



# INFLUENZA VACCINATION OF RESIDENTIAL AGED CARE FACILITY WORKERS

*How do I manage influenza vaccination compliance of workers in Residential Aged Care Facilities?*

	<i>Background</i>	Each State & Territory has operationalized mandatory influenza vaccination requirements for Residential Aged Care Facilities (by way of Directions & Orders issued under applicable health legislation). <sup>1</sup> The rules do not apply to Home Care Workers.	
	<i>General Rule</i>	A 'person' (including employees) must have an up to date vaccination against influenza, if such vaccination 'is available' to the person. <sup>2</sup>	
	<i>Penalties</i>	A person does not breach the applicable Direction/Order if s/he has a 'reasonable excuse'. <sup>3</sup>	
	<i>Operation</i>	A vaccine is deemed not to be available to a person who is unable to be vaccinated against influenza due to a (medical) contraindication.	
	<i>Contraindication generally</i>	A (medical) contraindication is "a medical condition or risk factor in a recipient/person that makes receiving a specific vaccine potentially harmful". <sup>4</sup>	
	<i>Recognised Contraindication for FluVax</i>	The only (recognised) absolute contraindication to 'flu vaccination' are 1 or more of the following: <sup>5</sup> (1) a history of previous anaphylaxis following vaccination; (2) (acquiring or triggering) Guillain-Barre Syndrome following flu vaccination; or (3) people on check-point inhibitor drugs for cancer treatment.	
	<i>Recognition of other grounds?</i>	If a person has an egg allergy, unless it gives rise to anaphylaxis, an egg allergy in & of itself will NOT constitute a contraindication to flu vaccination. It is also unlikely any exemptions on other medical or religious grounds would be granted or would constitute a reasonable excuse for the purposes of penalty provisions. <sup>6</sup>	
	<i>Steps for employers to take in relation to workers who refuse to comply on grounds that do not constitute a recognised contraindication</i>	<i>Step 1</i>	Consult with workers and advise them of their obligation to be vaccinated against influenza if the vaccine is available to them, unless they can provide evidence of a recognised contraindication for influenza vaccination entitling them to be exempt from the obligation.
		<i>Step 2</i>	Provide education, training and information regarding the importance of vaccination against influenza in the current environment.
		<i>Step 3</i>	Direct the relevant worker to be vaccinated against influenza & advise them the direction is a lawful instruction / reasonable direction & failure to comply could result in termination of employment.
		<i>Step 4</i>	If the worker does not comply with the direction, advise the worker in writing that the Facility will stand them down without pay for 48 hours, to allow them time to both consider the influenza vaccination information provided to them and to reconsider their decision not to comply with the direction in light of the consequences to them for non-compliance.
		<i>Step 5</i>	If the worker continues to elect not to comply with the direction, direct the worker (in writing) to attend a meeting to discuss their failure to follow a lawful instruction / reasonable direction to be vaccinated when the vaccine is available to them.
	<i>Risks</i>	As with any dismissal, there may be a risk of a claim to the Fair Work Commission, including for unfair dismissal or adverse action. Whilst failing to follow a lawful instruction & reasonable direction is included in the Fair Work Regulations' definitions of 'serious misconduct' ( <a href="#">Reg.1.07</a> ), it could be considered harsh in the current environment not to afford a worker the notice period required by the applicable industrial instrument or the <a href="#">National Employment Standards</a> .	



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*Decision Matrix*

		NO	YES
<b>STEP 1</b>	<i>Does the worker have a recognised medical Contraindication?</i>	Disciplinary Process   Possible Termination	<i>Go to Step 2</i>
<b>STEP 2</b>	<i>Can the worker still go to work or do their usual work?</i>	Work from Home <i>or</i> Stand Down	<i>Go to Step 3</i>
<b>STEP 3</b>	<i>Has there been a flu outbreak in the Facility?</i>	<i>Go to Step 4</i>	<i>Go to Step 4</i>
<b>STEP 4</b>	<i>What are the options having conducted a risk assessment?</i>	Redeploy (if able) <i>or</i> Work from Home <i>or</i> Normal Work	Redeploy (if able) <i>or</i> Work from Home <i>or</i> Stand Down

*Notes*

- Public Health Orders & Directions by State: [ACT](#), [QLD](#), [NSW](#), [VIC](#), [TAS](#), [SA](#), [WA](#), [NT](#)
- Except for SA. 3. Except for NSW. 4. [Department of Health Immunisation Handbook](#)
- [Media Release](#), 'Aged Care Workers Must Get Flu Vaccination', 2 April 2020, Minister for Aged Care, Senator Richard Colbeck on advice from Chief Medical Officer Brendan Murphy.
- [National Centre for Immunisation Research, Influenza Vaccines - FAQs, March 2020](#)

*Procedural Fairness*

- Employers must afford procedural fairness (as in any disciplinary process), which includes:
- giving the worker a reasonable opportunity to consider the written material;
  - providing the worker with the opportunity to bring a support person to the meeting;
  - ensuring the worker understands that termination of employment could be a consequence of the disciplinary process;
- ensuring the employee is given an opportunity to respond to the issues raised at the meeting, before a decision is made regarding their ongoing employment.