***INSTRUCTION PAGE i***



**Following is a template letter** that can be used in the situation where your employer has implemented a vaccination policy/risk assessment and they need to update it with respect to Omicron, the Police case and pursuant to their obligations of good faith.

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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***INSTRUCTION PAGE ii***



**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. Do not forget to include your email in the letter so that your employer knows where best to respond to you in writing.
5. Sign off the letter.
6. 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.

**Employees header name/ contact details**

**[Employer's Name of place**

**Address**

**Address]**

[Date]

FOR: [The Manager | Executive Board]

**OBLIGATION TO UPDATE THE RISK ASSESSMENT**

1. On [date] you implemented a compulsory vaccination policy which was based on a health and safety risk assessment that you conducted in about [month].
2. I confirm my commitment to act in good faith and to be honest, open and clear with you.
3. The risk assessment and vaccine policy were delivered at a time when Delta was the dominant variant of Covid-19, Rapid Antigen Tests (**RAT**) were not readily available, the Police Case has not been heard and determined, and other large employers had not yet commenced revising their policies.
4. It is clear that things have substantially moved on. It is therefore necessary for you to update the risk assessment and vaccination policy in light of the pandemic as it is currently. I deal with each under their own headings below.
5. Prior to you making any decision on my termination I ask you to reconsider your policy/risk assessment in line with:
	1. The rapidly evolving nature of the pandemic and the fact that Omricon is now the dominant variant of Covid-19;
	2. That RAT’s are readily available;
	3. The Police case;
	4. The decision by Government to cease the requirements of CVC’s and the reduction of a number of mandates.

***Omicron the dominant Variant***

1. Omicron is now the dominant variant in New Zealand. Vaccination has not stopped Omicron and the majority of New Zealand is anticipated to have had Omicron by the end of March when it is expected to have peaked[[1]](#footnote-2), and will be over with shortly thereafter. The consequence of which will be the majority of New Zealand will have obtained natural immunity making any further vaccinations for COVID-19 entirely redundant.
2. Omicron was also discussed in the Police Case, summarised further below.

***Rapid Atigen Tests***

1. RATs are now widely available and need to be included in your risk assessments as an additional control. Given vaccination doesn’t stop the spread of Omicron, if Covid-19 is a risk in the workplace, then regular testing of both vaccinated and unvaccinated is necessary and will need to form part of the updated risk assessment.
2. I confirm that I would agree to undergo these tests on a regular basis.

***Police Case***

1. On Friday 25 February 2022, the High Court set aside the Police and Defence Force Vaccination Order (COVID-19 Public Health Response (Specified Work Vaccinations) Order 2021) (**Police Mandate**) because it was unlawful. The decision was Y*ardley & Ors v Minister for Workplace Relations and Safety & Ors [2022] NZHC 291* (**Police Case**).[[2]](#footnote-3)
2. The High Court found 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:
	1. 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 Police Case has a flow on effect and application to your vaccination policy. The Police Case is relevant to employer policies as Police and Defence Force workers have the same rights under the BORA as every other New Zealander, so it is difficult to see how 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) would not equally apply to your policy.
2. Other key findings in the decision is that:
	1. mandatory vaccination does not assist in preventing workers in affected roles from contracting COVID-19, or transmitting it to others (either Delta or Omicron) [88-89] – it is clear from the evidence that vaccination does not prevent persons contracting and spreading COVID-19, particularly with the Omicron variant;
	2. the judge preferred the Police’s expert evidence from Dr Petrovksky's evidence that mandatory vaccination won't stop transmission - in fact, it will lead to further spread by asymptomatic, vaccinated people.
3. 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.
4. The decision suggests that vaccination means you might not get COVID-19 as bad, which leaves the only remaining health reason to get vaccinated is for you personally to not get as sick. It therefore can only be a personal choice, and not one that can be imposed by a government or an employer.
5. The judge was also quick to point out that the effectiveness of the vaccine wanes quickly after each shot.
6. While the Crown has appealed this decision, the decision of the High Court is binding until the appeal is upheld.

***Government’s removal of the use of My Vaccine Pass and certain vaccine mandates***

1. On Wednesday 23 March 2022, the PM announced that from 5 April 2022:
	1. there was no longer the requirement to use My Vaccine Pass and QR Codes were no longer required;
	2. vaccine mandates for certain worker types would be removed, namely education staff and places where My Vaccine Pass was required – there was also the ‘removal’ of the vaccine mandates on the Police and Defence workers that was announced, however, those mandates were already determined to be illegal and had been removed pursuant to the Yardley decision discussed above.
2. There were further announcements that other workers affected by the vaccine mandates may be considered as and from 4 April 2022.
3. It is clear by the removal of the use of Vaccine Passes across the country and the abolishing of mandatory vaccination of education staff which is presently 64,000 teaching staff (not including support staff), that the government itself has reassessed the risk of COVID-19 on the population at large and determined the risk profile has dramatically altered.

***Other major companies and public organisations reviewing their policies***

1. On 9 March 2022 Fonterra, one of New Zealand’s biggest organisation announced they were abandoning its hard-line vaccine policy. The Chief Executive Miles Hurrell in an email told staff “*we’ve taken on board the latest health advice, we have more information about rapid antigen tests and the risks omicron poses”.[[3]](#footnote-4)*
2. On 4 March 2022, Government departments and agencies were advised by the Public Service Commission to ‘pause’ the dismissal of staff who are refusing to get vaccinated and review their health and safety risk assessments.[[4]](#footnote-5) The Public Service Commission stated:

*“The Yardley decision presents agencies with a timely reminder that health and safety risk assessments should be reviewed on a regular basis to maintain their currency and test the assessments against emerging or new advice.*

*...*

*We therefore recommend that dismissal processes are paused whilst agencies review their health and safety risk assessment and vaccination policy. Once this review is complete, we recommend agencies revisit their rationale for any proposed dismissals, to confirm that it remains current and justified.”*

1. If the government is advising its agencies to reconsider its health and safety risk assessments and policies, it seems that the same advice and recommendations has application in the nature of our workplace.

**Conclusion**

1. Based on the above, please confirm that you will you review the Vaccination policy, risk assessments and Vaccination Request and undertake consultation with affected staff.
2. If you will not revoke the Vaccination Request, then please confirm you respect my right to informed consent and to refuse to undergo any medical treatment?
3. Should my choice not be respected, and the terms of my employment are negatively affected because of this choice, then I may exercise my right to file a personal grievance.
4. I trust that you will take into consideration the important information outlined in this letter for the sake of the safety and wellbeing of your employees.
5. I confirm that I am willing ready and able to carry out and perform my role of employment.

Sincerely

**Your Name**

**Your contact details**

1. <https://www.theguardian.com/world/2022/feb/08/new-zealand-omicron-wave-likely-to-peak-in-march-with-up-to-30000-cases-a-day-says-ardern> [↑](#footnote-ref-2)
2. <https://www.courtsofnz.govt.nz/assets/cases/2022/2022-NZHC-291.pdf> [↑](#footnote-ref-3)
3. <https://www.newsroom.co.nz/pro/fonterra-repeals-vaccine-mandate-in-favour-of-daily-rapid-antigen-tests> [↑](#footnote-ref-4)
4. <https://www.publicservice.govt.nz/resources/updated-guidance-for-agencies-on-vaccination-policies-and-associated-dismissals/> [↑](#footnote-ref-5)