

NSW Public Health Orders mandating vaccinations and associated workplace relations issues

SUMMARY

The NSW Government has issued public health orders that impose requirements upon certain workers to have a COVID-19 vaccination.

The public health orders raise various workplace relations issues that employers need to be aware of.

NSW Public Health Order – Authorised Workers

The following requirements apply to Authorised Workers **from 9 September 2021**. However, from **the beginning of 9 September 2021 until the end of 19 September 2021**, an Authorised Worker is taken to comply with these requirements if the Authorised Worker has an appointment to receive a COVID-19 vaccine on or before 19 September 2021.

Evidence of the appointment is taken to be the worker's vaccination evidence for the purposes of the required evidence:

- An [Authorised Worker](#) in NSW who is 16 years of age or older must not leave an [Area of Concern](#) for work unless the worker:
 - has had at least 1 dose of a COVID-19 vaccine, or
 - has been issued with a medical contraindication certificate.
- The Authorised Worker, when leaving the area of concern for work must:
 - carry the **required evidence**, and
 - produce the required evidence for inspection if requested by: the worker's employer; the occupier of the worker's place of work; a police officer; or an authorised officer.
- The requirements apply regardless of whether or not the employee has had a rapid antigen test.

Required evidence means evidence showing the worker's name and place of residence, and the worker's vaccination evidence.

NSW Public Health Order – Construction sites

Separate to the above requirements, **operative from 30 July 2021** NSW Public Health Orders impose vaccination requirements upon **persons who enter or remain on a construction site in the Greater Sydney Area**:

- A person whose place of residence is in an Area of Concern must not enter or remain on a construction site in Greater Sydney unless the resident:

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- has had 2 doses of a COVID-19 vaccine,
 - has had 1 dose of a COVID-19 vaccine at least 21 days ago,
 - has had 1 dose of a COVID-19 vaccine within the preceding 21 days and has been tested for COVID-19 within the preceding 72 hours, or
 - has a medical contraindication certificate issued to the person and has been tested for COVID-19 within the preceding 72 hours.
- The occupier of the construction site must not allow the person to enter or remain on the construction site unless satisfied that the person has complied with the above requirements.
 - The person must, when entering the construction site:
 - carry the required evidence, and
 - produce the required evidence for inspection if requested by: the person's employer; the occupier of the construction site; a police officer; or an authorised officer.

Tested for COVID-19 includes an approved rapid antigen test. There is no requirement for an occupier or employer to introduce rapid antigen testing.

NSW Public Health Order – Early education and disability support workers

NSW Public Health Orders impose vaccination requirements for certain **early education and disability support workers from 6 September 2021**:

- A relevant care worker 16 years of age or older whose place of residence or place of work is in an Area of Concern must not enter or remain in the worker's place of work unless the worker:
 - has had at least 1 dose of a COVID-19 vaccine, or
 - has been issued with a medical contraindication certificate.
- The relevant care worker must, when entering the worker's place of work:
 - carry the required evidence, and
 - produce the required evidence for inspection if requested by: the worker's employer; the occupier of the worker's place of work; a police officer; or an authorised officer.

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NSW Public Health Order – residential aged care facilities

NSW Public Health Orders impose vaccination requirements for certain persons entering **residential aged care facilities from 9am on 17 September 2021**:

- Persons employed at residential aged care facilities and contractors providing health and personal care services in those facilities may only enter the facility if they have received at least 1 dose of a COVID-19 vaccine.
- The above persons, if required to do so by the operator of a residential aged care facility, provide the operator with vaccination evidence.
- The above requirements do not apply to:
 - a maintenance contractor,
 - a person who provides services to a resident of the facility under a contract or arrangement with the resident,
 - a student,
 - a person who enters a residential aged care facility to respond to a medical emergency, or a non-medical emergency (e.g. a fire, flooding or a gas leak), or
 - a person who has been issued with a medical contraindication certificate.

NSW Public Health Order – Health care workers

NSW Public Health Orders impose vaccination requirements for certain **health care workers from 30 September 2021**:

- For the purposes of the Order, a **health care worker** is defined as:
 - a person who does work, including as a member of staff of the NSW Health Service, for a public health organisation within the meaning of the *Health Services Act 1997*, the Health Administration Corporation, or the Ambulance Service of NSW,
 - a registered paramedic who does work involving transporting, or assessing whether to transport, persons to or from a hospital or public health facility, including any treatment incidental to the work,
 - a member of staff of the Ministry of Health, and
 - a person who does work at a private health facility.
- A person must not do work as a health care worker unless:
 - if the work is done **on or after 30 September but before 30 November 2021**, the worker has received at least 1 dose of a COVID-19 vaccine, or
 - if the work is done **on or after 30 November 2021**, the worker has received at least 2 doses of a COVID-19 vaccine.

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- A health care worker must, if required to do so by the employer or another authorised person, provide vaccination evidence.
- The above requirements do not apply to:
 - a health practitioner who does work as a health care worker in response to a medical emergency,
 - another person who does work as a health care worker in response to a non-medical emergency, for example, a fire, flooding or a gas leak, or
 - a health care worker who has been issued with a medical contraindication certificate.

Workplace relations issues

If an employee is required to have a vaccination as a result of public health order and is unable to attend work because of the order, and if working from home is not feasible, the employee would most likely not meet the requirement to be 'ready, willing and able' to work.

In such circumstances, the employee will generally not be entitled to be paid by the employer unless the employee agrees to take paid annual leave or long service leave.

Many NSW employees who live in an Area of Concern will not be 'ready, willing and able' to work from 19 September as a result of the NSW public health order and hence will not be entitled to payment from their employer if they have not had their first COVID-19 vaccination dose by that date.

Employers should contact Ai Group for advice about these workplace relations issues in the context of their own specific circumstances.

Can an employer ask an employee for proof of vaccination status?

An employer is able to ask an employee for proof of their vaccination status if the collection of the information is reasonably necessary for business functions or activities.

An employer is only able to collect and store vaccination status information if an employee consents, except where a relevant exemption applies under the *Privacy Act 1988* (Cth). One exception is where the collection is required or authorised by law (e.g. authorised by a public health order).

If vaccination status information is collected, the employer must advise employees how this information will be handled.

Reasonable steps need to be taken to keep the information secure and the information should only be accessible to a limited number of people who need to know the information.

Do you require further advice?

For further information or assistance, please contact Ai Group.

Ai Group has set up a [special section on our website](#) to provide access to Ai Group advice and assistance relating to the COVID-19 pandemic and the recovery from the pandemic.

A handwritten signature in black ink, appearing to read 'S. Smith'.

Stephen Smith
Head of National Workplace Relations Policy