***INSTRUCTION PAGE i***

**Text

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**Following is a template letter** that can be used in the situation where your DHB employer responds to your letter that raises significant concerns about the mandate, vaccine and health and safety and you employer fails to engage meaningfully.

If you have been forwarded this letter by a friend, family member or colleague then please go to <https://voicesforfreedom.co.nz/resources> to see the outline of the employment process, to get access to the other letter/s, and to get access to the employment webinars hosted by Voices For Freedom.

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| --- |
| Disclaimer: It is a strict condition of reading and/or using this letter in any way you irrevocably agree that you are bound by the terms and conditions of this disclaimer. If you do not agree with the terms and conditions of this disclaimer, you are prohibited from reading and/or using this letter. Notwithstanding anything in this letter, the information set out in this letter is for general information only, and should not be construed as legal advice and/or health advice. No client-solicitor relationship is created whatsoever. Before taking any action based on this letter, you should consider your personal situation and seek professional legal advice. You acknowledge and agree that you were advised to take legal advice prior to using any information in this letter. If you use this letter and/or any information in the letter you acknowledge and agree that you have relied on your own judgement and initiative and not in reliance of anything else. The reader and/or user of this letter agrees to protect, indemnify, defend, and save harmless the author absolutely from and against any and all damages, claims, losses, demands, liabilities (including vicarious liability), injuries, suits, actions, judgements, costs, and expenses of any kind whatsoever (including reasonable legal fees) arising out of or in any way connected with this letter and the information contained within. Any person and/or persons that shares this letter without this disclaimer accepts full liability for any damage whatsoever caused.  If you are sharing this document with others, you acknowledge and agree that you are prohibited from removing this disclaimer. The disclaimer may only be removed once the letter is ready to be sent by the person sending it. You are also prohibited from amending the letter other than the sections identified for you to add to and you acknowledge and agree to this. If, however, you would like to use parts of this letter in a letter that you draft yourself then you are permitted to do so. . |

***INSTRUCTION PAGE ii***

**Text

Description automatically generated with low confidence**

**HOW TO USE THIS LETTER?**

1. Read the letter carefully so that you understand what you are sending – this letter is **your letter**.
2. The points you need to complete or closely consider for your situation are highlighted yellow. Keep this information factual and do not hesitate to get it checked by a friend, colleague or family member.
3. This letter is only to be used in the situation where you have received a letter from the DHB in response to your initial letter and they fail to engage with you. It might look as per the following:



1. If your employer has requested you be vaccinated against Covid-19 but there is no Vaccination Order then please refer to the other template letter (Request Letter: Long, Short or Medical Advice) you will be redirected to at <https://voicesforfreedom.co.nz/employment>.
2. Do not forget to include your email in the letter so that your employer knows where best to respond to you in writing.
3. Sign off the letter.
4. Print or email the letter – make sure you keep a copy. DO NOT include these first two pages of instructions.

Your employer will likely respond to this letter and if they do, then you will need to consider their response and may need to obtain advice specific to your situation.

**Employees header name/ contact details**

**[Employer's Name of place**

**Address**

**Address]**

[Date]

FOR: [The Manager | Executive Board]

**COVID-19 – ORDER TO BE VACCINATED AGAINST COVID-19**

1. I refer to your letter of [date].
2. It is my view that my role of [state your title/position] (**Role**) is not covered by the Covid-19 Public Health Response (Vaccinations) Order 2021 (the **Vaccination Order**), Schedule 2.
3. The Vaccination Order requires high-risk workers in the health and disability sector to be fully vaccinated against COVID-19 by 1 January 2022, and to receive their first dose by 15 November 2021.

**Vaccination Order**

1. Given the [DHB’s] view that my role is covered by the Vaccination Order, can you please specifically identify why you believe my role is covered by the Vaccination Order.
2. Specifically, I ask that you provide the relevant section/s of the Vaccination Order and the reasons why this section covers my role as specifically identified within my job description and/or employment agreement.
3. Please also outline any consultation you had with staff (as well as provide all information relied on) in reaching the decision that my Role is covered by the Vaccination Order.
4. I draw your attention to the fact that my role is one that does not work with persons vulnerable to the risk of SARS-COV-2 (**Covid-19**) – the likelihood of dying from Covid-19 is nil to negligible[[1]](#footnote-1) in people under the age of 70 with no underlying health issues - the average age of deaths being above 80 years[[2]](#footnote-2).
5. [list any additional factors about specific to your Role interacts - for example, if the nature of your role means that you do not work within 2 metre distance of a health practitioner or member of the public for 15 minutes or more at one time].
6. Alternatively, minor alternations/adjustments can be made to my Role, so that it does not fall within the Vaccination Order or if this does not apply, to minimise the risks identified in the risk assessment.

**Health and Safety**

1. Your health and safety obligations under the Health and Safety at Work Act 2015 (**HSWA**), to:
   1. eliminate risks to health and safety, so far as reasonably practicable; and
   2. if it is not reasonably practicable to eliminate risks to health and safety, to minimise those risks so far as is reasonably practicable.
2. Furthermore, **you** have a responsibility to assess the potential risks and benefits of any health and safety measures you propose to implement including those mandated by the Order. It is not a suitably acceptable response to say the government has mandated it, you have to engage under the HSWA.
3. For example, you are prepared to openly promote the Pfizer vaccine on your website as being a completely safe medication[[3]](#footnote-3) [add footnote reference to appropriate DHB website], yet consider that you cannot engage with me specifically on the concerns I have raised about the product. Instead, directing me to the Ministry of Health’s advice or to my GP.

**Achieving Health and Safety in my Role**

1. If it cannot be substantively demonstrated that my role is covered by the Vaccination Order, other avenues for protection are available, including but not limited to:
   1. social distancing;
   2. practicing good hygiene with hand washing;
   3. wearing appropriate PPE;
   4. regular testing;
   5. vaccinating the vulnerable;
   6. self-isolating if symptoms arise or a positive test and remain isolated for the accepted period of 14 days and a negative test.
2. It has not yet been demonstrated that the Pfizer Injection will either prevent infection or transmission of Covid-19. Indeed, evidence from outside of New Zealand confirms that the Pfizer Injection does not have a long lasting effect on preventing infection or transmission (ie United States[[4]](#footnote-4), Israel[[5]](#footnote-5), United Kingdom[[6]](#footnote-6), Singapore[[7]](#footnote-7)). Therefore, controls other than vaccination will need to be in place for all staff (both vaccinated and unvaccinated).
3. I confirm that I am prepared to undergo weekly saliva testing for Covid-19, results of which I will provide to you (mandatory testing has not yet been specified in the Vaccination Order and only teachers attending site in Alert Level 3 areas are required to undergo weekly testing as specified in the Testing Order[[8]](#footnote-8)). While it has been identified that some people with Covid-19 have no symptoms, asymptomatic people have not been found to be significant transmitters of infection[[9]](#footnote-9).
4. I confirm that should I show any symptoms of Covid 19, I will self-isolate and obtain a Covid-19 test. Should I test positive then I will remain in self-isolation for 14 days (as is the accepted isolation period) and work remotely where possible. I will obtain a further Covid-19 test on day 12 of my isolation to confirm that any infection is no longer active before returning to work.
5. As persons who have received the Pfizer injection are still able to spread the disease (called breakthrough infections), I understand that testing and isolation **must** be a policy applicable for all staff (whether they have received the Pfizer injection or not).
6. In the circumstances, the health and safety of the [people I work with, and patients I see] can be readily managed and encouraged even though I am an exempted employee – the health and safety audit for my Role is unlikely to be much different from a vaccinated colleague's role in any event. Getting the health and safety audit completed for management of any risks is the key for us to maintain our employment relationship. I look forward to doing so.
7. I note that the DHB has a duty to take all steps reasonably practicable to eliminate the risk, or if it is not reasonably practicable to eliminate the risk, to take all steps reasonably practicable to minimise those risks. It is my view that the proposed measures sufficiently mitigate the risk without requiring vaccination. Such changes are entirely reasonable, and it would not be fair and reasonable to require vaccination and/or terminate my employment in light of these reasonable accommodations.

**Legality of the Order**

1. Your letter suggests that the legality of the Vaccination Order has been considered by the High Court in *GF v Minister of COVID-19 & Ors*[[10]](#footnote-10). That case pertained to a border worker under Vaccination Order (No 1) and is distinguishable.
2. It is unclear from your letter if you are aware of the:
   1. extended boarder workers action questioning the validity of the Vaccination Order (No 2); or
   2. the midwives action questioning the validity of the Vaccination Order (No 3).
3. Decisions in respect of both are anticipated to be delivered before the 15th of November 2021. Therefore, given the outstanding information and court cases on Orders you say could apply to my Role, it would be premature for us to meet. However, for the avoidance of doubt, I confirm I am ready willing and able to engage with you once I have had opportunity to consider the information I have requested and am entitled to receive.

**Next Steps**

1. In good faith, your responsibility to assess the potential risks and benefits of any health and safety measures should be done in consultation with me to discuss whether any alternative solutions are practicable. Please identify what you have done to consider alternative solutions at this stage and provide all material relied on.
2. If minor changes to my role are not fair and reasonable (which is disputed), then redeployment options must be evaluated before considering termination of employment. If the matter reaches this stage, I would like to understand the full scope of redeployment options available to [the DHB] and my employment.
3. Where [the DHB] propose to make a decision that will, or is likely to, adversely affect my ongoing employment then you are required to provide me with access to relevant information about the decision as well as an opportunity to comment on the information before you make the decision[[11]](#footnote-11).
4. Accordingly, I note our ongoing obligations of good faith and request that [the DHB] provide the following information;
   1. all documentation, notes, emails, information and correspondence relating to and relied on in the decision-making process that my role is covered by the Vaccination Order; and
   2. all documents, information and/or communications, including verbal, email, relating to alternative solutions.
5. This request is made pursuant to the Privacy Act 2020 as well as the obligations of good faith, pursuant to section 4 of the Employment Relations Act 2000. As such, we look forward to receiving this information as soon as practicable, and most certainly within 20 working days. Given that the Vaccination Order will be applicable from 15 November 2021, it would be helpful to have a response by no later than [insert date].

I look forward to hearing from you.

Sincerely

**Your Name**

**Your contact details**

1. <https://ourworldindata.org/mortality-risk-covid> [↑](#footnote-ref-1)
2. <https://swprs.org/studies-on-covid-19-lethality/#age> [↑](#footnote-ref-2)
3. [add footnote reference to appropriate DHB website], [↑](#footnote-ref-3)
4. <https://www.cdc.gov/vaccines/covid-19/health-departments/breakthrough-cases.html>; https://link.springer.com/article/10.1007/s10654-021-00808-7 [↑](#footnote-ref-4)
5. <https://www.medrxiv.org/content/10.1101/2021.08.24.21262415v1> [↑](#footnote-ref-5)
6. [SARS-CoV-2 variants of concern and variants under investigation (publishing.service.gov.uk)](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1018547/Technical_Briefing_23_21_09_16.pdf) [↑](#footnote-ref-6)
7. <https://www.moh.gov.sg/news-highlights/details/updates-to-healthcare-protocols-and-implementation-of-vaccine-booster-strategy_10Sep2021> [↑](#footnote-ref-7)
8. COVID-19 Public Health Response (Required Testing) Amendment Order (No 4) 2021 [↑](#footnote-ref-8)
9. <https://wwwnc.cdc.gov/eid/article/26/8/20-1142_article>

   [Modes of contact and risk of transmission in COVID-19 among close contacts | medRxiv](https://www.medrxiv.org/content/10.1101/2020.03.24.20042606v1)

   [Suppression of a SARS-CoV-2 outbreak in the Italian municipality of Vo’ | Nature](https://www.nature.com/articles/s41586-020-2488-1) [↑](#footnote-ref-9)
10. [2021] NZHC 2526 [24 September 2021]. [↑](#footnote-ref-10)
11. S4(1A)(c) Employment Relations Act 2000. [↑](#footnote-ref-11)