



# COVID-19 Public Health Response (Vaccination Assessment Tool) Regulations 2021

Cindy Kiro, Governor-General

## Order in Council

At Wellington this 13th day of December 2021

Present:

The Right Hon Jacinda Ardern presiding in Council

These regulations are made under section 33AA of the COVID-19 Public Health Response Act 2020—

- (a) on the advice and with the consent of the Executive Council; and
- (b) on the recommendation of the Minister for Workplace Relations and Safety.

## Contents

	Page
1 Title	2
2 Commencement	2
3 Interpretation	2
4 Transitional, savings, and related provisions	2
5 Overview	2
6 Application	2
7 Assessment tool	3
8 Discretionary considerations	4
9 Revocation	4
<b>Schedule 1</b>	<b>5</b>
<b>Transitional, savings, and related provisions</b>	

## Regulations

### 1 Title

These regulations are the COVID-19 Public Health Response (Vaccination Assessment Tool) Regulations 2021.

### 2 Commencement

These regulations come into force on 15 December 2021.

### 3 Interpretation

In these regulations, unless the context otherwise requires,—

**Act** means the COVID-19 Public Health Response Act 2020

**class of workers** means a group of workers who carry out the same or substantially similar work

**internal area** means an area within a workplace that, when all its doors, windows, and other closeable openings are closed, is completely or substantially enclosed by—

- (a) a ceiling, roof, or similar overhead surface; and
- (b) walls, sides, screens, or other similar surfaces; and
- (c) those closeable openings

**other people**, in relation to a worker, means any individuals that the worker interacts with while carrying out work (for example, co-workers, customers, and clients)

**vulnerable to COVID-19**, in relation to other people, means other people who are—

- (a) under the minimum age for being vaccinated;
- (b) exempt from being vaccinated under a COVID-19 order;
- (c) at risk of severe illness from COVID-19.

### 4 Transitional, savings, and related provisions

The transitional, savings, and related provisions (if any) set out in Schedule 1 have effect according to their terms.

### 5 Overview

These regulations prescribe an assessment tool that a PCBU may, but is not required to, use to ascertain whether it is reasonable to require workers of the PCBU not to carry out work for the PCBU unless they are vaccinated.

### 6 Application

A PCBU may only use the assessment tool to assess whether work may be carried out for the PCBU only by—

- (a) a worker who is vaccinated;
- (b) a class of workers who are vaccinated.

## 7 Assessment tool

- (1) The assessment tool entails consideration of the following factors:
- (a) the environment in which a worker carries out work; and
  - (b) the proximity of a worker to other people; and
  - (c) the time in which a worker is in the proximity of other people; and
  - (d) whether the worker provides services to other people who are vulnerable to COVID-19.

### *Environment factor*

- (2) If a worker, during all or part of their time working, carries out work—
- (a) in an internal area that is less than 100 square metres, the answer is yes;
  - (b) outside or in an internal area that is at least 100 square metres, the answer is no.

### *Proximity factor*

- (3) If a worker, during all or part of their time working, carries out work in circumstances in which being able to maintain physical distancing of 1 metre or more from other people—
- (a) is unreasonable, the answer is yes;
  - (b) is reasonable, the answer is no.

### *Time factor*

- (4) If a worker carries out work—
- (a) for more than 15 continuous minutes at a distance less than 1 metre from the same individual, the answer is yes;
  - (b) for 15 continuous minutes or less at a distance less than 1 metre from the same individual, the answer is no.

### *Vulnerability factor*

- (5) If a worker provides a service to other people whom the worker's PCBU considers—
- (a) to be vulnerable to COVID-19, the answer is yes;
  - (b) not to be vulnerable to COVID-19, the answer is no.

### *Assessment*

- (6) If a PCBU ascertains that the answer is yes for at least 3 of the 4 factors specified in subclauses (2) to (5), it is reasonable for the PCBU to require a worker or a class of workers to be vaccinated to carry out work for the PCBU.

**8 Discretionary considerations**

- (1) This regulation applies if a PCBU ascertains that the answer is yes for at least 3 of the 4 factors specified in regulation 7(2) to (5).
- (2) If this regulation applies, the PCBU may decide not to require a worker or a class of workers to be vaccinated to carry out work for the PCBU if, before making the decision,—
  - (a) it has considered whether—
    - (i) other measures are available to the PCBU to eliminate or minimise the risk of exposure to and transmission of COVID-19 associated with the work; and
    - (ii) the implementation of those measures is reasonable in the circumstances; and
  - (b) it has taken into account—
    - (i) the outcome of the consultation process undertaken under section 33AB(3) of the Act; and
    - (ii) any other factors that the PCBU considers relevant.

**9 Revocation**

These regulations are revoked on the date on which the Act is repealed.

## Schedule 1

### Transitional, savings, and related provisions

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### Part 1

#### Provisions relating to these regulations as made

There are no transitional, savings, or related provisions in these regulations as made.

Michael Webster,  
Clerk of the Executive Council.

### Explanatory note

*This note is not part of the regulations, but is intended to indicate their general effect.*

These regulations, which come into force on 15 December 2021, prescribe an assessment tool that PCBUs may use to ascertain whether it is reasonable to require workers of the PCBU not to carry out work for the PCBU unless the workers are vaccinated.

Issued under the authority of the Legislation Act 2019.

Date of notification in *Gazette*: 14 December 2021.

These regulations are administered by the Ministry of Business, Innovation, and Employment.