

Managing employment processes after 15 November 2021

Workers who have not had their first dose of the COVID-19 vaccine by 15 November 2021 will not be able to work on site and will be committing an infringement offence if they do so. This page provides schools, kura and early learning services advice on employment processes after 15 November.

By now, all your employees should have been advised in writing of the requirement to be vaccinated and have been encouraged them to get vaccinated. Schools, kura and early early learning services should also have requested the required contact and vaccination information from all your staff.

You should now have a reasonable understanding of who has already received their first dose of the COVID-19 vaccine and who has yet to do so. You may also understand who intended to receive their first dose by 15 November.

The Ministry encourages you to continue to actively discuss with employees the benefits of vaccination and the health and safety, and other risks of not being vaccinated.

Employment steps to take from 16 November

Firstly, ensure that you have received, compiled and securely stored the contact and vaccination information from all employees. If you have not received this information from an employee, you must assume that employee has not had their first dose of the COVID-19 vaccine.

If an employee is either assumed or confirmed to not have received their first dose and does not intend to, you will need to follow a process with them.

While working through this process it is important to ensure that there is no predetermined outcome. Your usual employment obligations still apply, including the duty to act in good faith, consider all reasonable alternatives, consult with the employee and take their feedback into consideration.

The steps below are summarised [in the flowchart we have previously provided\(external link\)](#)

[https://ndhadeliver.natlib.govt.nz/webarchive/20220218114939mp_/https://assets.education.govt.nz/public/Documents/School/SchoolsBulletin/2021-Bulletins/2021COVID/Oct-COVID-documents/28OCTMandatoryVaccinationFlowcharts.pdf] and there is more advice on [managing implications for staff impacted by the vaccination requirement](#)

[/webarchive/20220218114939mp_/https://www.education.govt.nz/covid-19/advice-for-schoolskura/managing-staff/managing-employment-processes-after-15-november-2021/nmanaging-implications-for-staff-impacted-by-the-vaccination-requirementew-page/].

1. You should advise the employee that they can no longer be on site which may mean they are unable to perform the work required of them. They will need to leave the worksite.
2. You should ask the employee why they are not vaccinated and if they are now willing to be vaccinated. This process will need to take into account that the employee will not be onsite to do this. If the employee is willing to be vaccinated, you should immediately provide them with time to be vaccinated and no absence should be recorded.
3. If the employee is not willing to be vaccinated, for any reason other than they have a medical exemption from the Ministry of Health or their doctor/nurse practitioner has applied for an exemption for them and the result isn't back yet, alternative duties should be provided where feasible. If necessary, they may be placed on discretionary special leave.

Discretionary leave can be provided with or without pay at the discretion of the school board.

You will need to consult with the employee to determine whether going forward they can carry out work in a way that means that they have no contact with children and are not onsite when children are expected to be present for the rest of Term 4 and when school resumes in 2022.

You will also need to discuss alternative working arrangements such as the feasibility of alternative duties, an alternative role, working hours or working from home arrangements.

For many roles it is unlikely that alternative duties can be reasonably accommodated beyond the short term and, as a last resort, the school may need to consider terminating the employee's employment.

We strongly advise consulting NZSTA or an alternative employment adviser for support during this step and in any employment processes.

While working through this process, if you determine that:

1. The employee's work can be reasonably rearranged, to ensure that they do not have contact with children and are not onsite when children are expected to be present, you should confirm with the employee their new working arrangements
2. If a longer-term period of leave is involved, you will need to confirm with the employee that they must be fully vaccinated at the end of the leave period in order to return to onsite duties
3. There are no alternatives to dismissal, you should work with NZSTA or an alternative employment advisor and move to give notice to the employee of termination of their employment. The notice period in the employee's employment agreement applies. For example, the Primary Teachers' and Secondary Teachers' Collective Agreements both require the employer to give permanent employees two calendar months' notice of the termination of their employment. This must be paid notice. If staff have been put on unpaid leave then the unpaid leave is not part

of the notice period. The employee will not be able to have contact with children or work on site at a time that children are present during this notice period and therefore the employee will either need to continue with alternative working arrangements or they should be on discretionary leave during their period of notice.

Advertising vacancies

It would be contrary to your employment obligations throughout this process, including not having a predetermined outcome, to start advertising the potential vacancies created by unvaccinated staff before their employment status is certain. It would be appropriate to advertise positions to temporarily backfill the role of the person who is not performing their usual duties.

Positions can start to be advertised after staff have been given notice of termination of employment, however staff should continue to be encouraged to get vaccinated and should be given time and resources to allow them to change their mind during the notice period.

What do we do if an unvaccinated staff member goes on sick leave on or before 15 November, preventing the employment consultation process from taking place?

As per the usual requirements, you cannot contact employees for work related issues while they are on leave such as this. This means that if a staff member is on leave during a time when you were planning to start the consultation process to work through their employment options, you will need to wait until they return from leave.

The usual process concerning requests for a medical certificate for sick leave will still apply. If a staff member's sick leave ends during a period in the school holidays, you are still able to conduct the employment process during the school holidays if necessary.

What do we do if a staff member is awaiting the result of an application for a medical exemption?

If a staff member has not had their first dose of the COVID-19 vaccine by 15 November and is seeking a medical exemption from the Ministry of Health they cannot be on site.

If the employee's doctor or nurse practitioner has applied for a medical exemption for the employee, they should provide you with a letter from the medical professional confirming that. If so, these staff should be on discretionary paid leave while waiting for the result of their application.

What do we do if an unvaccinated staff member turns up on site after 15 November?

The staff member will be committing an infringement offence if they have not had their first dose of the COVID-19 vaccine and are onsite after 15 November. This means they may be liable for a fine.

If staff do turn up on site after this date, we encourage school leaders to deal with this in the usual manner you would if other inappropriate people were to turn up on site.

The staff member should be notified that they are committing an offence under the Order. A conversation may be required in the first instance to work through the staff member's concerns.

If you feel your safety or the safety of ākonga or other staff is compromised, you could consider contacting the police.

What do we do if a staff member reports in sick on 16 November?

If an unvaccinated employee reports themselves as unfit for work and on sick leave on 16 November this should be treated as sick leave through your usual process.

This can include requiring a medical certificate demonstrating illness in line with the relevant terms of your staff members' employment agreement.

What do we do if an unvaccinated staff member advises they will be vaccinated with an alternative vaccine when this is available (such as the AstraZeneca vaccine)?

The Order requires that a staff member who may have contact with students or will be working at a site where children or students may be present, to have received one dose of a vaccine by 15 November.

An unvaccinated staff member may not work onsite without a valid exemption or a letter from a medical professional confirming an exemption request has been submitted on the staff members' behalf and the appropriate health and safety assessment has been undertaken, and measures to ensure safety have been put in place. We have provided guidance about how to undertake this assessment here(external link) [https://ndhadeliver.natlib.govt.nz/webarchive/20220218114939mp_/https://mailchi.mp/education/covid19-update-10-nov].

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Managing implications for staff impacted by the vaccination requirement

This page provides more advice on managing the employment processes for employees who did not receive their first dose of the COVID-19 vaccine by 15 November 2021.

While working through this process it is important to ensure that there is no predetermined outcome. Your usual employment obligations still apply, including the duty to act in good faith, consider all reasonable alternatives, consult with the employee and take their feedback into consideration.

We acknowledge that this is particularly challenging at this time of year and as you plan for your staffing requirements for 2022.

You may wish to contact NZSTA or an alternative employment advisor for guidance with these employment processes. You can also contact employment.relations@education.govt.nz [<mailto:employment.relations@education.govt.nz>] for advice.

If your employee has a medical exemption, you should follow [the advice we have provided here](#)(external link).
[https://ndhadeliver.natlib.govt.nz/webarchive/20220218114939mp_/https://www.education.govt.nz/covid-19/advice-for-schoolskura/managing-staff/medical-exemptions-for/].

Otherwise, you will need to work through the process in consultation with your employee to determine:

- if the employee is willing to be vaccinated
- if their work can be reasonably rearranged, to ensure that they do not have contact with children or students and are not onsite when children are expected to be present (not just until the end of the 2021 school year but also in the longer term). You should confirm with the employee their new working arrangements
- if there are other options such as extended leave without pay which are appropriate in the circumstances
- for roles where alternative duties cannot be reasonably accommodated beyond the short term, notice will be given to end the employee's employment as a last resort.

We have provided a fuller overview of this process in [managing employment processes\(external link\)](#)

[https://ndhadeliver.natlib.govt.nz/webarchive/20220218114939mp_/https://www.education.govt.nz/covid-19/advice-for-schoolskura/managing-staff/managing-employment-processes-after-15-november-2021/] and in [this flowchart\(external link\)](#)

[https://ndhadeliver.natlib.govt.nz/webarchive/20220218114939mp_/https://assets.education.govt.nz/public/Documents/School/SchoolsBulletin/2021-Bulletins/2021COVID/Oct-COVID-documents/28OCTMandatoryVaccinationFlowcharts.pdf].

If the employee is not willing to be vaccinated, alternative duties should be provided where feasible.

If no alternative duties are available, they may be placed on discretionary special leave while you work through the employment process. Whether that leave is with or without pay is a matter for the school board, but an employee who has chosen not to be vaccinated is arguably not “ready, willing and able to work” and therefore may not be entitled to pay.

There may be cases in which a board decides that paid leave is appropriate, for example, in the case of an employee who is waiting on the outcome of a medical exemption application submitted to the Ministry of Health by their doctor or nurse practitioner.

Termination of employment

If you have found no suitable alternatives after consultation with the employee, you should move to give notice to the employee of termination of their employment. The notice period in the employee's employment agreement applies.

For example, the Primary Teachers' and Secondary Teachers' Collective Agreements both require the employer to give permanent employees two calendar months' paid notice of the termination of their employment.

If staff have been put on unpaid leave while you undertake the employment and consultation process described above, then the unpaid leave is not part of the notice period.

The employee will not be able to have contact with students or work on site at a time that students are present during this notice period. Therefore, the employee will need to continue with alternative working arrangements, or they should be on discretionary leave with pay during their period of notice.

In most circumstances you will be able to make payment in lieu of notice, and the employee's relationship with the school would be fully terminated on receipt of their final pay.

This will provide you with certainty as you plan your staffing requirements for 2022. Your employment adviser will be able to provide further information about how this would apply.

While you will already be thinking ahead about how to manage your staffing for next year, it is important that you fulfil your responsibilities as an employer, including undertaking a comprehensive consultation process with affected employees before moving to give notice of termination of their employment.

Advertising vacancies

You are able to advertise positions to temporarily backfill the role of the person who is not performing their usual duties.

However, you should consider whether it would be contrary to your employment obligations throughout this process (including not having a predetermined outcome) to start advertising any potential ongoing vacancies created by unvaccinated staff before their employment status is certain.

Positions can start to be advertised after staff have been given notice of termination of employment.

However, if their notice period has not yet ended, an employee who gets vaccinated might ask to have their employment reinstated. You will need to give reasonable consideration to this and, as a general rule, we suggest that you reinstate the employee unless the ongoing role has been filled.

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