - Are your WHS obligations, risk and liability mitigated by way of documentation and/or processes?
- Have you considered paying employees to vaccinate as a way to boost the numbers of vaccinations and promote a safer workforce?
- Have you consulted with your workforce?
 - If you have undertaken a consultation, what was said and what documents were provided?
 - Have you complied with any industrial instrument obligation such as a Modern Award or Enterprise Agreement?
 - Does the employment contract or another policy provide obligations for how and when the consultation is to take place?
- What objections if any are there by your employees to taking the vaccine?

- Do any of these objections overcome the following:
 - WHS obligations?
 - Contractual obligations you may have with third parties?
 - The inherent requirements of the position?
- Is compliance with the direction and policy an inherent requirement of the position?
 - If so – how?
 1. Check the employment contract
 2. Check commercial terms with third parties
 3. Check the position description
- Do the employment contracts of your employees need to be varied?
- Do other policies need to be varied?

Communication

COVID-19 vaccines are here, and employees have questions: Is it safe? Is it required? While a lot of answers aren't yet known (and may depend on state, territory or Federal Government guidelines), one thing is clear: It's time to start communicating the facts, directing employees to resources, and preparing education and even marketing campaigns to support employees through the remainder of this pandemic.

- Have you considered how you will communicate: do you want a single piece of communication or are you considering a more robust strategy to educate your employees and to help address their employee concerns in a clear and empathetic manner?
- Have you considered the needs of your line managers? They are the first place that employees will go for answers, are they equipped to answer them in a consistent way?

Implementation

- Have you considered how you will ensure that any required policies or procedures are implemented in a fair and consistent manner to avoid potential employee complaints?
- Do you have a policy in place to address how you are going to handle any objections that are received?
- Have you trained your line managers/HR to be able to address any medical, religious or other objections that arise?
- If an objection is on medical grounds what evidence has been supplied to you to support this claim?

- Do you need to consider an independent medical examination?
- Do you need to consider alternative available positions, roles and duties for the employee?
- If the objection is on the basis of not being an inherent requirement of the position how will you assess this?
 - What actions can you take to mitigate liability and risk?
- If you are considering disciplinary action have you considered:
 - Reasonable adjustments
 - WHS obligations
 - Discrimination legislation
 - Unfair dismissal claims
 - General protections claims
 - Bullying claims
 - Reasonable management action
 - Natural justice and procedural fairness
 - Any other workplace rights that may have been utilised by the employee
 - Compliance of any industrial instruments regarding procedures for taking disciplinary action
- Will you continue to implement safety precautions in line with the most up to date guidelines, such as masks, social distancing, daily screenings as required, noting it's not yet clear yet whether someone who is vaccinated could still transmit the virus.
- Are you monitoring the wellbeing of staff, particularly in relation to mental health?
- Is your approach to COVID-19 a standing agenda item at board meetings?

Looking at all the processes, policies, letters, correspondence and documents you put in place, what would a Commissioner or Judge think of the evidence you were to provide if a claim was made?

- Is there ambiguity?
- Are there poorly drafted documents or letters?
- Have processes been followed?
- Have file notes been made documenting discussions with individual employees?
- Is there an argument against the company that would be successful because of an error in either the strategy and/or the information and evidence provided?

Insurance

- Have you checked if your organisation has adequate insurance protection under your existing insurance program, in particular, whether you place the following key policies?:
 - Directors & Officers Liability or Management Liability insurance
 - Statutory Liability or Workplace Health & Safety Liability insurance
 - Employment Practices Liability or Employment Disputes insuranceBe sure to check their terms and conditions to ensure you remain compliant including your reporting obligations under those policies.
- Have you or are you planning to seek specialist advice to understand the potential impact of any existing policy

exclusions if an insurance claim may arise? (e.g. a bodily injury or COVID/pandemic related exclusion and the breadth or scope of those clauses);

- How is your organisation positioned to respond if a bullying, harassment, victimisation, discrimination or unfair dismissal or similar type of allegation is made by an employee against the organisation or any manager personally?
- Do your HR team understand the reporting requirements of your organisation's Employment Practices Liability (employment disputes) insurance policy to ensure that your insurer is notified before external lawyers are engaged or any action is taken to avoid prejudicing your right to protection under the policy?

Actions you can take to protect your employees

1. Keeping employees safe until they get the vaccine is key, so workplace health and safety management strategies will remain critical. Continue to utilise social distancing, ensure mask wearing in public spaces, encourage hand washing and sanitisation, increase ventilation where possible and use barriers and policies to decrease the risk of transmission. Be aware that neither employers or employees are likely to know for sure if employees are truly immune post vaccinations or how long it will take to achieve herd immunity so these measures could continue to be part of our future.
2. Implementing a strong communications campaign to encourage vaccination, making sure to use culturally inclusive language. Consider emphasising the importance of vaccination and using learnings from behavioural science such as describing the losses employees could prevent by getting vaccinated.
3. Storing policies and procedures on an easily accessible site and including FAQs and links to where employees can source additional information or seek advice.
4. Keep listening to your employees consider undertaking pulse surveys so the organisation can monitor and address employee concerns and anxiety levels.

If you are a global employer

If you are a global employer, ensure your vaccine policies are aligned to overseas jurisdictional requirements. It is not clear yet whether employers in any overseas jurisdiction will be able to purchase or administer vaccines to their employees. Your organisation may wish to consider:

- how the cost of administering the vaccine will be funded (e.g. is the cost borne by employer sponsored health insurance or will a reimbursement system be developed for employees unable to receive coverage, part-time or ineligible workers)
- leave policies to allow employees paid time off to vaccinate
- if employees will be prioritised to receive the vaccine
- whether the program should be extended to employees' families
- whether vaccination clinics required on site and what are the liability implications for the organisation if entering into contracts with third parties to conduct vaccinations on your behalf
- how logistical challenges around transportation and cold storage of vaccines are managed
- ensuring there are appropriately qualified personnel to deal with any vaccine reactions and
- how left-over vaccines will be managed (if applicable)

Like to know more?

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