Mandatory COVID-19 vaccinations and your rights

The Victorian Government has announced that work is underway to ensure the coronavirus (COVID-19) vaccine will be made available to everyone who wants to get vaccinated. As the COVID-19 vaccine becomes available, some employers or service providers may seek to require their staff or customers to be vaccinated. This resource answers some frequently asked questions about vaccine requirements and Victoria’s Equal Opportunity Act or Charter of Human Rights and Responsibilities.

Is it discriminatory for my employer or a service provider to require me to get vaccinated?

The Equal Opportunity Act prohibits discrimination in certain areas of life, including employment and provision of goods and services, based on protected attributes such as disability, pregnancy or religious belief or activity.

Vaccination status is not a protected attribute under the Equal Opportunity Act.

However, if an employer makes vaccinations a mandatory condition of employment, or a service provider requires proof of vaccination, this could be discrimination.

What if my reasons for not getting vaccinated are connected with a protected attribute under the Act?

If your reasons for not getting vaccinated are connected to a protected attribute under the Equal Opportunity Act, then an employer or service providing requiring you to get vaccinated could be discrimination.

For example, people with certain disabilities, medical conditions or who are pregnant may not wish to get the vaccine for medical reasons. The vaccine may not have been tested on people with their condition or the vaccine could be found to have been dangerous for people with their attribute. Requiring people to be vaccinated in these circumstances...
could amount to indirect discrimination. If this is the case, the employer or service provider may seek to rely on health and safety grounds to impose the vaccine (see discussion below).

If a person’s reason for not wanting the vaccine is not linked to a protected attribute under the Equal Opportunity Act, then this would not be discrimination.

**Are anti-vaccination views a protected attribute under the Equal Opportunity Act?**

‘Political belief or activity’ is a protected attribute under the Equal Opportunity Act, meaning it is unlawful to discriminate against someone because of that political belief or activity.

It is important to note that the protected attribute of ‘political belief or activity’ has been interpreted narrowly in Victoria and it is unlikely to apply to people who are opposed to vaccines being imposed by employers.

**Can an employer require employees to be vaccinated on health and safety grounds?**

Under the Equal Opportunity Act, discrimination on the basis of disability or physical features is allowed if it is reasonably necessary to protect the health and safety of any person, or the public generally. If an employer wishes to make vaccination a mandatory requirement, they must prove how this health and safety exception applies. A range of things will likely be relevant to whether it is ‘reasonably necessary’ to require vaccination, including:

- the type of workplace and the people in the workplace, and whether there is a heightened risk they will suffer severe symptoms if they contract COVID-19 (for example, aged care settings where there are people over 60 or healthcare settings people where patients have respiratory conditions)
- the physical space of the workplace and associated risk of transmission
- whether alternative measures could have been put in place to protect employees and any members of the public who enter the workplace
- the rate of community transmission at the time
- the availability of the vaccine
- advice from work health and safety bodies such as [Safe Work Australia](https://www.safeworkaustralia.gov.au) about vaccinations at the time – Safe Work Australia currently states that it is unlikely that work, health and safety laws require employers to ensure their workers are vaccinated.
Can a provider of goods and services require customers or visitors to be vaccinated?

Under the Equal Opportunity Act, discrimination is allowed on the basis of disability or physical features if it is reasonably necessary to protect the health and safety of any person, or the public generally. If the provider of goods and services wishes to make vaccination a mandatory requirement, they must prove how this health and safety exception applies. A range of things will likely be relevant to whether it is ‘reasonably necessary’ to require customers and visitors to be vaccinated, including:

- the type of goods or service provided and the people that access it, and whether there is a heightened risk they will suffer severe symptoms if they contract COVID-19 (for example, care or support service settings where there are people over 60 or medical goods for people with pre-existing health conditions)
- the physical space of the location (for example, a shop) and associated risk of transmission
- whether alternative measures could have been put in place to protect employees and any members of the public who enter the location
- the rate of community transmission at the time
- the availability of the vaccine
- advice from work health and safety bodies such as Safe Work Australia about vaccinations at the time – Safe Work Australia currently states that it is unlikely that work, health and safety laws require providers of goods and services to ask customers and visitors for proof of vaccination.

If a provider of goods and services is treating you badly because you can’t get the vaccine due to your disability or other protected attribute contact us on 1300 292 153 for more information about your rights and how you can make a complaint.
Is it a breach of human rights for employers or service providers to require staff or customers to be vaccinated?

In Victoria, the Charter of Human Rights and Responsibilities sets out the human rights that people enjoy, as well as the responsibilities on public authorities to protect and promote those rights.

The Charter has continued to apply during the state of emergency in Victoria, imposed by the government to manage the COVID-19 pandemic. This means that public authorities must consider and act compatibly with human rights when making decisions, and that if they fail to do so, they could be taken to court.

If a public authority requires employees to be vaccinated for COVID-19, this may engage certain Charter rights, including:

- the right to life
- the right to freedom of thought, conscience, religion and belief
- the right not to be subjected to medical or scientific treatment without full, free and informed consent
- the right not to have privacy unlawfully or arbitrarily interfered with
- the right to equality and to be protected from discrimination.

How is the Charter relevant to employers and service providers who are public authorities?

Under the Charter, public authorities include government departments and agencies, local councils, Victoria Police and organisations that deliver public services on behalf of the government.

If your employer or service provider is a public authority, the Charter requires them to properly consider and act compatibly with human rights in their decisions and actions, including a decision to make COVID-19 vaccines mandatory for employees and customers.

However, it’s important to note that human rights protected by the Charter are not absolute and can be limited in some circumstances. Any limitation on rights must only go as far as necessary to achieve a legitimate purpose and, if limiting a right is necessary, the action taken should be reasonably justified and proportionate, and the least restrictive means available.
How do we know if employers and service providers requiring vaccination is a necessary and proportionate limitation of people’s rights?

Public authorities may argue that requiring their staff or customers to be vaccinated is a lawful limitation on rights, because it protects the right to life and the health and safety of others.

Determining whether these sorts of limitations on people’s rights are necessary and proportionate depends on a range of factors:

- **Necessary**: Is there a justification for making vaccinations mandatory? For example, is requiring employees or customers to be vaccinated necessary to stop the spread of COVID-19 or protect the health of employees or others?

- **Proportinate**: Is the mandatory vaccine requirement proportionate to the purpose it is seeking to achieve? For example, does the risk posed by COVID-19 spreading in the workplace or service outweigh the impact on individuals whose rights are limited? Are there people in the workplace or service who are likely to be at increased risk of severe symptoms if they contract COVID-19? Does the requirement to vaccinate take into account the differing needs of people with disabilities, health conditions or who might otherwise have valid reasons for not wanting to be vaccinated?

- **Availability of other less restrictive means**: Is there another less restrictive option reasonably available? For example, are there measures other than vaccination that would effectively stop the spread of COVID-19 in the workplace or service?

What can I do if I think my rights have been breached?

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<tr>
<th>Human rights</th>
<th>For information about the Charter and your rights:</th>
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<td>➔ Contact us on 1300 292 153 or <a href="mailto:support@yourwebsite.com">send us an email</a></td>
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What other resources are available?

The Australian Human Rights Commission has also developed guidance for the community on the discrimination and human rights implications of the roll out of the COVID vaccine. Read more: COVID-19 vaccinations and federal discrimination law.

The Fair Work Ombudsman has released guidance materials on vaccinations and workplace issues. Read more: COVID-19 vaccinations & the workplace.