

# Managing risks for law firms returning to the office



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After lengthy lockdowns, increasing rates of vaccination and the NSW government roadmap for reopening have put us in a position to consider returning to the office. The transition back to the office requires caution, planning and compliance.

## Mandatory vaccination policies

Under the NSW government roadmap for reopening, restrictions are lifting for vaccinated people. Those who are not vaccinated are required to continue working from home if reasonably practical, even after NSW hits the 80 per cent vaccination rate (at the date of writing). In this context, many employers are grappling with the question of whether to mandate vaccination for employees.

Exposure to workers compensation claims by employees that contract COVID-19 in the course of their employment is incentivising some firms to consider a vaccine mandate.

The Fair Work Ombudsman has given high-level guidance for employers considering mandatory vaccination. Each employer will need to consider its own operations and workplace risks to decide on the best approach to vaccination.

In two recent unfair dismissal applications, brought by employees who were dismissed for refusing to comply with mandatory flu vaccination policies, the Fair Work Commission ruled that directions for compliance with mandatory vaccination policies were lawful and reasonable, and the employees' failure to comply were valid reasons for dismissal (*Bou-Jamie Barber v Goodstart Early Learning* [2021] FWC 2156; *Kimber v Sapphire Coast Community Aged Care Ltd* [2021] FWCFB 6015). In both cases, the employees unsuccessfully sought medical exemptions.

Drawing from these recent judgments, law firms considering a mandatory vaccination policy will need to facilitate exemption requests, particularly if there are medical reasons supported by evidence. A mandatory vaccination policy should also address the requirements of the *Privacy Act 1988* (Cth), where applicable.

## Return to work plans

Law firms may consider a staggered return to work plan that

## Snapshot

- Transitioning back to the office requires caution and planning.
- The Fair Work Ombudsman has provided guidance for employers considering mandatory vaccination. Each employer should consider its operations and workplace risks to decide on the best approach.
- It is important that someone within each law practice is designated the responsibility of staying across changes to government directives and keeping staff updated.

prioritises certain people or teams, subject to government directives for allowing employees to continue working from home if reasonably practical and requiring unvaccinated employees to work from home in some cases.

Return to work plans might address how to optimise office space and facilities in line with current directives, including whether to remodel shared and open workspaces. Firms might consider introducing hybrid working models and rosters for staff coming into the office.

## Updated policies and protocols

With rapid changes to government directives, and the roadmap for the easing of restrictions under ongoing review, it is important to designate someone the

responsibility of keeping staff updated with the latest changes.

Work Health and Safety ('WHS') compliance will be paramount. Policies and procedures will need to be updated in line with directives, including for masks, QR codes and density limits. SafeWork NSW guidance is available at [safework.nsw.gov.au/resource-library/COVID-19-Coronavirus](https://safework.nsw.gov.au/resource-library/COVID-19-Coronavirus).

Equally important is the management of employee morale and mental health. WHS legislation and guidance has been recently amended to impose positive obligations on employers to eliminate or control psychosocial hazards. The ongoing pandemic and restrictions have increased employee sensitivity to these hazards. Employees need to be monitored and offered support. Many free resources are available to assist employers manage the impact of COVID-19. e.g. RUOK.org, Black Dog Institute's COVID-19 resources for managers and workers.

Staff should be pointed to available resources, and it will be up to managers and HR staff to lead with empathy, normalise a dialogue about these issues and address concerns promptly. Workplaces should review their insurance needs – consider Lawcover's Lawyers Management Liability Policy, which includes cover for certain employment practices liability and statutory liability (excluding losses arising from COVID-19). Visit [Lawcover.com.au](https://lawcover.com.au) or call 1800 650 748. **LSJ**