



Guidelines for Employers

These Guidelines are based on the current laws, regulations and orders in place in Vanuatu.

Can I require my employees to be vaccinated?

The recent *Declaration of Public Health (Amendment) Order No. 24 of 2022*, issued on 4 March 2022, requires that all persons supporting repatriation, quarantine or isolation operations that are 'members of the Vanuatu Chamber of Commerce and Industry' must be fully vaccinated against COVID-19. It is not clear if these means staff members and/or Councillors of the VCCI Councillors or all members of the VCCI i.e. all registered businesses, and again whether this extends to employees. The VCCI is currently seeking clarification on this from the Government and these guidelines will be updated accordingly. A reasonable interpretation of the vaccination requirement in this Order suggests that anyone that is involved in repatriation, quarantine or isolation operations must be fully vaccinated.

For other employers and employees that are not involved in these COVID-19 related operations, there are currently no other laws or Orders that prohibit you from making the COVID-19 vaccination a condition of employment.

As an employer you have a duty to ensure, '*so far as is reasonably practicable*' the health, safety and welfare of all of your employees. Employees also have a duty to follow requirements imposed by their employers or health and safety regulations and take reasonable care for the health and safety of themselves other persons that could be affected at work.

If having unvaccinated employees in the workplace creates risks for themselves or other employees, and their physical or mental condition is impaired or are injured from a disease, you may be held liable for their injuries if you have not taken steps to mitigate that risk.

If you intend to make the vaccinations a condition of employment, it must be seen as *reasonable* in the circumstances. For example, if the employee has contact with other people as part of their responsibilities and there has been a community transmission, which may expose them COVID-19 in the workplace, this may be considered reasonable. The same would be the case if the employee has contact with people that may be COVID-19 positive e.g. people repatriating or in quarantine/isolation. However, this is yet to be tested in court.

You should also include the vaccination requirement in the contract of employment for new employees or to make your own workplace regulations that requires employees be vaccinated. A new workplace regulation will need to be approved by a Labour Officer and should be visible in the workplace.



Can I terminate my employees if they refuse to be vaccinated?

Under the current laws, you can only terminate an employee in two ways: 1) termination by notice; and 2) immediate termination for serious misconduct.

Unless Government Regulations are passed requiring all workers to be vaccinated, it is unlikely that refusing to be vaccinated will amount to serious misconduct, and employers should be cautious about terminating employees for serious misconduct – it is the most litigated employment issue in Vanuatu.

However, you may terminate any employee for any reason (or for no reason at all) if you follow the termination by notice requirements.

Termination by notice requirements for open-ended contracts are as follows:

	Employee works 4 days a week or more and has been in service for <i>less than 3 years</i>	Employee works 4 days a week or more and has been in service for <i>more than 3 years</i>	Employee works 3 days or less a week (<i>not in continuous employment</i>)
Period of notice	Minimum 14 days or equal to pay period intervals (e.g. weekly pay = 1 week notice)	Minimum 3 months	Minimum 14 days or equal to pay period intervals (e.g. weekly pay = 1 week notice)
Pay in lieu of notice allowed	YES	YES	YES
Outstanding payment for work done	YES	YES	YES
Payments for annual leave outstanding	YES	YES	NO
Payment of severance allowance	YES	YES	NO

If your employees are on fixed-term contracts (i.e. there is an end date of employment) you must follow the notice requirements in the contract (provided they meet the minimum



requirements in the table above). If there are no notice requirements in the contract, you must pay the employee's salary or wages until the end of the contract period.

[You can find a template Termination by Notice Letter here.](#)

Can I stop people from entering my business if they are not vaccinated?

Yes, you can stop people from entering your business or limit the provision of your goods and services for health and safety reasons. This includes limiting access to people that have vaccination cards, people wearing masks or even adults (no children allowed).

As an employer you have a duty to ensure the health, safety and welfare of all your employees, but you also have a duty to other people that could be affected through your business to not be exposed to risks to their health or safety. This also applies if you are self-employed.

Whatever measures you take to ensure a healthy and safe workplace to your employees and others accessing your business should be '*reasonably practicable*' in the circumstances.

Again, you may be held liable for any injuries to employees and others that result from COVID-19 if you have not taken steps to mitigate that risk (proportionate to the risk).

If we have community transmissions, what are my responsibilities towards 'at-risk' employees e.g. elderly, pregnant or underlying illnesses?

Your responsibilities towards 'at-risk' employees are the same as all employees (see details above). However, the risk of serious illness from COVID-19 is higher for these employees than others and different measures may need to be taken for these employees.

Until Government Orders or Regulations are passed providing further guidance on this, you may consider the following:

- i. You can identify alternative working arrangements for 'at-risk' employees if reasonably practicable e.g. remote work, physical distancing or personal protective equipment.
- ii. If alternative working arrangements are not reasonably practicable for your business, you can require your employee take annual leave, if they have annual leave available.
- iii. You also have the option to terminate with notice, paying out all entitlements (see requirements above).

What are my responsibilities towards my employees during a lockdown?

As an employer, you have a duty to provide work to your employees as per their contracts of employment and if there is no work you are still required to provide remuneration, unless there is 'an emergency' that prevents you from providing work. Vanuatu is currently in a State of Emergency as a result of COVID-19, which should justify an 'emergency' exempting you from your legal duty to provide work, or remuneration if there is no work.



If access to your business is restricted from opening or your employees cannot get to work due to Government mandated lockdowns, unless Government Orders or Regulations are made giving further directions, you have the following options:

- i. You can require that the employee/s take annual leave, if the employee is eligible for paid annual leave and has annual leave accrued.
- ii. If annual leave is not available, or if it runs out during the lockdown period, you can offer the employee leave without pay. The employee accepts, they will remain in continuous employment and continue to accrue annual leave and severance allowances during this period.
- iii. You can terminate the employee with notice, paying out all entitlements (outstanding salary or wages, annual leave and severance allowance) 'as soon as the service has ceased'. With this option, you will have no ongoing obligations towards the employee.
- iv. It may also be possible for you to stand down your employees for the duration of the lockdown (as you are not able to provide work due to the emergency). It is not clear whether employee's entitlements (e.g. annual leave and severance) continue to accumulate during this time.

There are also no laws to address what happens to an employee's entitlements if their employment conditions are changed or reduced. For example, if the employee is able to do remote work but the hours of work reduced to below 4 days per week, this may no longer be considered continuous employment but what payments are required to be made to the employee and when is not clear.

[What happens if one of my employees cannot work because they have COVID-19?](#)

An employee in continuous employment (working 4 days or more a week) is entitled to 21 days sick leave per year. Employees that are not in continuous employment are not entitled to paid sick leave.

The law requires that the employee first notifies you and then provides a medical certificate if absent from work for two or more days (in Port Vila and Luganville) or four or more days (outside of Port Vila and Luganville). Medical certificates cannot be backdated beyond four days from the date of the examination, and you have the option to send an employee to a certified medical practitioner for a second opinion at your own expense.

If the employee does not have sufficient sick leave days, you can provide leave without pay until such time that they can return. However, their sick leave, annual leave and severance allowance will continue to accrue during this period.



If the employee is unfit to continue to work, for their employment to end a medical practitioner under the *Health Practitioners Act* must certify the employee being unfit to work. You would be required to pay out any outstanding wages or salary, annual leave and severance allowance (but no notice period).

You still maintain the right to terminate with notice for any reason provided you pay out all entitlements, or require the employee take annual leave if the employee has accumulated annual leave.

What happens if one of my employees cannot work because they are isolating?

There are currently no Government Regulations or Orders to guide employers and workers in this situation to date.

If your employee cannot come to work because they are isolating but not sick, you can make remote working arrangements if reasonably practicable in the circumstances. If not, you can require the employee to take annual leave if they have leave available and if not, unpaid leave for the duration of the isolation. The employee's entitlements (e.g. annual leave and severance) continue to accrue during this time.

There are no laws to address what happens to an employee's entitlements if their employment conditions are changed or reduced, e.g. hours of work reduced to below 4 days per week, which is no longer considered continuous employment.

Whilst not likely to be desirable in these circumstances, you still have the option to terminate with notice, paying out all entitlements (see requirements above).