

On 2 December 2021, the Acting Chief Health Officer issued directions pursuant to the Public Health Act 2016 restricting unvaccinated persons from accessing building and construction sites within Western Australia unless they are an exempt person. On 23 December 2021, further directions were issued that have now been complemented by directions issued on 5 February 2022 requiring eligible persons to obtain booster shots.

What You Need to Know

From 1 January 2022, only individuals who have received a single dose of a COVID-19 vaccine may enter or remain on a building or construction site. From 1 February 2022, this restriction is narrowed to those who are fully vaccinated.

From 5 February 2022, anyone previously eligible for a booster vaccination that has not obtained it is not permitted to access building or construction sites. Anyone becoming eligible for a booster vaccination after 5 February 2022 must obtain the vaccine within one month of becoming eligible or face restrictions.

Employers of building and construction workers, owners, operators, occupiers or persons in charge of building and construction sites must:

- Collect and maintain records of the vaccination status of workers
- Only roster and permit to work vaccinated workers
- Only permit vaccinated or exempt persons from entering or remaining on a building and construction site

What Is a Building and Construction Site?

A place at which building and/or construction work is being carried out, but not work:

- Carried out in relation to a dwelling in which a person is residing
- For which, pursuant to paragraph 41 of the Building Regulations 2012 (WA), a building permit is not required
- In any other place that is specified to be a building and construction site by the Chief Health Officer in writing or any person authorised by him for that purpose

Where only part of a premises is being used as a building and construction site, the directions do not apply to the balance of the premises that is not being used as a building and construction site.

What Is an Exempt Person?

No, playing tennis does not count! Only building and construction workers that can prove upon request that they have a medical exemption or a temporary exemption will be permitted on to sites unvaccinated. Medical exemption means a medical exemption recorded on the Australian Immunisation Register and displayed on the individual's Immunisation History Statement.

Penalties

AU\$20,000 for individuals and AU\$100,000 for bodies corporate.

Conclusion

To comply with the public health directions, stakeholders should consider and implement systems and processes to ensure entry to sites is strictly controlled and that vaccination records are kept up to date and available for inspection.

Main contractors may find that they are ultimately responsible for ensuring subcontractors comply as they are likely to be considered to be in charge of building and construction sites and the controlling entry.

Principals and owners will also need to ensure that they comply with their obligations to maintain records and control entry to sites in circumstances where they have not properly delegated obligations to contractors in their contracts or indemnified themselves against a contractor's failure to comply with laws.

Contracts usually make provision for how the risk and liability is allocated if a change in legislation impacts on a project after the date the contract is entered into. These clauses are normally restricted to changes that affect the physical works or particular activities.

Is the clause in your contract broad enough? If so, it may allow for any consequential increase in cost and delivery times to be recovered.

Author

Robert O'Brien

Of Counsel, Perth

T +61 8 9429 7580

E robert.obrien@squirepb.com

Key Contacts

Donna Charlesworth

Partner, Perth

T +61 8 9429 7465

E donna.charlesworth@squirepb.com

Cris Cureton

Partner, Sydney

T +61 2 8248 7846

E cris.cureton@squirepb.com

Brent Henderson

Partner, Sydney

T +61 2 8248 7810

E brent.henderson@squirepb.com

Melissa Koo

Senior Associate, Perth

T +61 8 9429 7568

E melissa.koo@squirepb.com

David Starkoff

Partner, Sydney

T +61 2 8248 7833

E david.starkoff@squirepb.com

Greg Steinepreis

Partner, Perth

T +61 8 9429 7505

E greg.steinepreis@squirepb.com