



Ref: 224657

23 November 2023

Erika Whittome
Via FYI.org.nz

Tēnā koe Erika

Response to your request for Official Information

On 10 November 2023, you requested the following information from the Human Rights Commission (“the Commission”) under the Official Information Act 1982 (“OIA”):

I refer to my request <https://fyi.org.nz/request/23408-hrc-policies-correspondence-etc-on-medical-disability-and-vaccination-for-complaints>

And in your response you mention templates. I will copy and paste from your response:

Is the complainant (‘C’) alleging direct or indirect discrimination on the basis of one of the prohibited grounds in the Human Rights Act 1993?¹⁵

- Yes: go to step (4) for disability discrimination, (5) for religious belief discrimination, (6) for political belief discrimination.

- No (for example, the complaint is about ‘vaccination status’ only): we cannot assist. See ‘mandatory vax (no jab, no job)’ template, and ‘generic bulk response (Dec 2021 template)’.

Please would you provide a copy of these templates: ‘mandatory vax (no jab, no job)’ template, and ‘generic bulk response (Dec 2021 template)’.

In response to your request, we **attach** these two templates as the Appendix to this letter.

Alternative avenues

If you are not satisfied with this response, under the Official Information Act you are entitled to complain to the Ombudsman’s Office. Information about how to make a complaint is available at www.ombudsman.parliament.nz or on freephone 0800 802 602.

Nāku noa, nā

Philippa Mitskevitch

Kaitohu Ture | Legal Advisor

New Zealand Human Rights Commission | Te Kāhui Tika Tangata

Appendix

Template response: Mandatory vax (no jab no job)

Kia ora

Thank you for contacting the Human Rights Commission. We are sorry for the delay in responding to you. The Commission is receiving a very high volume of enquiries and complaints about Covid-19 and this is significantly affecting our response times.

You have complained about mandatory vaccinations in workplaces. This email explains more about:

- *Mandatory vaccinations in workplaces*
- *The Commission's role*
- *Complaints we can and can't progress*
- *Where to get information and advice about Covid-19.*

Mandatory vaccinations in workplaces

From 30 April 2021, the COVID-19 Public Health Response (Vaccinations) Order 2021 made it a requirement for all MIQ workers, and other government officials at high-risk border settings, to be fully vaccinated. As you are likely aware, the Government subsequently extended this to apply to workers in other 'high risk' sectors. The Government has recently announced upcoming changes to the Red traffic light setting, including that, from 11.59pm on 4 April 2022, Government vaccine mandates for some workers will be removed. You can find further information on this here: <https://covid19.govt.nz/traffic-lights/life-at-red/>. Please note some workers will still be covered by government vaccine mandates, including health and disability sector workers, prison staff, and border and MIQ workers.

For work not covered by the vaccine mandates, businesses can still assess whether specific work in their workplace requires vaccination. The [Ministry of Business, Employment and Innovation](#) has [guidance](#) on its website for employees and employers on Covid-19 vaccination requirements in the workplace and the risk assessment process. This includes a [vaccination assessment tool](#). The process must be fair and reasonable and carried out in good faith.

Some people may be eligible for a vaccine exemption. Further information on how to apply for this can be found [here](#).

The Commission's role

We use impartial dispute resolution to resolve complaints that meet the criteria for unlawful discrimination. [Dispute resolution](#) involves a mediator talking to the people involved and helping them communicate to resolve the complaint. In some cases, we offer mediation. Our process is fair to everyone involved and we don't take sides or advocate for people who complain to us. The Commission does not investigate complaints, make findings, or impose penalties. We are unable to provide legal advice.

Complaints we can help with

The Commission's role is defined by the Human Rights Act. We can only offer our dispute resolution process for complaints that meet the criteria for unlawful discrimination under the Human Rights Act. Unlawful discrimination happens when:

1. A person is treated differently to someone in the same or similar situation, and
2. there is some indication or evidence they were treated differently because of [one of the prohibited grounds](#) in the Act (such as their disability, age, ethnicity, religious belief or political opinion), and
3. the different treatment happens in an area of public life (such as employment, education, government services, access to housing), and
4. they are disadvantaged or significantly impacted by the different treatment, and
5. there is no relevant justification or exception in the Human Rights Act.

A relevant exception in the Human Rights Act

The Human Rights Act prohibits employers from discriminating against an employee because of one of the prohibited grounds. However, where workplaces are correctly applying and following the law, their actions are unlikely to be unlawful under the Human Rights Act. This is because section 21B of the Human Rights Act states that when a person or organisation takes actions required by law, then those actions are not unlawful under the discrimination provisions of the Act. Essentially, this places responsibility on the Government that makes the rules, rather than on the employer who follows them.

Complaints we can't progress

We cannot offer dispute resolution for all complaints. For example, we cannot offer dispute resolution for the following:

- **General complaints about the Government's response to Covid-19**, unless they meet the criteria for unlawful discrimination (as defined above).
- **Complaints related to your rights under the Bill of Rights Act**, or other laws or human rights mechanisms. We can only offer our dispute resolution process for unlawful discrimination complaints under the Human Rights Act.
- **Situations where a person makes a personal choice**. For example, where someone chooses not to wear a face covering, or not to get vaccinated, for personal reasons. This is because personal choice and vaccination status are not prohibited grounds of discrimination in the Human Rights Act. As you may be aware, political opinion and religious belief are prohibited grounds. However, they have specific meanings under the Human Rights Act:
 - **'Political opinion'**: the New Zealand courts have interpreted 'political opinion' to primarily apply to party political matters. As such, the definition is unlikely to extend to someone's personal preferences or views (for example, to not get vaccinated);
 - **'Religious belief'** does not cover personally held beliefs. Someone making a complaint on religious grounds would generally need to show their belief is sincere and connected to an established religion, and explain how their religious belief prevents them from being vaccinated.

If you contact us with human rights concerns that aren't covered by our dispute resolution process, your contact still helps inform our broader advocacy work. However, we are unable to progress or respond to your individual complaint.

Information and advice about Covid-19

You can find more information about Covid-19 on the following websites:

- *Employment NZ has information about [COVID-19 in relation to employment](#), including specific information about [vaccines and the workplace](#). This includes information about notice periods; paid time off to get vaccinated; and obligations to consider all reasonable alternatives. You can also find out more about Employment NZ's mediation service for employment complaints here: <https://www.employment.govt.nz/resolving-problems/>*
- *Disabled Persons Assembly NZ has [COVID-19 information for the disabled community](#)*
- *Community Law has information about [COVID-19 and the law](#)*
- *The Government's [Unite against Covid-19](#) website has the latest information about [vaccines](#), the new [traffic light system](#), [rapid antigen tests](#) and more.*

There may also be [support available from Work and Income](#) for people who have lost their jobs as a result of their decision not to get the Covid-19 vaccination. If you need legal advice, the [Citizens Advice Bureau website](#) offers some options.

We hope this information is helpful for you. Thank you for contacting the Human Rights Commission.

Ngā mihi

*Human Rights Information and Support Services
New Zealand Human Rights Commission*

Template Response: Generic bulk response (December 2021 template)

Kia ora

Thank you for contacting the Human Rights Commission. We apologise for the delay in responding to you. The Commission is receiving a very high volume of enquiries and complaints about Covid-19 at present and this is significantly affecting our response times.

We are aware the Covid-19 response has evolved since you first contacted us. We have provided some general information below which we hope will be helpful for you.

This email explains more about:

- Human rights and Covid-19*
- Complaints we can and can't help with*
- How we help with complaints*
- Other agencies who can help*
- Where to get information and advice about Covid-19.*

Human rights and Covid-19

The Government measures to combat Covid-19 are extraordinary and place significant restrictions on New Zealanders' human rights. Even during a pandemic, everyone has human rights and freedoms under the [New Zealand Bill of Rights Act](#) and the [Human Rights Act 1993](#). However, there are times when limiting these rights and freedoms can be justified under section 5 of the New Zealand Bill of Rights Act.

Complaints we can help with

We offer a dispute resolution process for complaints about unlawful discrimination under the Human Rights Act. Under the Human Rights Act, unlawful discrimination happens when:

- 1. a person is treated differently to someone in the same or similar situation, and*
- 2. there is some indication or evidence they were treated differently because of [one of the grounds in the Human Rights Act](#) (such as their disability, age, ethnicity), and*
- 3. the different treatment happens in an area of public life (such as employment, education, government services, access to housing), and*
- 4. they are disadvantaged or significantly impacted by the different treatment, and*
- 5. there is no relevant justification or exception in the Human Rights Act.*

Our role is defined by the Human Rights Act, so we are limited in what we can help with in our complaints process.

Complaints we can't progress

We cannot offer dispute resolution for these complaints:

- **General complaints about the Government's response to Covid-19**, unless they meet the criteria for unlawful discrimination (as defined above).*
- **Situations where a person makes a personal choice**. For example, where someone chooses not to wear a face covering, or not to get vaccinated, for personal reasons. This is because personal choice and vaccination status are not prohibited grounds of discrimination in the Human Rights Act. Please note: 'Political opinion' and 'religious belief' are both prohibited grounds in the Human Rights Act. However, these grounds do not cover personally held beliefs, views or preferences.*
- **Immigration matters**, because [the Immigration Act](#) prohibits us from taking any action on complaints about immigration policy or decisions.*

- **Complaints related to your rights under the Bill of Rights Act, or other laws or human rights mechanisms.** We can only help with unlawful discrimination complaints under the Human Rights Act.

If you contact us with the above complaints, or with other human rights concerns that aren't covered by our dispute resolution process, your contact still helps inform our broader advocacy work. However, we are unable to progress or respond to your individual complaint.

How we help with complaints

We use impartial dispute resolution to resolve complaints. The Commission does not investigate complaints, give legal advice, make decisions, or impose penalties. Our dispute resolution process involves a mediator talking to the relevant people and helping them communicate to resolve the complaint. Our process is fair to everyone involved and we don't take sides or advocate for people who complain to us. If you believe you have been personally discriminated against, you can provide more information through our complaint form: <https://tikatangata.org.nz/resources-and-support/make-a-complaint>. We will check if the complaint meets the criteria and contact you.

Other agencies who can help with complaints

- [Employment NZ](#) offers a mediation service for employment complaints.
- [The Ombudsman](#) can help with complaints about government agencies, including MIQ facilities.
- [The Health and Disability Commission](#) can help with complaints about the service you have received from a health or disability provider.

Information and advice about Covid-19

You can also find more information about Covid-19 on the following websites:

- Employment NZ has information about [COVID-19 in relation to employment](#), including specific information about [vaccines and the workplace](#)
- Disabled Persons Assembly NZ has [COVID-19 information for the disabled community](#)
- Community Law has information about [COVID-19 and the law](#)
- The government's [Unite against Covid-19](#) website has the latest information about [vaccines](#), [rapid antigen tests](#), and more
- The [Ministry of Health](#) provides the latest updates and advice about Covid-19.

If you need legal advice, the [Citizens Advice Bureau website](#) offers some options.

We hope this information is helpful for you. Thank you for contacting the Human Rights Commission.

Ngâ mihi,