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Covid-19: Nine Customs border workers fired after refusing job

George Block · 05:00, May 02 2021



STUFF

New Zealand's slow rollout of Covid-19 vaccines has allowed health officials to observe various aspects of other nations' programmes (first published April 15).

In what could be a sign of things to come, [nine Customs workers, including four at a single provincial port](#), have been fired for refusing the Covid-19 vaccine.

One of the maritime border workers said she was devastated to be sacked and frustrated by what she says was a lack of consultation by the agency. She asked not to be named because she feared public criticism for her decision not to vaccinate.

Customs is defending its communication with the workers and says it can't offer redundancy payments, as the sacked staff are calling for, because their roles are not being disestablished.

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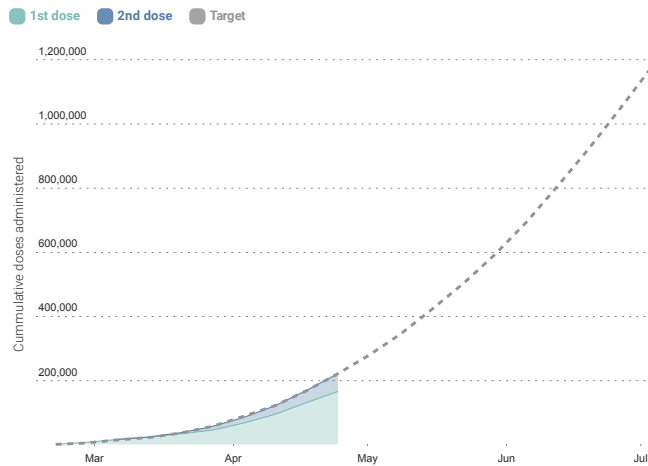
Auckland employment lawyer Catherine Stewart said employers of workers required to be vaccinated were likely to be able to substantively justify dismissing an unvaccinated employee.

They would point to the Covid-19 Public Health Response (Vaccinations) Order, and explain they are unable to lawfully continue with an unvaccinated person in the role.

"However, substantive justification is only one aspect of a justified dismissal and the employer would also need to follow a robust process prior to carrying out any dismissal," she said.

New Zealand's Covid-19 vaccine rollout

Weekly cumulative doses administered



Source: [Ministry of Health](#)

Data as of Apr 24, 2021

"This means that they should consult with staff and, if a worker is reluctant to be vaccinated, ascertain the reasons for this and work with them to try to persuade them effectively to be vaccinated.

"If the worker is still unwilling to be vaccinated then the employer should consider alternatives and try to redeploy the worker into a role that does not require vaccination, in order to save the worker's employment."

She agreed with Customs' view that redundancy provisions in employment agreements would not come into play where a worker is dismissed because they are unvaccinated.



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going into force.

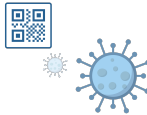
It requires all workers in managed isolation and quarantine (MIQ) facilities, and those who work for Government agencies at the border, to be vaccinated.

The worker had a role until Friday at a provincial port monitoring international ships, making sure stevedores and their crew took appropriate Covid precautions, including protective gear.

"We took it seriously, it's really important. If we weren't there, people got lax."

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The woman said she never came into contact with international crew and believed there was insufficient risk to justify her being required to vaccinate.

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She was not a union member and had a lawyer write to Customs in December asking management to keep her informed if there was to be any changes to their role.

However, she said she found out via the media in March that workers like her, who refuse to get vaccinated, [could be barred from frontline roles](#).

The woman would not disclose her rationale for not getting the vaccine.

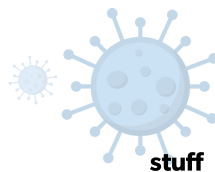
"I don't ... have to explain why I don't want to be vaccinated, it's my choice under the Bill of Rights."

Matters came to a head at a meeting on Thursday.

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Management said the nature of her position meant it was not possible to modify her role to reduce her exposure to Covid-19, according to a letter sent the following day terminating her employment.

"We also advised you that Customs has been searching for internal redeployment opportunities for you, none were available in the [...] region, but Customs is looking for external redeployment opportunities through the Public Services Commission's Workforce Mobility Hub," the letter said.

The woman is supported by Christchurch employment law educator Ashleigh Feehany.



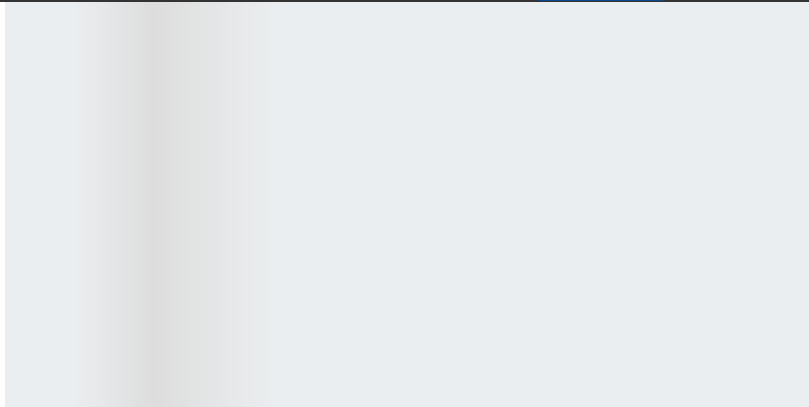
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ALDEN WILLIAMS/STUFF

Fechney believes the workers should be offered some compensation after losing their jobs.

"The roles are ongoing and we will recruit into them," the letter said. "Given the matters we discussed at the meeting, including the reasons why Customs requires your position to be performed by a vaccinated person, the Government's requirement that non-vaccinated border workers stop working in those positions by May 1, and the absence of suitable redeployment opportunities, we advised that Customs had decided to terminate your employment as proposed.

"Please treat this letter as formal notice of termination of your employment in accordance with Part 9 of your Employment Agreement."

She was not required to work out her notice and will be paid for those four weeks as a lump sum in her final pay.

The woman said she was frustrated and disappointed.

"I just feel undervalued. It's been very, very unpleasant, very unprofessional, and it's devastating."



RNZ

University of Canterbury Professor Michael Plank is adamant that vaccinating the young is vital to ensure New Zealand reaches herd immunity.

Fechney, who is advocating for several other Customs workers in a similar situation, said the Government should be paying the sacked workers compassionate compensation.

"If you're going to terminate, at least do it in a redundancy setting," she said. "They gave up their own health and safety to protect the borders."

The worker was also given the option of remaining employed for four weeks while Customs



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ROSA WOODS/STUFF

A new Covid-19 public health order means all government border workers and staff at managed isolation facilities must be vaccinated.

She confirmed nine Customs employees, including the four at the provincial port, had their contracts terminated because they were unvaccinated.

Over 95 per cent of Customs staff have had their first dose and more than 85 per cent the second dose, she said.

"We've been able to redeploy most of the people who haven't been vaccinated," she said. "There was just a very small number who we simply weren't able to find redeployment options within Customs for. We did attempt to work with them to find them roles in other organisations."

If they made the workers redundant they would be legally unable to replace them, she said.

Funnell rejected comments by Fechney and the workers that communication and consultation was lacking.

"I think that we have put a lot of effort into consulting with people. Senior managers have travelled to all of these ports to talk to staff, we have run many, many sessions online and in person with staff, they've had opportunities to talk to their managers."

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