

Vaccine Certificates in the Workplace

Uncertainty about whether workplaces can require vaccination certificates under the status quo is creating great anxiety in workplaces. The cause is uncertainty about how health and safety obligations interact with non-discrimination requirements.

Currently, businesses are required by the Health and Safety at Work Act to ensure the health and safety of their employees and people coming into the business. Employers must [ensure, so far as is reasonably practicable, that the workplace, the means of entering and exiting the workplace, and anything arising from the workplace are without risks to the health and safety of any person.](#)

At the same time, many businesses are expressing concern and receiving legal advice that measures to minimise risks from COVID-19 transmission, such as requiring vaccination certificates would be [challenged in court on privacy or discrimination grounds.](#)

The Government, instead of providing leadership on this issue, has announced vaccine certificates [without clarifying how that can be used,](#)

ACT has a plan that would deliver certainty for employees, customers, and businesses by clarifying that the setting of health and safety measures, such as requiring vaccine certificates, is permitted and is not subject to claims of a breach of privacy or discrimination.

ACT's plan

Principles

- Businesses need certainty that if they impose requirements for vaccine certificates that the Government will back their right to set their own rules.
- Businesses should be free to set the conditions of entry to their business with limited exceptions based on need.

Businesses and their employees:

- Amend the Health and Safety at Work Act to expressly allow for businesses to put in place safety measures, such as requiring vaccine certificates or a negative COVID-19 test to limit the spread of COVID-19.
- ACT would clarify that these measures could be required by employers and were not subject to legal challenges under discrimination or privacy grounds if employers did require them.
- ACT would amend the Health and Safety at Work Act to add a provision to allow for the ending of an employment agreement for someone acting in a wilfully irresponsible manner in respect of health and safety at the workplace including being reckless when it comes to transmission of COVID-19 in the workplace.

Traffic Light System

- ACT would introduce a traffic light system based on risk that would allow businesses to determine the level of risk due to COVID-19 in their business and, therefore, the set of rules needed to manage that risk.
- Businesses would need to make the determination based on contact with people, volume of persons through the business, strategic overview of the business in the wider supply chain, and whether they are based in high population areas.

- **High risk:** would allow for businesses to impose mandatory vaccine certification for employees including requiring employees to provide certification, end employment agreements for non-compliance, require vaccine certificates for customers and indemnity from discrimination rules (subject to certain exclusions), and undertake other safety measures to ensure risks transmission are minimised.
- **Medium risk:** allowed to require vaccine certificates for customers, require vaccine certificates from employees, a different process for non-compliance requiring businesses to look at alternate options to minimise risk of transmission first.
- **Low risk:** allowed to require vaccine certificates for customers

Businesses and their customers:

- Businesses would be able to require vaccination certification as a condition of entry. ACT would ensure that businesses could do this without facing litigation for discrimination.
- In some cases, people have not been able to receive the vaccine due to medical reasons. In these cases, businesses would not have the same protection from litigation.
- Essential services, such as the provision of food or other necessities, would still need to be able to be accessed by persons who do not have a vaccine, though the provision of service would be different depending on risk.
 - **High Risk:** Provide service based on Alert Level 3 standards: click and collect, masks, sanitising rules, contact tracing etc
 - **Medium Risk:** need to be able to provide a way to access services
 - **Low Risk:** base safety standards of masks, contact tracing, sanitising.