



POSITION STATEMENT & GUIDANCE NOTE

Office of the Ombudsman National Human Rights Institution statement on COVID-19 vaccine mandates and proof of vaccine cards

In December 2021, the Government of Samoa in its efforts to ensure the safety of members of the public who entered the hospital and to boost vaccination numbers introduced a policy requiring members of the public who visited the Tupua Tamasese Meaole and Tuasivi Hospitals to provide proof of vaccination before being allowed entry.¹

More recently, the National Emergency Operation Centre (NEOC) Committee further proposed that the requirement to show proof of vaccination will also be enforced in the workplace (public services) starting 1 February 2022 and those who do not provide such proof will not be able to work.² Showing proof of vaccination will also be made mandatory for students when they return to school.³

The proof and showcasing of vaccination cards in Samoa currently applies to these three areas for public services and institutions – hospital, workplace and schools. For the private sector, majority of businesses have also put in place similar measures of showing proof of vaccinations for its employees and also members of the public.⁴ It is anticipated that more places will be included especially if COVID-19 spreads into communities.

VACCINATION REQUIREMENTS GENERALLY PERMISSIBLE

Mandating and requiring proof of vaccination to protect people at work/public places and/or when receiving services including health care is generally permissible under international human rights laws.

¹ Samoa Ministry of Health, December 2021 – *COVID-9 and Health care facilities*:
<https://www.health.gov.ws/covid-19/>.

² FK(22) Fa'apitoa 03 - Cabinet Directive and See *State of Emergency (SOE) Order 65*:
<https://www.samoagovt.ws/2022/01/order-66-poloaiga-o-faalavelave-faafuasei-numera-66/>. The Government through NEOC has also **strongly encouraged** private businesses to ensure that they put in place similar measures for the safety of their employees and members of the public.

³ See Government of Samoa COVID-19 webpage: <https://www.samoagovt.ws/category/novel-coronavirus-covid-19/>. Samoa Ministry of Health advice – *What prevention measures should be implemented in schools to prevent the spread of COVID-19?* <https://www.health.gov.ws/covid-19/>. See also Matai'a Lanuola Tusani T - Ah Tong, "Vaccine cards mandatory for public servants next month", <https://www.samoobserver.ws/category/samoa/96680>.

⁴ See *State of Emergency (SOE) Order 65*: <https://www.samoagovt.ws/2022/01/order-66-poloaiga-o-faalavelave-faafuasei-numera-66/>. See also Samoa Ministry of Health advice - *How can workplaces and businesses prevent COVID-19 transmission in the Workplace?* <https://www.health.gov.ws/covid-19/>.

However, it is important that there is reasonable accommodation especially for those who are not able to be vaccinated due to *health*-related reasons.⁵

It has been a great challenge throughout the pandemic for countries to uphold individual human rights while trying to collectively protect the general public. ***It is crucial that Governments and agencies do their best to balance the rights of people who have not been vaccinated due to a health-protected ground, such as disability, while ensuring individual and collective rights to health and safety.***⁶

DUTY TO ACCOMMODATE FOR MEDICAL REASONS

Unless it would significantly interfere with people's health and safety, people who are unable to receive a COVID-19 vaccine for *health*-related reasons must be reasonably accommodated. Under the vaccine regime, such persons *must provide written confirmation from their doctors* stating that they are exempted for a medical reason from being fully vaccinated and how long this would apply.⁷

TIME LIMITED REQUIREMENTS, PRIVACY PROTECTION

Proof of vaccine should not in any way limit access to any services including health care for people who are unable to be vaccinated for medical reasons.

*Proof of vaccine and vaccine mandate policies that result in people being denied equal access to health, education and/or employment or services on **justified** grounds, should only be used for the shortest possible length of time. Such policies might only be justifiable during a pandemic. They should regularly be reviewed and updated to match the most current pandemic conditions, and to reflect up-to-date evidence and public health guidance.*⁸

Legal safeguards for the appropriate use and handling of personal health information must also be included in policies.

ENFORCEMENT

Certain public services including hospitals, workplaces and schools are currently responsible under current health measures for ensuring that they enforce proofs of vaccination. Members of the public who visit hospitals, public servants and students must make sure any information they provide to show proof of vaccination (or proof of qualifying for an exemption like a doctor's note) are complete and accurate. There may be penalties for those who for example forge vaccine cards.⁹

⁵ See for example, NZ Ministry of Health, "COVID-19: Exemptions from mandatory vaccination", <https://www.health.govt.nz/our-work/diseases-and-conditions/covid-19-novel-coronavirus/covid-19-response-planning/covid-19-mandatory-vaccinations/covid-19-exemptions-mandatory-vaccination>

⁶ See British Columbia's Office of the Human Rights Commissioner, *A human rights approach to proof of vaccination during the COVID-19 pandemic*, October 2021, <https://bchumanrights.ca/wp-content/uploads/COVID-19-vaccine-guidance-Oct.-2021-update.pdf>.

⁷ Samoa Ministry of Health - <https://www.health.gov.ws/covid-19/>.

⁸ See OHCHR, *COVID-19 Guidance*, <https://www.ohchr.org/EN/NewsEvents/Pages/COVID19Guidance.aspx>. See also for example, British Columbia's Office of the Human Rights Commissioner, *A human rights approach to proof of vaccination during the COVID-19 pandemic: Policy Guidance*, July 2021, <https://bchumanrights.ca/wp-content/uploads/COVID-19-vaccine-guidance-Oct.-2021-update.pdf>.

⁹ See *State of Emergency (SOE) Order 66*: <https://www.samoagovt.ws/2022/01/order-66-poloaiga-o-faalavelave-faafuasei-numera-66/>.

It is important to note that when providing any agency with discretionary powers to assess proof of identification and vaccination, this may and can lead to disproportionate application and impact on members of the public especially vulnerable groups.

There may also be issues with those who do not have proof (either they left it at home or lost their cards) and may potentially be denied services, education or employment. In such situations, *service providers and agencies must ensure that they have in place measures to ensure that people still receive services without being denied or turned away.* An example of a measure can include confirming proof of vaccination online. *In the context of seeking medical care and for those who have not been vaccinated at all but still require urgent care, it is crucial that a system be put in place where such persons are still treated.*

Overall, when enforcing vaccine mandates or proof of vaccination policies, it is essential that governments and organizations take proactive steps to make sure that specific individuals are not discriminated and/or disproportionately targeted.

PERSONAL PREFERENCES AND SINGULAR BELIEFS NOT PROTECTED

NHRI Samoa and relevant human rights laws recognize the importance of balancing people's right to non-discrimination and civil liberties with public health and safety, including the need to address evidence-based risks associated with COVID-19.

Although receiving a COVID-19 vaccine is voluntary, at the same time ***a person who chooses not to be vaccinated based on personal preference or singular beliefs does not have the right to accommodation.***¹⁰

If a person has been denied a service or employment because of a personal preference or singular belief against vaccinations, the duty to accommodate them does not necessarily require they be exempted from vaccine mandates or certification. This should also apply to COVID-19 testing. ***The duty to accommodate can be limited if it would significantly compromise health and safety amounting to undue hardship – such as during a pandemic.***

¹⁰ Right to accommodation refers to the right to be accommodated/ treated on a certain ground.