***INSTRUCTION PAGE i***

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**Following is a template letter** that can be used in the situation where your employer has not carried out a health and safety audit with any consultation with you and requests you be vaccinated.

This is **not** pursuant to the *Covid-19 Public Health Response (Vaccinations) Order 2021* (**Vaccination** **Order**). To review the current orders see: <https://covid19.govt.nz/alert-levels-and-updates/legislation-and-key-documents>

In this letter you are advising your employer that they have a duty to consult with you in carrying out the health and safety audit and have not done so.

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. There are alternative letters for other roles that have been mandate.

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***INSTRUCTION PAGE ii***

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**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 if you are a worker, your employer has carried out a health and safety risk assessment but has not consulted with you and then reached the conclusion that you need to be vaccinated. Your employer is obliged to engage with you about this.
4. Consider doing your own health and safety audit specific to your role available in our employment kit <https://voicesforfreedom.co.nz/resources> All Employees / Health and safety risk audit
5. Do not forget to include your email in the letter so that your employer knows where best to respond to you in writing.
6. Sign off the letter.
7. 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.

**[Your Name**

**[Email address**

**[Any other contact details**

**[Employer's Name**

**Address**

**Address]**

[Date]

FOR: [Manager | Executive Board]

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

1. I refer to my employment agreement of [date] and note that there is that there is no express provision within that employment agreement that I must be vaccinated in order to carry out my role as [role as specified in your employment agreement] (**Role**).
2. I refer to your letter of [date] in which you advised that I am required to be vaccinated by [date] in order to remain employed (**Immunisation**).
3. You advised in your letter that you have carried out a health and safety risk assessment in reaching the conclusion that my role was high risk and that it was required to be carried out by a vaccinated employee.

**Employment obligations**

1. I accept we have mutual obligations to act in good faith[[1]](#footnote-1) and to not mislead or deceive one another[[2]](#footnote-2). I also understand that we have to be active and constructive in maintaining a productive employment relationship which includes being responsive and communicative[[3]](#footnote-3).
2. I also acknowledge 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.
3. 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 as well as an obligation to consider alternative options to maintain my employment. It is not a suitably acceptable response to say the government has recommended it. Critically, you have an obligation to engage under the HSWA and engage with me as your employee.

**Process**

1. In carrying out your health and safety risk assessment, I was not consulted. In particular:
	1. I was not advised of what:
		1. factors were considered in determining that my role was high risk.
		2. the risk was and how it was quantified.
		3. risk mitigation factors were considered for each of the risks.
		4. considerations were taken into account in determining that my role would have to be carried out by an employee who has had the Immunisation.
	2. I was not consulted on:
		1. my views on the risk.
		2. my ideas on how any risks could be mitigated.
		3. any proposals I had in order to carry out my role safely.
2. Before determining whether or not my role is one which requires me to have the Immunisation, and certainly before determining that there cannot be other options to ensure that I can continue working while still ensuring that your health and safety obligations have been fulfilled, you are required to consult with me and to actively consider any concerns I may have with your suggestion and also any proposals I may have in relation to mitigating the risk.
3. Recently, the Employment Court in *WXN v Auckland International Airport Limited* held that:

*[165] Good faith is a developing concept. Its scope is informed by particular circumstances. The Act focuses on maintaining and preserving employment relationships, rather than terminating them. It is arguable that in circumstances such as the COVID-19 context, where a “no jab, no job” outcome is under consideration, there is an active obligation on the employer to constructively consider and consult on alternatives where there is an objectively justifiable reason not to be vaccinated.*

1. The judge in that case noted that the employer had not considered the employee’s proposals and had not adequately responded to the concerns raised in WXN’s letter. Nor had the employer consulted with WXN’s colleagues about his proposals. The judge found that this was likely a breach of the employer’s obligations and ordered the employee to be reinstated so that the Employment Relations Authority could determine whether or not a proper process had been followed and whether or not, after properly considering WXN’s proposals, WXN would have been able to continue working.

**Next steps**

1. I invite you to withdraw your letter of [date], stating that in order to maintain my employment, I must receive the Immunisation.
2. Please provide a copy of your health and safety risk assessment, along with a copy of the information set out in paragraph 7(a) above.
3. I will shortly forward you a health and safety risk assessment carried out by me, for consideration by you.
4. I look forward to working with you in an open and consultative process.
5. In the meantime, I confirm that I am ready, willing and able to continue in my current position.

Sincerely

**Your Name**

**Your contact details**

1. S4(1)(a) Employment Relations Act 2000. [↑](#footnote-ref-1)
2. S4(1)(b) Employment Relations Act 2000. [↑](#footnote-ref-2)
3. S4(1A)(b) Employment Relations Act 2000. [↑](#footnote-ref-3)