

Coronavirus Update – 27 January 2022

Mandatory COVID-19 Vaccination for Healthcare Workers

New South Wales

In response to the ongoing COVID-19 Pandemic, on 23 December 2022 the NSW Government introduced the *New South Wales Public Health (COVID-19 Vaccination of Health Care Workers) Order (No 3) 2021 (Direction)* which mandates vaccination against COVID-19 for health care workers including dental practitioners as well persons who do work in connection with the provision of dental services at the dental practice.

Who do the Direction apply to?

The Direction applies to “*health care workers*” which refers to

- (a) a stage 1 health care worker, or
- (b) a stage 2 health care worker.

Under Schedule 1 of the Directions ‘**stage 2 health care worker**’ includes:

- **Under paragraph (d):** a health practitioner within the meaning of the *Health Practitioner Regulation National Law (NSW)*;
- **Under Paragraph (f):** a person who does work in connection with the provision of a health service by a person referred to in paragraph (d) on the premises at which the person referred to in paragraph (d) provides the health service.

Under Section 5 of the *Health Practitioner Regulation National Law (NSW) No 86a of 2009*:

- A health professional means an individual who practises a dental profession or a recognised speciality in the dental profession.

As a result all dental practitioners, and all workers who do work in connection with the provision of services by a dental practitioner(s) **on the premises** at which the dental practitioner(s) provides the dental services, are covered by the Direction. Such categories of workers would therefore include all dental practitioners and support staff.

Under the Direction, all employees, contractors, volunteers, students, on-hire or temporary workers, including work done by a visiting practitioner at a dental practice will be required to comply with the Directions.

What does the Direction say?

Vaccination and Evidence Requirements

The Directions provide that a stage 2 health worker must not do work as a health care worker on or after:

- (a) **31 January 2022** unless the worker has received at least 1 dose of a COVID-19 vaccine, and

(b) **28 February 2022** unless the worker has received at least 2 doses of a COVID-19 vaccine.

If required to do so by an authorised person on or after 31 January 2022, a worker **must** provide evidence of their vaccination status.

General Exclusions

The Directions provide for very narrow general exclusions and include an exclusion for a health practitioner who does work as a health care worker in response to a medical emergency, or another person who does work as a health care worker in response to a non-medical emergency.

Enforcement

Under Clause 9 of the Directions, responsible persons for workers must take all reasonable steps to ensure the worker complies with the vaccination requirement.

The Directions outline that a responsible person includes an employer, supervisor of a clinical placement or the occupier of premises. In this respect, a practice owner who has independent contractors, or practitioners operating under an SFA structure, must also take steps to ensure that those professionals are compliant with the Directions.

Practices must keep a record of having sighted evidence of or verified Workers' vaccination status or medical contraindication. Vaccination evidence means evidence from the Australian Immunisation Register kept under the Australian Immunisation Register Act 2015 of the Commonwealth that the worker has had 1 or more doses of a COVID-19 vaccine.

After 30th January 2021 a dental practice should make reasonable efforts to obtain confirmation that any Worker that enters, works in or provides services in a dental practice has received the prescribed number of doses of a COVID-19 vaccine, or meets the conditions for an exception.

Medical Exceptions

There are limited circumstances in which a worker will be exempt from the vaccination requirements in the Direction. These include where the worker has a medical contraindication.

Workers who have a medical contraindication **must** provide practices with a medical contraindication certificate which means a certificate issued by a medical practitioner in a form approved by the Chief Health Officer, and certifying that, because of a specified medical contraindication, the worker cannot have any approved COVID-19 vaccine available in New South Wales.

If the Worker satisfies the evidence requirements related to a medical contraindication, they may continue to work in a dental setting after 30th of January 2021, provided that the practice has assessed the risk to the staff member, other staff, patients, clients, and other persons at the dental practice and determines that the unvaccinated Worker may continue to work in the dental practice where their work cannot be performed outside the dental practice.

Other Exceptions

The Minister of Health may, in writing and subject to the conditions the Minister considers appropriate, grant other exemptions to the Direction or its specified provisions if the Minister is satisfied it is necessary to protect the health and well-being of persons.

Next Steps

Workers captured by the Direction have until 30th January 2022 to receive the first dose, and until 27th February 2022 to receive their second dose, of a COVID-19 vaccine unless exempt. Such Workers should take steps to ensure compliance with the Direction by these dates, including providing evidence of their vaccination status. Workers who fail to comply with the Direction will not be permitted to do work at a dental practice, or outside of the premises if they are a health practitioner (unless an exception applies).

Practices should take steps to ensure compliance with the Direction, including:

1. Familiarising themselves with the requirements and definitions in the Direction.
2. Notifying Workers of the requirements contained in the Direction regarding vaccination requirements and evidence requirements.
3. Engage with Workers to encourage compliance with the vaccination requirements.
4. Request Workers provide vaccination evidence as promptly as possible to avoid disruptions in their ability to perform work.
5. Consider placing employees who are unvaccinated or have not provided vaccination evidence by the required date/s on a period of unpaid leave or by agreement, paid leave. Personal leave will generally not be available where the employee is not suffering from an illness or injury that renders them unfit for work.
6. In the event a Worker refuses to comply with the Direction, seek advice concerning the potential options available which may include but are not limited to ending the employment relationship.

In the case of a Contractor, advice should be sought from the ADA HR Advisory Service as to the rights and obligations of the parties arising from the terms of the contractor relationship.

Please note this article applies only to dental practices in New South Wales and should not be relied on for dental practices in any other state of Australia. The information in this article is correct at the time of writing but is subject to change.

If you have any questions about mandatory vaccinations or the content of this article, please contact the ADA HR Advisory Service on 1300 232 462.