***INSTRUCTION PAGE I***

Text

Description automatically generated with low confidence

**Following is a template letter** that can be used in the situation where you have been injured having dutifully complied with your employer’s vaccine policy and you are refusing to receive another vaccine.

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.

| 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 for 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 your employer has requested, directed or advised that it expects you to be vaccinated and there is NO requirement for your role to be vaccinated in the government's Vaccination Order. The latest vaccination order/s are available at <https://covid19.govt.nz/alert-levels-and-updates/legislation-and-key-documents>
4. If you have been injured as a consequence of a vaccine you have received under your employer’s vaccine policy you should seek an exemption.
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 with your letter.

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.

**Employee’s header name/ contact details**

**[Employer's Name of place**

**Address**

**Address]**

[Date]

FOR: [The Manager | Executive Board]

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

**Introduction**

1. I refer to my employment agreement of [date] and [check your employment agreement and confirm the following] note that there is no express provision within that employment agreement that I must undergo a medical procedure in order to carry out my role as [state your title/position] (**Role**).
2. On [date] you introduced a policy requiring staff to be vaccinated by receiving a novel mRNA vaccination against Covid-19 (**Vaccination** **Policy**). The Vaccination Policy specified that an employee is to receive their first vaccine [date] and second by [date].
3. Pursuant to your Vaccine Policy, I dutifully received my first vaccine on [date] and second on [date]. [delete if you didn’t have a second]
4. After the first/second vaccine I suffered a vaccine injury which is confirmed by my doctor. My doctor’s certificate is **attached**. Add information of the side effects and the doctor’s advice if they wish.
5. If I were to receive another vaccine for Covid-19, there is a real probability that I will suffer further negative side effects (and certainly greater than those of Covid-19). I note that Medsafe has confirmed that a possible vaccine side effect is death[[1]](#footnote-0).
6. Given the potential for serious further injury if I were to receive a further vaccine, I request that you allow me to continue to work in my role with the vaccines I have already had and not insist that I receive a further vaccine which may cause further irreparable and significant injury.

**Obligations**

1. I accept we have mutual obligations to act in good faith[[2]](#footnote-1) and to not mislead or deceive one another[[3]](#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[[4]](#footnote-3).
2. Further, in the situation where you are proposing 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 the decision is made[[5]](#footnote-4).
3. Finally, before terminating employment for a failure to comply with a vaccine mandate (whether government or employer initiated mandate) *"the employer must ensure that all other reasonable alternatives that would not lead to termination of the employee’s employment agreement have been* ***exhausted****.”[[6]](#footnote-5)*
4. 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.
5. Furthermore, you have a responsibility to assess the potential risks and benefits of any health and safety measures you propose to implement.

**Consider alternatives**

1. If you will not allow me to work as I have outlined then, I request that arrangements be made by you to allow me to do so until such time as this pandemic is endemic and the Vaccination Policy is no longer required. Pursuant to *WXN case,* as my employer, you are obliged to consider alternatives, which the Employment Court has confirmed with respect to Covid-19 vaccination mandates and requests.
2. IN *WXN v Auckland International Airport Limited* the Employment Court 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.
2. As to my proposals, I could continue working for you while still allowing you to meet your obligations. The proposals I make are:
   1. To work remotely.
   2. To test weekly and only attend the workplace upon receipt of a negative test result.
   3. [proposal made by you]
   4. [add any other proposals to this list].
3. I have for [Insert time period during which you worked from home] from [date] to [date], been working from home. I have done this effectively and efficiently. There is no reason I cannot continue to do so and have not received any feedback as to why this cannot be possible.
4. In the interests of preserving our employer/employee relationship, this is an option which must be considered, particularly as proper consideration of my proposals could result in my remaining employed rather than unemployed.

**Police Case**

1. Further, as your Vaccination Policy was premised on a health and safety audit, you are no doubt aware of the recent decision of Yardley & Ors v Minister for Workplace Relations and Safety & Ors [2022] NZHC 291 (**Police Case**).
2. Key findings in that case were und the Police Mandate to be unlawful because it placed unjustified limits upon fundamental rights protected by the NZ Bill of Rights Act 1993 (**BORA**), namely:

a. the right of an affected worker refuse to undergo medical treatment (s 11 BORA) including by its limitation upon its rights for people to remain employed [45] and [46];

b. the right to manifest religion (s 15 BORA) but limited to those who object to vaccination with a vaccine that has been tested using cells derived from a human foetus on religious grounds [52].

1. The assessment on the unjustified limits placed on the right to refuse medical treatment or right to manifest religion (where that religion specifically takes issue with a practice in which the vaccine was made) applies equally to all workers and even more so with employer policies.
2. There is a clear finding in the case that vaccination does not stop transmission of the virus (certainly Omicron but perhaps Delta also). Meaning both vaccinated and unvaccinated people are just as able to spread the virus. Delta was highly transmissible and Omicron is even more so again. However, the finding that both vaccinated people and unvaccinated people transmit Omicron is a torpedo to both the Vaccination Order and employer’s jab policies requiring vaccination.
3. There was a further clear and unequivocal finding that based on the numbers of the already highly vaccinated workforce considered in that case, that vaccination of the remainder would make much difference.
4. Therefore, in the circumstances, the Vaccination Policy needs to be updated and reconsidered in light of the dominant Omicron variety.

**s 83 notice**

1. As my employer you have a primary duty of care, so far as is reasonably practicable, to ensure mine and other employees health and safety (section 36 HSWA). Failure to do so is an offence under sections 47-49 of that Act.
2. Failure to grant an exemption or facilitate reasonable alternatives where I am at serious health risk should I receive another vaccination, will likely give rise to a section 83 notice pursuant to Health and Safety at Work Act 2015[[7]](#footnote-6) which gives a worker the right to cease or refuse to carry out unsafe work. I trust that this won’t come to that.

I look forward to hearing from you.

Sincerely

**Your Name**

**Your contact details**

1. <https://www.health.govt.nz/covid-19-novel-coronavirus/covid-19-vaccines/covid-19-pfizer-vaccine-side-effects-and-reactions#rare> [↑](#footnote-ref-0)
2. S4(1)(a) Employment Relations Act 2000. [↑](#footnote-ref-1)
3. S4(1)(b) Employment Relations Act 2000. [↑](#footnote-ref-2)
4. S4(1A)(b) Employment Relations Act 2000. [↑](#footnote-ref-3)
5. S4(1A)(c) Employment Relations Act 2000. [↑](#footnote-ref-4)
6. Emphasis added. Schedule 3A clause 3(4) Employment Relations Act 2000. [↑](#footnote-ref-5)
7. [↑](#footnote-ref-6)