

LEGISLATIVE COUNCIL
Question Without Notice

Wednesday, 1 December 2021

C1132. Hon Martin Aldridge to the Leader of the House representing the Minister for Public Sector Management

My question without notice of which some notice has been given is to the Leader of the House representing the Minister for Public Sector Management

I refer to the announcement of 20 October regarding WA's mandatory COVID-19 vaccination policy for workers and I ask:

1. What advice has the Public Sector Commission provides to public sector agencies and government trading entities in terms of complying with the directions;
2. Has the Public Sector Commission published policies or procedures to guide agencies in the management of staff who are not compliant with the directions; and
3. If yes to (1) or (2) please table these documents?

Answer

(1 – 3) Yes. Information was provided to public sector agencies to assist in their planning to comply with the COVID-19 vaccination policy for WA workforces. A copy was provided to government trading entities for their information. I now table the information provided.

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COVID-19 mandatory vaccination requirements: Information for public sector employers

Introduction

The COVID-19 mandatory vaccination policy for WA workforces (the policy) is now in place.

It will be supported by directions under the *Public Health Act 2016* (PHA directions) restricting access to workplaces for people who are not vaccinated against COVID-19. The PHA directions will be released during November and December 2021.

This information sets out the steps to be taken by Western Australian public sector employers in implementing and complying with PHA directions. It should be read in conjunction with the policy and any related information published by the WA Government. It is intended as general advice.

For further information or to discuss specific situations:

- For industrial relations and workforce management questions, contact your Government Sector Labour Relations adviser.
- For questions about the disciplinary process, email agency.support@psc.wa.gov.au
- For questions about how PHA directions apply to your workforce or parts of it, email CHO@health.wa.gov.au
- For legal questions, contact the State Solicitor's Office through d.anderson@sso.wa.gov.au

Procedural steps

1. Assess how the policy will apply to your workforce

PHA directions are expected to be published several weeks before the dates on which affected people are required to be vaccinated against COVID-19.

Employers should assess as early as possible how the categories in Groups 1 and 2 identified in the policy will apply to their workforce. Identify which parts of the workforce will be:

- unable to attend workplaces because they work in occupations or at places of a kind specified in Group 1 or 2; and
- affected by the operation of the PHA directions because their ordinary duties sometimes require them to attend places where access will be restricted to people who are vaccinated against COVID-19.

For advice about the scope and application of Groups 1 or 2: CHO@health.wa.gov.au

For employees who only sometimes need to attend places where vaccination against COVID-19 will be a requirement of entry, employers can consider whether operational demands immediately and over time will mean all, or only some, of those employees will need to be vaccinated. For example, if contact with affected external workplaces is only required rarely, or can be carried out remotely, it may be possible to manage with less than 100% of employees being vaccinated against COVID-19. Refer to item 8 for advice on options to manage employees in this situation.

2. Make other preparations for implementing the policy

In implementing the policy employers will need to:

- ensure general information about the policy is readily available to employees in the workplace
- lawfully direct employees to disclose vaccination status (**see item 3 and Attachment A below**)
- arrange storage and management of information about employees' vaccination status (**see item 5 below**)
- consult and notify employees and unions of the intention to direct employees to be vaccinated (**see item 6 and Appendix 6 below**)
- lawfully direct employees affected by a PHA direction to be vaccinated against COVID-19 (**see item 4 and Attachment B below**)
- make practical arrangements to ensure unvaccinated employees cannot attend restricted workplaces (for instance, checking vaccination status on access, deactivating building access cards)
- develop and publish a policy setting out the process that will apply to employees who do not comply with the employer's direction to disclose information or to be vaccinated against COVID-19 (**see item 7 below**).

3. Lawfully direct affected employees to disclose their vaccination status (if the information is needed before PHA directions are in force)

It is anticipated that PHA directions will require:

- employees who work in premises specified in the direction to provide evidence of their vaccination status to their employer; and
- employers to collect and maintain records of those employees' vaccination status and restrict the use which can be made of the records.

Employers may decide they need to be aware of employees' vaccination status before the date on which PHA directions are published for operational or workforce management reasons. These employers can issue a direction to employees (an "**employer evidence direction**") requiring disclosure of the information. A template direction is at **Attachment A**.

An employer evidence direction must be reasonable. The employer must be able to point to legitimate operational or workforce management reasons why they need the information. It must also be proportionate, in that it does not ask for any information beyond what the employer needs to know, or extend to parts of the workforce to which the underlying reasons do not relate.

Whether issuing a direction is reasonable and proportionate will depend, among other things, on the degree of certainty an employer has about which employees are affected. It is not recommended to direct an entire workforce to produce evidence of vaccination status just because of uncertainty about the scope of a future PHA direction. If employers are unsure about scope, there is nothing to prevent them asking employees to voluntarily declare and produce evidence of vaccination status.

Employers employing occupational groups identified in Group 3 of the policy can consider whether it is reasonable and proportionate to issue an employer evidence direction to assess capacity to perform essential functions during a lockdown or similar restrictions.

For advice about how to vary the employer evidence direction template to suit individual circumstances: Contact the State Solicitor's Office

4. Lawfully direct employees to be vaccinated

Employers are strongly advised to issue directions to employees affected by PHA directions to require them to disclose vaccination status and to be vaccinated (an “**employer vaccination direction**”). A template direction is at **Attachment B**. It is important that an employer vaccination direction does not go beyond the requirements of the applicable PHA direction.

Issuing an employer vaccination direction means employers can:

- manage employees covered by a PHA direction who refuse to be vaccinated on the basis that the employee has disobeyed a lawful order; and
- have the option to terminate the employment of an employee who is unable to perform their job because of refusing to be vaccinated.

For employees who only sometimes need to attend places where access will be restricted to vaccinated people, it may not be necessary to issue an employer vaccination direction if it is practicable to operate without all employees vaccinated against COVID-19. See item 8 for information about managing employees in this group.

For advice about how to vary the employer vaccination direction template to suit individual circumstances: Contact the State Solicitor’s Office

An employer vaccination direction should be:

- provided to affected employees in a way that ensures each employee is aware of the direction; and
- directly communicated to employees on leave whose scheduled return date extends beyond the commencement of the PHA direction, sufficiently in advance of each employee’s return to work for the employee to comply. In these cases, the employer vaccination direction should apply on the employee’s return to work.

5. Manage information about employee vaccination status

Information about vaccination status is sensitive health information. Employers who collect and keep vaccination evidence must store it confidentially and limit access to only those people who need to be aware of it for the reasons it was collected.

The Public Sector Commission or other central agencies may in future request agencies to provide de-identified, aggregated workforce vaccination data. The template employer evidence direction mentions that possibility to ensure there is no issue with providing the data if it is requested.

For advice about disclosure of records: Contact the State Solicitor’s Office

6. Undertake consultation

Public sector employers must notify employees and unions of their intention to issue an employer vaccination direction, and the consequences of non-compliance with the direction, in accordance with the requirements of relevant industrial awards and/or agreements. Template notification letters are at **Appendix C**.

For advice about how to vary the template letter to suit individual circumstances: Contact Government Sector Labour Relations

Employers must ensure safety and health representatives and committees are consulted as required by the *Occupational Safety and Health Act 1984*, sections 35(1)(a) and (c) and 40(2)(a).

7. Manage employees who fail to disclose vaccination status or be vaccinated against COVID-19

Appendix D is a flowchart of suggested employer processes for managing employees affected by a PHA direction.

Employers should develop and publish a policy setting out the process that will apply to employees who do not comply with the employer's direction to disclose information or to be vaccinated against COVID-19. The failure to comply with a direction could result in a disciplinary action and trigger notification requirements under the *Corruption, Crime and Misconduct Act 2003*.

Employees who do not disclose vaccination status

Employers may take disciplinary action in accordance with the *Public Sector Management Act 1994* (or other applicable statutory process), industrial instruments and agency or organisation policies if an employee does not comply with an employer evidence direction. Disciplinary responses should be proportionate to the seriousness of the non-compliance.

Employees who are not vaccinated when required

Below is a suggested approach to managing employees who are not vaccinated against COVID-19 at the time required by a PHA direction. It is based on the principle that an employee who does not work is not entitled to be paid and assumes an employer vaccination direction has also been issued.

- An employee who is not exempt from a requirement to be vaccinated against COVID-19, and who is not vaccinated as required by a PHA direction, will not be able to access an affected workplace after the date in the PHA direction.
- The employer should immediately stop the pay of any employee who is unable to work because of the operation of a PHA direction, noting there may be options for the employee to take leave, work remotely or undertake alternative duties.
- The employer should advise the employee in writing that:
 - they are unable to access the affected workplace because of the operation of the PHA direction;
 - they are required to be vaccinated against COVID-19 in accordance with the employer vaccination direction;
 - no disciplinary process for failing to comply with the employer vaccination direction will be commenced for at least two weeks, during which time the employee will not be paid but can take any annual or long service leave they have available if they remain unvaccinated
 - following the 2-week period they may be subject to disciplinary action as a result of disobeying or disregarding a lawful order (that is, the employer vaccination direction), which may result in a range of disciplinary action, including the possibility of termination of employment.

Employers should use discretion in applying the suggested approach and timeframes, taking into consideration the employee's situation and any reasons why they have not yet been vaccinated.

There may be some situations in which the employer chooses to take no disciplinary action and allows the employee to work remotely or undertake alternative duties, although there is no obligation on the employer to do so (see item 8 below).

Employers will need to ensure procedural fairness throughout the disciplinary process and in relation to any disciplinary action. Employers should review their existing policies and processes for managing disciplinary matters to ensure they are robust and applicable for managing disciplinary processes arising because of refusal to be vaccinated or provide vaccination information.

For legal or industrial relations questions about managing individual cases: Contact SSO or GSLR, respectively

8. Other workforce management approaches

For some employees, a PHA direction will operate so they cannot perform the work for which they are employed at all unless they are vaccinated. In these situations, it is appropriate to take the steps set out in item 7 above.

In other situations, particularly for larger employers with a range of functions and workplaces, a PHA direction may limit the duties an unvaccinated employee is able to perform, but not prevent them from working for the employer altogether. In these situations, employers may consider temporary arrangements for unvaccinated employees other than the two-week 'cooling off' period followed by disciplinary action.

Employers can consider the workload and other implications for the vaccinated workforce when deciding whether it is reasonable to treat unvaccinated employees differently. Employers are not expected to incur extra costs in managing unvaccinated employees.

There may be other situations where compassionate or other circumstances lead employers to consider temporary alternative arrangements for unvaccinated employees.

Options can include:

- **Temporary deployment or reallocation of duties** where this is practicable, operationally convenient and not in contravention of a PHA direction. There is no expectation that employers will generally find alternative duties for affected employees.
- **Working remotely.** Employers may allow remote working arrangements on an interim basis where operationally viable. Remote working arrangements should be consistent with applicable employer policies. There is no expectation that remote work will be generally facilitated or available indefinitely.
- **Access to accrued leave or leave without pay.** An employee may request to access accrued leave entitlements including annual leave, long service leave, accrued days off or time off in lieu, consistent with requirements in the applicable industrial instrument.

In many instances, employers can refuse applications for annual and long service leave for operational reasons, although section 25 of the *Minimum Conditions of Employment Act 1993* allows employees to take annual leave accrued for more than 12 months with 2 weeks' notice. Some industrial instruments require leave applications not to be unreasonably refused, noting that refusal could be found to be unreasonable if made only on the basis that the leave is sought to temporarily avoid a vaccination requirement.

Questions about access to leave can be directed to GSLR.

9. Manage people who are seeking exemptions or are exempt

A PHA direction or an employer vaccination direction will not apply to any employee who has a temporary exemption from the Chief Health Officer or a medical exemption from the Australian Immunisation Register for the period of the exemption. The employee must comply with any terms and conditions of their exemption.

Employees seeking exemptions from the Chief Health Officer or Australian Immunisation Register should be given alternative duties, work remotely or allowed to take leave while the exemption application is being determined. Employees seeking a permanent exemption through the Australian Immunisation Register may be eligible for a temporary exemption from the Chief Health Officer during the application process.

As exempt people may still represent a health risk or be exposed to risk in the workplace, employers may need to make changes to manage the risk. The action taken should be proportionate to the level of risk, taking into consideration the reason for the exemption, whether it is permanent or temporary, and the extent of community spread of COVID-19 at the time.

Employers can consider the following steps for employees with an exemption, noting the need to consult with the employee:

- requiring an employee to use additional personal protective equipment to further protect them from infection or transmission to others
- temporary deployment to work in areas with a lower risk
- requiring an employee to perform other duties consistent with their contract of employment
- allowing an employee to work remotely on a temporary basis.

Other information

10. Employees unable to secure vaccination appointments within specified timeframes

Some employees (particularly remote or regional employees) may have genuine difficulty securing a vaccination appointment in time. Others may be due for a second vaccination after the time specified in a PHA direction (particularly given the long period between doses for Astra Zeneca). Temporary exemptions from the Chief Health Officer may be available in these situations.

Employers should prioritise allowing reasonable work time (including reasonable travel time) for these employees to receive a vaccination.

11. Future recruitment

Employers should ensure employees who commence employment in positions affected by a PHA direction after the date provided for in the direction are required to provide evidence of being vaccinated against COVID-19 (or evidence of being an exempt person) before commencing employment.

For affected positions, employers may also consider updating future recruitment processes to include COVID-19 vaccination in the pre-employment screening processes, and reflecting COVID-19 vaccination requirements in job advertisements, employment contracts and job description forms.

Attachment A: Employer evidence direction

Note: This template direction is designed for issue by employers before a PHA direction is in effect to require employees to declare and give evidence of vaccination status. It should only be issued if there are legitimate workforce planning reasons that the employer requires the information from the employees receiving the direction.

Employer direction: Requirement to declare vaccination status and provide evidence of vaccination

Background

On 23 March 2020, under section 167 of the *Public Health Act 2016* (Act), the Minister for Health first declared a public health state of emergency with effect from 1.30pm on 23 March 2020 in respect of COVID-19. The public health state of emergency applies to the State of Western Australia.

The State Government has announced its intention to restrict access to certain premises, including [relevant premises] to people who are unvaccinated through Directions made under the Act in the near future.

Direction to employees

You are directed:

- to declare if you are unvaccinated, partially vaccinated or fully vaccinated against COVID-19 in accordance with the Schedule to this direction;
- if you are partially or fully vaccinated against COVID-19, to provide evidence of your vaccination status in accordance with the Schedule to this direction;
- if you are unvaccinated against COVID-19, to declare if you intend to be partially vaccinated against COVID-19 before [relevant date from State Government Mandatory Vaccination Policy or public health direction] and fully vaccinated against COVID-19 before [relevant date from that policy or direction]; and
- if you are exempt from a requirement to be vaccinated against COVID-19, to provide evidence of the exemption in accordance with the Schedule to this direction.

Failure to comply with this direction is a breach of discipline which may result in disciplinary action. The outcomes of disciplinary action can range from a reprimand to dismissal.

Schedule

Declaration of vaccination status

Employees must declare their vaccination status by emailing [address] with the subject heading "Vaccination status update", including [identification requirement, e.g. staff number] before [DATE], and declaring in the email whether they are unvaccinated, partially vaccinated or fully vaccinated.

Employees who are unvaccinated must declare in the email if they intend to be partially vaccinated by [date] and fully vaccinated by [date].

Note: Individual employers may gather information through means other than email, for instance an online reporting tool. The words above can be revised to reflect different reporting arrangements.

Evidence of vaccination

Employees who are partially or fully vaccinated against COVID-19 must produce evidence for inspection and recording.

The following forms of evidence are acceptable:

- documentary confirmation of COVID-19 vaccination/s given by the Department of Health
- a COVID-19 digital vaccination certificate or Australian Immunisation Register immunisation history statement
- an International COVID-19 vaccination certificate issued by the Australian Government.

Evidence of employees' vaccination status is required to enable [name of department/organisation] to plan for and manage future operational and service delivery requirements

Note: You can access your immunisation history statement and COVID-19 digital certificate through your [myGov account](#) if you have linked it your Medicare, or the [Express Plus Medicare mobile app](#). Refer to [Services Australia](#) for further information and options on how to obtain proof of your COVID-19 vaccinations including if you are not eligible for Medicare.

If you cannot access your statement online, your vaccination provider can print your immunisation history statement for you. Further support is available from the Australian Immunisation Register, telephone 1800 653 809.

Evidence of an exemption

Employees who are exempt from vaccination requirements must provide evidence of the medical exemption or temporary exemption.

Evidence is to be produced by [method of collection] before [DATE].

Employees who are exempt must comply with the terms and conditions of the exemption applying to them.

Note: Information regarding applying for an exemption is available from to [Services Australia](#) and [WA Department of Health](#).

Management of information

Information provided in response to this direction will be kept confidential. It will only be used for the purposes for which it has been collected unless an employee consents to another use. It will only be disclosed as required or permitted by the Directions made under the Act or by any other applicable act or law.

The information provided may be de-identified and provided in aggregate to the Public Sector Commission or another WA Government agency if required for the purpose of cross-sector data analysis. No identifiable personal information will be included in any such report.

Further information

For further information or to discuss this direction please contact [telephone/email].

[NAME]

[POSITION]

Attachment B: Employer vaccination direction

Note: This template direction is designed for issue by employers after a PHA direction is in effect to require employees to be vaccinated, and to declare and give evidence of their vaccination status.

Employer direction: Requirement to be vaccinated against COVID-19 and provide evidence of vaccination

Background

On 23 March 2020, the Minister for Health first declared a public health state of emergency with effect from 1.30pm on 23 March 2020 in respect of COVID-19, under section 167 of the *Public Health Act 2016* (Act). The public health state of emergency applies to the state of Western Australia.

On X November 2021, the [insert name of Directions] (Directions) were issued under the Act to restrict access to [X premises] by unvaccinated [employees/workers/persons – check drafting].

Direction to employees

You are directed to:

- be vaccinated against COVID-19 in accordance with Part 1 of the Schedule to this direction unless you are exempt from the requirements of the Directions; and
- provide evidence of your vaccination or of any exemption applying to you in accordance with Part 2 of the Schedule to this direction.

Schedule

Part 1: Vaccination requirements

[Insert occupational group] workers' vaccination requirements

A [Insert occupational group] [employees/workers/persons – as the case may be] required as part of their employment to enter a [insert facility] must be vaccinated against COVID-19 as follows:

- [insert date] – Partially vaccinated (first dose)
- [insert date] – Fully vaccinated

Part 2: Evidence requirements

Evidence of vaccination

You must produce evidence in a form approved by the Chief Health Officer that you have been vaccinated against COVID-19 for inspection and recording.

The Chief Health Officer has approved evidence in the following forms:

- documentary confirmation of COVID-19 vaccination/s given by the Department of Health
- a COVID-19 digital vaccination certificate or Australian Immunisation Register immunisation history statement
- an International COVID-19 vaccination certificate issued by the Australian Government.

[Please check the Directions relevant to your employees to ensure this is the evidence specified in it.]

Evidence is to be produced by [method of collection] before [DATE].

Note: You can access your immunisation history statement and COVID-19 digital certificate through your [myGov account](#) if you have linked it your Medicare, or the [Express Plus Medicare mobile app](#). Refer to [Services Australia](#) for further information and options on how to obtain proof of your COVID-19 vaccinations including if you are not eligible for Medicare.

If you cannot access your statement online, your vaccination provider can print your immunisation history statement for you. Further support is available from the Australian Immunisation Register, telephone 1800 653 809.

Failure to comply with this employer direction is a breach of discipline which may result in disciplinary action. The outcomes of such disciplinary action may vary from a reprimand to dismissal.

Evidence of your vaccination status is required for the following purposes:

- to enable [name of department/organisation] to comply with its obligations under the Directions; and
- to ensure employee compliance with this employer direction.

Evidence of an exemption

If you are exempt from compliance with the Directions, you must provide evidence of the medical exemption or temporary exemption.

Evidence is to be produced by [method of collection] before [DATE].

Employees who are exempt from compliance with the Directions are not required to be partially or fully vaccinated as set out in Part 1 of this Schedule. Employees who are exempt must comply with the terms and conditions of the exemption applying to them.

Note: Information regarding applying for an exemption is available from to [Services Australia](#) and [WA Department of Health](#).

Management of information

The information provided will be kept confidential. It will only be used for the purposes for which it has been collected unless an employee consents to another use. It will only be disclosed as required or permitted by the Directions or any other applicable act or law.

The information provided may be de-identified and provided in aggregate to the Public Sector Commission or another State Government agency if required for the purpose of cross-sector data analysis. No identifiable personal information will be included in any such report.

Non-compliance with this direction

If you do not comply with a requirement of this direction, this may be addressed as a disciplinary matter. Disciplinary action can range from reprimand to dismissal.

Further information

For further information or to discuss this direction please contact [telephone/email].

[NAME]

[POSITION]

Attachment C: Letter to employees

[employer letterhead]

Dear [affected employee/s]

Mandatory vaccinations

On 20 October 2021, the Premier announced the COVID-19 mandatory vaccination policy for WA workforces.

A Direction under the *Public Health Act 2016* will be published in line with the policy affecting [affected employees/occupational group].

As a result, [name of agency or organisation] proposes to separately direct employees who are affected by the Direction to require them to be:

- partially vaccinated against COVID -19 before [group 1 or group 2 commencement date]
- fully vaccinated against COVID-19 before [group 1 or group 2 second date].

Employees are able to use reasonable work time to attend vaccination appointments. To book a COVID-19 vaccination, visit Roll up for WA.

If an affected employee is not vaccinated by the relevant dates this may be addressed as a disciplinary matter. Disciplinary action can range from reprimand to dismissal.

Non-compliance with a Direction under the *Public Health Act 2016* is punishable by a fine of up to \$20,000.

Information about applying for an exemption is available from to Services Australia and WA Department of Health.

Employees who have applied for an exemption from the requirement to be vaccinated through the Australian Immunisation Register may be eligible for a temporary exemption from the Chief Health Officer to cover the period before the application is determined.

Employees who provide evidence that they have applied for a temporary or permanent exemption for any reason that has not yet been granted may be provided with alternative work or allowed to work remotely while their application is determined, subject to the discretion of the employer. If alternative work or remote work is not provided, these employees may take an appropriate form of leave.

Employees who are temporarily or permanently exempt from the requirement to be vaccinated under a Public Health Act Direction may be required to use additional personal protective equipment, work at another location or remotely, or perform other duties consistent with their contract of employment depending on the employer's assessment of the workplace risk.

If you wish to provide any feedback or comment on the above, please email [address] by [date].

[Director General/CEO signature block]

Attachment C: Letter to unions

[employer letterhead]

Dear [Union Secretary]

Mandatory vaccinations

On 20 October 2021, the Premier announced the COVID-19 mandatory vaccination policy for WA workforces.

A Direction under the *Public Health Act 2016* will be published in line with the policy affecting [affected employees/occupational group].

As a result, [name of agency or organisation] proposes to separately direct employees who are affected by the Direction to ensure they are:

- partially vaccinated against COVID -19 before [group 1 or group 2 commencement date]
- fully vaccinated against COVID-19 before [group 1 or group 2 second date].

Employees are able to use reasonable work time to attend vaccination appointments.

If an affected employee is not vaccinated by the relevant dates this may be addressed as a disciplinary matter. Disciplinary action may range from reprimand to dismissal.

Employees who have applied for an exemption from the requirement to be vaccinated through the Australian Immunisation Register may be eligible for a temporary exemption from the Chief Health Officer.

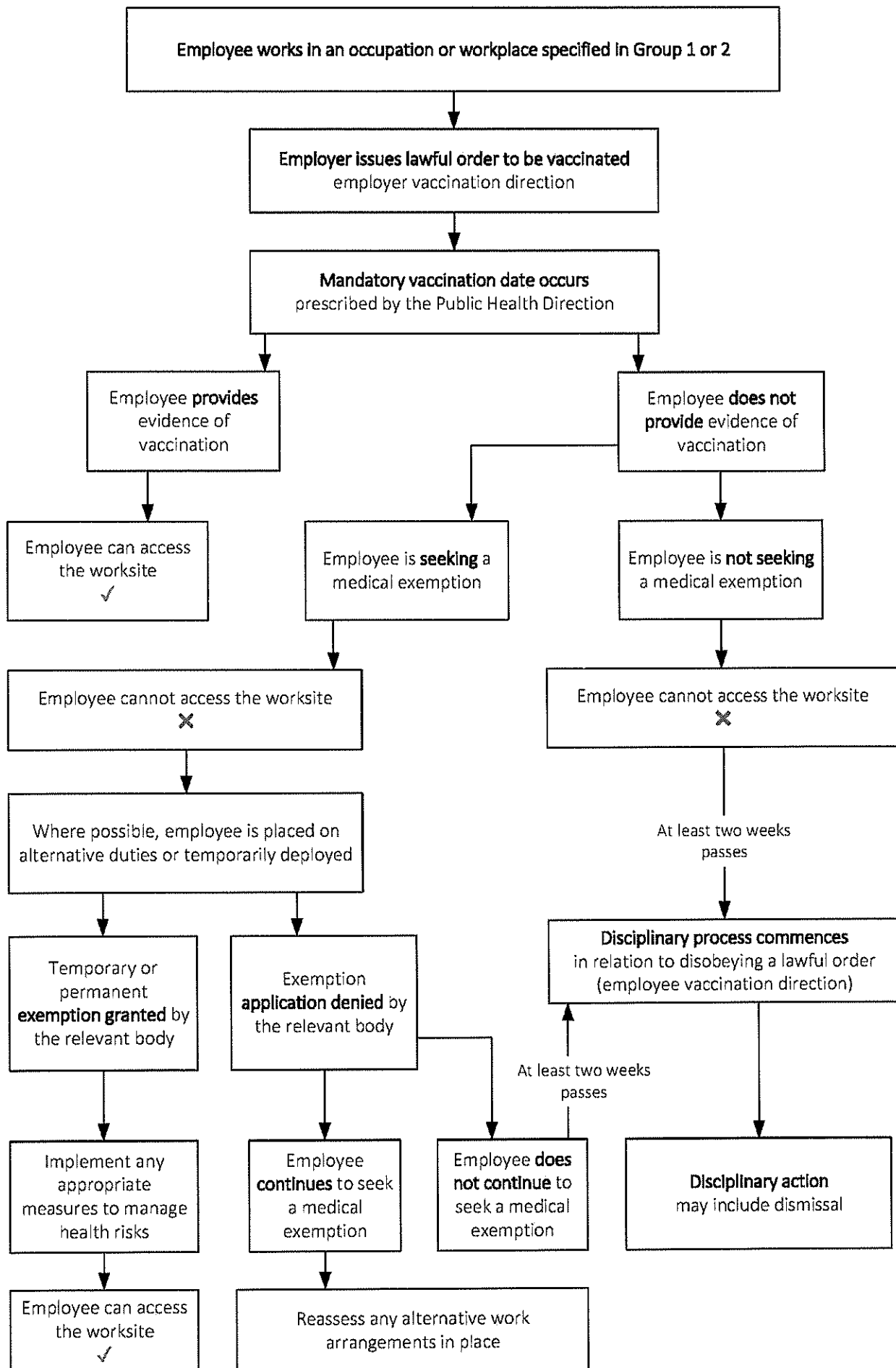
Employees who provide evidence they have applied for a temporary or permanent exemption for any reason that has not yet been granted may be provided with alternative work or allowed to work remotely while their application is determined, subject to the discretion of the employer. If alternative work or remote work is not provided, these employees may take an appropriate form of leave.

Employees who are temporarily or permanently exempt from the requirement to be vaccinated under a Public Health Act Direction may be required to use additional personal protective equipment, work at another location or remotely, or perform other duties consistent with their contract of employment depending on the employer's assessment of the workplace risk.

Consultation discussion on this proposed change and the corresponding [name of agency or organisation] internal policy will commence as soon as possible. My [employee relations/HR] team will be in touch to arrange a meeting.

[Director General/CEO signature block]

Appendix D



Appendix D

