EMPLOYERS’ LEGAL OBLIGATIONS TO PROVIDE VACCINATION STATUS AND HOW WORKERS’ VACCINATION STATUS IS RECORDED

The Victorian Chief Health Officer (CHO) has issued COVID-19 Mandatory Vaccination (Workers) Directions (the Directions) as part of the public health response to the COVID-19 pandemic. These Directions are made under the Public Health and Wellbeing Act 2008 and are legally enforceable.

Employers of workers in sectors listed in the Directions can legally request evidence of the COVID-19 vaccination status of their worker who is, or may be scheduled to leave home for work, to comply with the Directions.

An “employer” in the Direction is a person who employs or engages a worker, or if the worker is self-employed, “employer” means the worker.

Workers may choose to withhold their vaccination status, but if so, an employer must not permit the worker to work for them outside their ordinary place of residence.

Every employer that is subject to the Directions must collect, record and hold evidence to show that each of their workers who leaves home to work, has received at least one dose of an approved COVID-19 vaccination, has a booking to receive a COVID-19 vaccination by 22 October 2021, or has a medical exemption to receiving a vaccination. Workers must be fully vaccinated by 26 November 2021. Employers must implement a process for complying with their obligations.

The employer must make a record which may include the worker’s name and vaccination status. It is also recommended to record who sighted evidence of vaccination, the date the evidence was sighted, and the nature of that evidence (for example, a COVID-19 digital certificate or Australian Immunisation Register (AIR) record, which can also display a medical exemption).
There are currently two ways to evidence your vaccination status:

- Fully vaccinated or exempt individuals can use the COVID-19 digital certificate available from Services Australia (which may be displayed in the Service Victoria app).
- Those who have had only one dose of a vaccine can show their AIR record which includes all immunisations, including the date and brand of COVID-19 vaccine the person has received.
- A hardcopy AIR-issued record may also be used as an alternative to digital certificates for both vaccination and exemption status.

Displaying this information electronically – including on a mobile phone – is acceptable.

For limited medical reasons, a medical practitioner can register a patient’s exemption in the AIR to confirm that they are unable to be vaccinated. The evidence of this exemption will be displayed as a valid certificate. Proof of a relevant medical exemption can also be provided as a hard copy letter from an approved medical practitioner. For those with an acute medical illness, this letter will have a specified end date for the exemption or will automatically expire 6 months after the date it was written.

Any records of vaccination status must be kept private as they contain personal information. Employers must adhere to relevant Federal (Privacy Act 1988) and Victorian (Privacy and Data Protection Act 2014, and the Health Records Act 2001) legislation. This includes informing employees about why their vaccination status is being collected, collecting only the minimum amount of information required, disclosing the information on a ‘need-to-know’ basis only, and taking reasonable steps to keep the information secure.

The only exceptions to the above are emergency situations and similar exceptional circumstances.