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## **Health and Safety Risk Assessment**

## and Hiring New Employees

*[PLEASE NOTE. Restaurant Association members are strongly advised to seek guidance from the helpline team on 0800 737 827 if you have any questions. The Restaurant Association has taken all reasonable care to ensure that the information materials contained on our website are true and correct at the time of publication including this resource. The information provided is general information only and is not intended to constitute legal advice. Therefore, the Restaurant Association accepts no responsibility for any loss, errors or omissions which may arise pertaining to such reliance.]*

The following Guide includes:

* Hiring new workers on the condition of vaccination against Covid-19.
* How does a member conduct a risk assessment?
* Vaccination Register, new hires and existing employees.
* Template 1**:** [**Health and Safety Risk Assessment Framework**](#_Template_1)
* Template 2**:** [**Employment agreement clause – new employees**](#_Template_2)
* Template 3:[**Paragraph for the letter of offer**](#_Template_3:)

### Hiring new workers on the condition of vaccination against Covid-19.

**It is ‘easier’ to require candidates for employment to be vaccinated in comparison to existing employees because candidates have fewer rights and protections than employees*.***

A candidate who is not offered a position can essentially only rely on the Human Rights Act 1993 or the Privacy Act 2020 as the basis for any claim:

The Human Rights Act makes it unlawful for an employer to treat candidates differently due to their medical history, subject to a limited range of exceptions.

An employer should not ask candidates questions about their medical histories or disabilities during a recruitment process. Instead, the employer should ask questions that help them assess whether an applicant has the skills and abilities to carry out the job.

An employer can treat a candidate differently if employing them for a certain role would create a genuine risk of harm to themselves or others, including the risk of infecting others with an illness.

This exception does not apply if there are reasonable measures an employer could take to reduce the risk to a normal level. Reaching a conclusion on whether this exception applies will require a health and safety risk assessment (discussed below).

Privacy Act requirements apply to collecting personal information from a candidate.

A Member must have a lawful reason to ask about vaccination status. The basis for this will usually be set out in a health and safety risk assessment. The candidate will also need to be made aware of what use will be made of the information, who will it be disclosed to, how it will be stored and the consequences of not providing the information. For further information on this see [our guide here](https://www.restaurantnz.co.nz/wp-content/uploads/2021/10/Guide-to-Asking-Employees-about-Vaccination-Status-15-October-2021.pdf)

To mitigate against breaching the Human Rights Act or Privacy Act, a member should conduct a [**health and safety risk assessment**](#_Template_1), in consultation with existing workers doing that work to justify a requirement that applicants for that role be vaccinated as a condition of employment.

**Any requirement to be vaccination should be notified to applicants:**

* **during the application process,**
* **in any letter of offer and**
* **in the employment agreement.**

Letter of offer and clause for a new employment agreement [included below.](#_Template_2)

Click here for our amended application form.

## How does a member conduct a risk assessment?

*A template health and safety risk assessment is* [***included below***](#_Template_1)*.*

A member must identify hazards that could give rise to reasonably foreseeable risks to health and safety in the workplace. In this case, the hazard is the “severe acute respiratory syndrome coronavirus 2” which can cause the “coronavirus disease 2019” (Covid-19).

Risk is the probability or likelihood of harm arising from a hazard. A member must assess a combination of the **potential consequences of exposure to the hazard and the chance of it happening.**

Having undertaken the identification and assessment of risk, the hazard must be managed to reduce the likelihood or consequence (or both) of the risk, so far as is reasonably practicable.

The legal obligation is to **eliminate risk** where it is reasonably practicable to do so or else minimise it using a range or mixture of ‘isolation’ or ‘minimisation’ controls:

Eliminating the risk in the context of hospitality can typically only be done by ceasing the activity, which we would suggest is not reasonably practicable for most members.

If it is not reasonably practicable to eliminate a hazard, the hazard should be substituted for something with less risk. Again, given the nature of the hazard, this approach reasonably practicable.

Where substitution is not reasonably practicable or residual risk remains, administrative controls such as information, instruction, training, and safe systems of work must be used.

Where administrative controls are not reasonably practicable or a residual risk remains after their deployment, then personal protective equipment (PPE) must be used to control the remaining risk.

The template that has been developed has been informed by question suggested by WorkSafe. Additional information may be required, depending on the specific nature of the Member’s business.

The Member is **required to engage** with all workers who carry out work and whose health or safety may be affected by the work. The duty is effectively continuous but expressly applies when:

identifying hazards and assessing risks to work health and safety;

when making decisions about ways to eliminate or minimise those risks; and

when proposing changes that may affect the health or safety of workers.

Engagement with workers does not require consensus, but the Member is required to provide information about the hazard in a timely manner, and give a reasonable opportunity for the workers to express views and have those views taken into account by the Member.

## Vaccination Register, new hires and existing employees.

With regards to the vaccination register, a member can only use this ‘tool’ to encourage vaccination of workers in so far as it complies with the Privacy Act. Click [here](https://www.restaurantnz.co.nz/resource/voluntary-vaccinations-register/) for more information on the Register.

With regards to the ‘new hire’ approach, disclosing this policy to existing workers will breach a new employee’s privacy as it will disclose the fact that the new employee is vaccinated.

## Template 1

**Covid-19 risk assessment – dated [date]**

The [directors/owners/Health and Safety Committee etc] recently met to discuss what steps may need to be taken for a return to the premises to resume [full/partial] operations when permitted by government.

We have identified ‘infectious diseases’ as something that has the potential to cause harmwithin our workplace. We have now considered the hazard caused by “severe acute respiratory syndrome coronavirus 2” (Covid-19) as a subgroup of infectious diseases.

The purpose of this document is to record our risk analysis for discussion with workers [and/or the Board / shareholders / clients / customers].

**Who might be harmed by Covid-19 and how**

**Who** [select all that apply]**:**

* Employees – in particular any ‘at risk’ or medically vulnerable employees
* Contractors/service providers (supplier, couriers, tradespersons etc)
* Customers/public attending our premises

**How** [select all that apply]**:**

* Transmission of virus in workplace due to close contact with other persons;
* Surface transmission;
* Poor hygiene practices;
* Transmission via ventilation;
* Travel to third party sites e.g. client premises, travel for work between regions.

**Risk assessment**

We considered the matters and questions below and consider that Covid-19 presents a [low / moderate / high] risk to workers and other persons safety in the workplace.

**The likelihood of the hazard;**

* What is the risk of COVID-19 infection and transmission in the work environment when compared to the risk outside work? (equal to outside work = lower risk; higher than outside work = higher risk).

[insert assessment]

***Drafting Note:*** *The answer depends on what the starting point is. On one hand, if Covid-19 is present in the workplace, obviously the risk is higher. On the other, workers may be at no more at risk at work than in their personal life e.g., if they have children at ECE/school, attend large gatherings such as a religious service, regularly use public transport, attend GP clinic/hospital, etc.*

* How many people do our workers come into contact within the workplace? (very few = lower risk; many = higher risk)

[insert assessment]

* How easy will it be to identify the people who the employee comes into contact with? (easy to identify, such as co-workers = lower risk; difficult to identify, such as unknown members of public = higher risk)

[insert assessment]

* How close do workers come in proximity to other people when working? (2 metres or more in an outdoor space = lower risk; close physical contact in an indoor environment = higher risk)

[insert assessment]

* How long does the work require the employee to be in that proximity to other people? (brief contact = lower risk; lengthy contact = higher risk)

[insert assessment]

* Does the work involve regular interaction with people considered at higher risk of severe illness from COVID-19, such as people with underlying health conditions? (little to none = lower risk; whole time = higher risk)

[insert assessment]

***Drafting Note:*** *Are there any ‘at risk’ people in the workplace? The Ministry of Health considers that ‘at risk people are:*

*People with underlying health conditions are most at risk of COVID-19 becoming a severe illness (over 70 years old with a medical condition; live in an aged care facility where spread can occur more easily; have a medical condition and/or compromised immunity; pregnant). Other risk factors include ethnicity, smoking and obesity.*

***Suggested Action:*** *One option may be to ask all workers to advise the person they report to whether they consider that they are an ‘at risk’ person. A response is voluntary, however this will allow you to assess what additional controls (if any) it thinks may be required to eliminate or minimise the risks associated with Covid-19.*

* How many workers are vaccinated against Covid-19?

*[****Drafting Note:*** *Ministry of Health advice is that vaccination may not fully protect everyone who gets it. However, it is highly effective if people have both doses so if a person catches COVID-19, they are far less likely to fall seriously ill and less likely to transmit the virus to others. See :* [*COVID-19: Vaccine effectiveness and protection | Ministry of Health NZ*](https://www.health.govt.nz/our-work/diseases-and-conditions/covid-19-novel-coronavirus/covid-19-vaccines/covid-19-vaccine-effectiveness-and-protection)*]*

***Suggested Action:*** *if the vaccination rate is unknown, you may consider it beneficial to survey workers as to vaccination status. This will allow you to assess what controls should be put in place in our workplace e.g. if there is a low rate of vaccination, additional controls may be required; or vice versa.*

[insert assessment]

**The degree of harm**

While the risk is statistically low, Covid-19 infection has the potential to cause death.

Covid-19 may require hospitalisation. Covid-19 may cause acute or chronic respiratory symptoms, cognitive dysfunction and fatigue.

The potential for harm is high, but especially so for at risk persons.

**What we know (or ought to know) about eliminating or minimising the hazard;**

The Ministry of Health has provided a set of guidelines. The Ministry’s advice is that people should:

* Get vaccinated as soon as you can
* Stay home if you’re sick
* Use basic hygiene (hand washing; sanitising; coughing into elbow etc)
* Wear a mask
* Use the NZ Tracer App
* Physical distancing

See: <https://www.health.govt.nz/our-work/diseases-and-conditions/covid-19-novel-coronavirus/covid-19-health-advice-public/protecting-yourself-and-others-covid-19>

We consider it both prudent and appropriate to follow the Ministry’s advice in order to minimise the hazard of Covid-19.

We also consider that the following approaches can also be used to eliminate or minimise risk.

[Select all that apply / add as is appropriate]

* Working from home
* Client/customer/third party meetings are held by video or teleconference unless impracticable
* Cleaning protocols are maintained / initiated for workplace
* Ventilation
* Use of Covid-19 contact tracer app

**The availability of suitable ways to eliminate or minimise the risk;**

***Drafting Note:*** *Comment on whether the matters in the preceding paragraph are already in place, or could be put in place where necessary*

[insert assessment]

**Control measures**

**Can the hazard of Covid-19 be eliminated?**

[insert assessment e.g. No. The only way Covid-19 can be eliminated is to cease operations and this is not reasonably practicable in our view]

**Can we substitute a lower risk work method?**

***Drafting Note:*** *This could be for example, dividing the workplace into teams that rotate in order to lessen the number of people on premises at any given time; working in zones; contactless delivery etc. Also consider engineered controls, e.g. screens/barriers.*

[insert assessment]

**Minimisation:**

[Select all that apply / add as appropriate]

**Ventilation/air conditioning:** [consider if it is possible to increase air quality or ventilation in the workplace. This may require consultation with landlord/HVAC specialist]

**Building access** [consider if it is possible to limit or record persons entering premises]

**Cleaning protocols** [review and revise as required – attach to document].

**Customer/supplier/contractor interaction** will be minimised where possible [state how]

**Sick leave** should be used where workers are too ill to work.

**Working from home** will be permitted where workers exhibit Covid-19 symptoms (cold/flu like symptoms) but consider they are not too sick to work [delete if inapplicable].

**Signing-in:** all workers will sign in at reception/the designated area on a daily basis, and must use our QR code in the Tracer App.

**Physical distancing protocols** [review and revise as required].

**Mask use:** Ministry of Health advice currently states:

*In most workplaces outside of the health care setting, additional PPE for protection against COVID-19 is not required unless it is advised in workplaces where there is a higher risk of exposure to COVID-19 through the nature of the work undertaken, such as border workers who interact regularly with people returning from overseas.*

*You need to wear a face mask or face covering if you are taking public transport to and from your place of work. it is important that you put on and take it off correctly. Similarly, if you choose to wear gloves, you must still practice good hand hygiene. Remember to dispose of any used single use or disposable PPE safely and appropriately. You may wish to consider wearing a face covering when you cannot maintain physical distancing of more than 2 metres from people you do not know.*

Mask use is therefore highly recommended but not mandatory within the workplace.

**Vaccinations:** We [do/do not] recommend that vaccination of workers, clients or other persons should be compulsory at this stage. [insert justification for this decision]

**Incident response:** a plan should be documented where a possible or confirmed case of Covid-19 occurs in the workplace.

**Review period**

The controls and effectiveness of the controls would be monitored by the Committee on a [weekly/fortnightly/monthly] basis, unless significant changes necessitate earlier review.

## Template 2

EMPLOYMENT AGREEMENT CLAUSE – NEW EMPLOYEES:

1. Covid-19 Vaccination

The Company has identified that Covid-19 is a risk to the health and safety of its workers, including employees and contractors, and other persons who may come into contact with the Company’s workers.

The Company considers that vaccination is a safe and effective way to minimise the risk of infection and transmission of Covid-19 within the workplace.

In accordance with its obligations to ensure the safety of workers and others, and to minimise risks, the Employee’s employment with the Company is conditional on and subject to the Employee:

being fully vaccinated, which means a full course of any of the Covid-19 vaccines that have been approved by the New Zealand Government for use in New Zealand or a specified vaccine where that is a requirement of a public health order for the work or position; and

providing satisfactory evidence to the Company of being vaccinated, including allowing the Company to access any Covid-19 vaccination record that the Ministry of Health may have for the Employee; and

receiving any additional or ‘booster’ vaccinations recommended by the Ministry of Health on an ongoing basis.

**Note:** The Company may, at its sole discretion, accept an alternative vaccine approved by a foreign government. Where this occurs, the Company will provide its acceptance in writing and set out any additional conditions it may require regarding the ongoing status of the alternative vaccine.

If the Employee has been examined by a suitably qualified health or medical practitioner who has determined that the Employee has medical needs that make it inappropriate for the Employee to be vaccinated, the Company may (upon receipt of written evidence from the practitioner that explains that view and the recognised contraindication of the identified vaccine(s) for the Employee) waive the condition above. If the condition is waived, the Employee agrees that other and/or additional health and safety controls may be required.

If the Employee has a genuine religious belief that would mean vaccination is inappropriate, the Employee and the Company will discuss this in good faith. In doing so the parties recognise that the health and safety of the Employee, the Company’s workers, including employees and contractors, and other persons who may come into contact with the Company’s workers is paramount.

The Company may terminate the Employee’s employment without notice if the Employee does not comply with this clause.

## Template 3:

PARAGRAPH FOR THE LETTER OF OFFER:

Our offer of employment is conditional on, and subject to, the following matters, and on you providing satisfactory evidence of these matters, at the Company’s request:

* You are legally entitled to work in New Zealand, for the Company, and in the position offered;
* [You have a full NZ Driver’s License];
* [Any other conditions relevant to the person/role];
* You have been vaccinated for Covid-19 in accordance with clause X of the attached Employment Agreement.

If any of these conditions are not satisfied, the Company may withdraw this offer of employment or, if the offer has been accepted, the Company may terminate your employment. The Company’s failure to insist on completion of any of these conditions prior to the commencement of your employment will not be taken as a waiver of the condition in the future.

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