

Fair Work Commission: Consultation not required for Compliance with Public Health Directions

Where the Government has implemented a vaccination mandate for a particular industry or task, directing compliance does not require consultation.

In *Michael Taylor v WesTrac Pty Ltd* [2021] FWC 6595 (13 December 2021), the employee and employer are within a group of industries and occupations affected by Western Australian Public Health Directions requiring vaccination against COVID-19 to attend work.

The *Resources Industry Worker (Restrictions on Access) Directions (No. 2)*, made under the *Public Health Act 2016* (WA),

requires resource industry workers as defined to not enter a rural or remote resources industry site or a remote operating centre if they have not been partially vaccinated against COVID-19 on and from 1 January 2022. The order requires a resources worker to provide evidence of their vaccination status. Employers of resource industry workers must take steps to collect and maintain records of their vaccination status and only roster on, or otherwise permits to work on site, workers who have been vaccinated (Paragraph [10]).

The employee attempted to dispute the employer's requirement of compliance with this Direction in the Fair Work Commission. One of the arguments put by the employee was that the employer was required to consult under the Award about this 'change' and failed to do so.

The Commission ruled against the employee, stating that:

what has occurred here is not a definite decision by the [Employer] to make a change. Rather the [Employer] is merely seeking to comply with its obligations under the Western Australia Government's public health direction (Paragraph [17]).

Going further, the Commission also held that even if the Employer had "made a definite decision to make a change", the change would not be characterised as a change to which the consultation clause of the Award applied (Paragraph [18]).

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