



Nominated Supervisor

The worst thing an educator can do is ask another educator about regulations. Usually they get the wrong answer. To see this in action, read those Facebook pages that early childhood educators post on. How to do it correctly? A friend who works as a barrister taught me how to read regulations.

What is the problem?

What caused it?

The regulations should have the solution to the problem.

The Education and Care Services National Law has 87 penalties ranging from \$1000 to \$100,000 and the Education and Care Services National Regulations has 87 Penalties ranging from \$1000 to \$2000.

The unprofessional actions of educators will result in us getting fined, not them. That is how the law and regulations are written. Educators can put you at great financial risk. That is why you need to know what they put into practice by constantly testing your educators' knowledge and practice to ensure you don't end up with a fine.

Please read the educator and educational leader professional development activities.

Let's have a look at some routines and see how they could cause us a compliance issue, or worse a fine.

Please also see the Summary of Offences under the National Law and Regulations, and the relevant fines, in the [Guide to the NQF](#) pages 574-578.

Law/Regulation	What must happen
Law section 165 Offence to inadequately supervise children	Always supervise children adequately
Law section 167 Offence relating to protection of children from harm and hazards	Always protect children from harm and hazards
Law section 170 Offence relating to unauthorised persons on education	Always supervise anyone who is not authorised to be on the

Law/Regulation	What must happen
and care service premises	premises eg doesn't have WWCC or isn't a parent/family member or authorised nominee
77 Health, hygiene and safe food practices Fine \$2,000	Always implement: <ul style="list-style-type: none"> appropriate hygiene and health practices including hand washing, toileting, nappy changing and cleaning safe practices for storing, handling and reheating food
82 Tobacco, drug and alcohol-free environment Fine \$1,000	Never use tobacco, illicit drugs or alcohol on service premises when any child is present
83 Staff members not to be affected by alcohol or drugs Fine \$2,000	Never come to work if impaired by alcohol or drugs (including prescription medicine)
84 Awareness of child protection law Fine \$1,000	Never use corporal punishment Always report disclosures or suspicions of child abuse
86 Notification to parents of incident, injury, trauma and illness Fine \$2,000	Notify parents within 24 hours if their child is involved in an incident, trauma, injury or becomes ill
87 Incident, injury, trauma and illness record	Complete a record for all incidents, injuries, traumas and illnesses at service
88 Infectious diseases Fine \$2,000	Stop the spread of infectious disease eg hygiene measures. Exclusion
100 Risk assessment must be conducted before excursion	Conduct risk assessments before

Week 2, 8-12 February 2021- 7.1.3 Roles and Responsibilities

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Law/Regulation	What must happen
Fine \$2,000	excursions as required under Reg 101
103 Premises, furniture and equipment to be safe, clean and in good repair Fine \$2,000	Cleaning and maintenance procedures, hazard removal, risk assessments
155 Interactions with children	Educators: <ul style="list-style-type: none"> • encourage children to express themselves and their opinions • develop children's self-reliance and self-esteem • maintain dignity and rights of child • give children positive guidance toward acceptable behaviour • consider family and cultural values, age, physical, intellectual abilities of each child

Law/Regulation	What must happen
170 Policies and procedures to be followed Fine \$1,000	Always follow all Service policies and procedures
12 Serious incident 176 Time to notify certain information to Regulatory Authority	Notify Regulatory Authority about serious incidents within 24 hours
175 Prescribed information to be notified to Regulatory Authority 176 Time to notify certain information to Regulatory Authority	Notify Regulatory Authority of any: <ul style="list-style-type: none"> • incident or allegation of physical or sexual abuse that has occurred or is occurring at the service within 7 days • complaints that a serious incident has occurred or is occurring, or the Law has been breached within 24 hours

Remember: If you need to use a checklist go to the members area of Centre Support's website where every checklist imaginable is available.

centresupport.com.au/checklist-for-members/

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Click here

Checklist for Educators
Click here

Checklist for Nominated Supervisors

- Access and Participation Nominated Supervisor
- Bathroom Safety and Hygiene Nominated Supervisor
- Behaviour Management Nominated Supervisor

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1.1.3 Program learning opportunities

Week 1 - 1.2.2021
Monday to Friday



Answers from last week - Compliance test for educators

Instructions: Nominated Supervisor is to conduct the test. Ask one educator at a time in a location that other educators cannot hear or provide support to the educators being asked the question. Record the responses then analyse to see if the educators responses would place you at risk of a fine. Finally, train the educators that fail to meet the regulations.

Name of educator:

Questions	Response	Pass or Fail
Billy is a child with autism. He doesn't like washing his hands. Is it okay for Billy not to wash his hands before lunch if they look clean?	No it's not okay. Hand washing is a requirement outlined in our policies and procedures to minimise the risk of spreading infection and we must follow our policies and procedures. You can't tell by looking whether Billy's hands are clean. We need to work with Billy and his family to help make him comfortable with hand washing.	
Danielle is a room leader and doesn't always make sure Mohamed has food with no pork. She says, "whoops, his dad won't know." What would you do if you worked in the same room as Danielle?	I'd say I don't think it's okay to have this attitude, and Reg 79 says we must make sure the food Mohamed eats takes into account religious and cultural preferences. If Danielle doesn't change I'd raise with the NS.	
What hygiene practices would you need to do to allow the children to eat their lunch outside?	I'd need to make sure the outdoor area is hygienic eg swept, tables cleaned, area free from dirt, mud etc. Children would need to follow handwashing procedures as usual.	
A mother has requested that her child sleep no more than an hour. Is it okay to wake her up after an hour?	No it's not okay if the child needs more sleep and after being woken is cranky and out of sorts all afternoon. Reg 81 requires us to meet the sleep and rest needs of children.	

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Compliance test for educators

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Name of educator:

Questions	Response	Pass or Fail
Rosalie turns up without her hat and gets upset when asked to wear one of the spare hats at the service. Is it okay to let her play outside just this once without a hat?		
Room Leader Kayla says that for a change they're walking a different way on their 'regular outing' today. Do they need to do a new risk assessment first?		
Nathaniel tripped over and hit his head playing outside. There is no obvious injury, and Miss Renee says there's no point completing an incident record. What would you do?		
Miss Kat says it's okay to bring her coffee into the room because she always puts it up high out of children's reach. What would you do if you worked in the same room as Kat?		

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Nathaniel tripped over and hit his head playing outside. There is no obvious injury, and Miss Renee says there's no point completing an incident record. What would you do?		
Miss Kat says it's okay to bring her coffee into the room because she always puts it up high out of children's reach. What would you do if you worked in the same room as Kat?		

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This week I'm sharing an article that discusses the issues around requiring employees to get COVID vaccinations, including in an early childhood service.

Can my boss make me get a COVID vaccination? Yes, but it depends on the job.

As Australia prepares to roll out a national vaccination program – aiming for a 95% uptake rate – big questions remain for employers and employees.

Employers have a clear incentive to want employees vaccinated, to protect clients and co-workers as well as to avoid legal liabilities of potential workplace COVID transmissions.

But can an employer insist on vaccination as a condition of employment?

That's an ambiguous legal question, as indicated by two recent unfair dismissal cases taken to the federal Fair Work Commission. Both involve employers in 2020 making an influenza vaccination a requirement, and employees losing their jobs for refusing.

The bottom line from both cases is that an employer can make vaccination a condition of working – but with significant caveats. It depends on “balancing” the employer's duty of care to others with the employee's reason for refusal, and the circumstances of the work they do.

Employers have a duty of care

The first relevant case is the Fair Work Commission's ruling in November 2020 on an unfair dismissal claim by child-care worker Nicole Arnold against Goodstart Early Learning, Australia's largest early learning provider.

In April 2020 Goodstart made a flu vaccination a condition of employment, though allowing exceptions on medical grounds. Arnold objected. In correspondence with her employer she cited the Bible, the Nuremberg Principles and the Universal Declaration of Human Rights. But she gave no medical reasons. She was dismissed in August 2020.

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The commission dismissed Arnold's application to have her case heard on the basis Goodstart's vaccination policy was arguably reasonable to satisfy its duty of care to children, while Arnold's refusal was arguably unreasonable.

Commissioner Ingrid Asbury ruled:

While I do not go so far as to say that [Arnold's] case lacks merit, it is my view that it is at least equally arguable that [Goodstart's] policy requiring mandatory vaccination is lawful and reasonable in the context of its operations which principally involve the care of children, including children who are too young to be vaccinated or unable to be vaccinated for a valid health reason.

It was, Asbury said, a matter of balancing an employer's duty of care with the needs of employees who may have reasonable grounds to refuse to be vaccinated. She saw no exceptional circumstances to rule Arnold was unfairly dismissed.

Work circumstances count

The second case involves an unfair dismissal claim by care assistant Maria Glover against Queensland aged and disability care provider Ozcare, for whom she had worked since 2009.

Ozcare provides free flu vaccinations to employees annually. Glover, 64, had previously declined to get the shot due to allergies and her understanding she had an adverse reaction to a flu shot as a child.

In April 2020, Ozcare introduced a policy making influenza vaccinations mandatory for all employees in its residential aged care facilities or having direct client contact in its community care services. Its reason was the risk to clients who caught the flu and then contracted COVID-19.

It required supporting evidence for a medical exemption. Glover did not do so. This resulted in Ozcare no longer rostering her for work from May. She filed her unfair dismissal claim in October.

Ozcare made influenza vaccinations for workers mandatory due to the risk for clients getting the flu and then COVID-19. Shutterstock

A final ruling by the Fair Work Commission is still pending. The case was complicated by Ozcare's lawyers arguing Glover had not been dismissed. But a preliminary decision

on January 18 – in which Commissioner Jennifer Hunt ruled Glover had been dismissed – included observations relevant to the merits of future cases involving vaccination refusals.

Hunt considered a future scenario (in November 2021) when employers of men playing Santa Claus in shopping centres may be required to have a flu vaccination “and if a vaccination for COVID-19 is available, that too”. In such a situation, where social distancing is impossible, a vaccination might become an “inherent requirement” of the job. In the court of public opinion, Hunt said, this might not be considered unreasonable. But a court or tribunal would need to consider the context.

In particular, Commissioner Hunt noted:
In my view, each circumstance of the person’s role is important to consider, and the workplace in which they work in determining whether an employer’s decision to make a vaccination an inherent requirement of the role is a lawful and reasonable direction. Refusal of such may result in termination of employment, regardless of the employee’s reason, whether medical, or based on religious grounds, or simply the person being a conscientious objector.

What this all means

What these two rulings boil down to is that an employer can make a vaccination an inherent requirement of employment and dismiss a worker for refusing – even if they have a legitimate reason. But it depends on the role and exposure risks.

But if risks to others can be minimised through social distancing and other measures – say, for instance an employee works from home – dismissing an employee for refusing to get vaccinated could be ruled unfair. Particularly if they have a good reason – that is a medical condition, not a pseudo-legal objection. It depends on the balance of the employer’s duty of care to others against the employee’s claims.

So it’s not clear-cut. As things stands it is risky for employers to adopt a blanket policy to make COVID-19 vaccinations compulsory.

Bringing greater clarity

Employer groups would like a more straightforward legal landscape. As the head of the Council of Small Business Organisations Australia, Peter Strong, has noted:

There is the issue of vaccinated employees refusing to work with non-vaccinated employees. Where does the employer stand, legally and practicably, in that situation? Where does the employee stand?

In the US the Equal Employment Opportunity Commission (which enforces federal laws against workplace discrimination) has ruled employers can require all employees – with some religious or disability-related exemptions – to get vaccinated to enter a workplace.

Australia’s federal industrial relations minister Christian Porter has reportedly told employers the government will not mandate vaccines in workplaces.

That means making the legality of workplace vaccination policies more “black-and-white” will need to come from the state and territory governments, using their regulatory powers under their work health and safety acts.

Source: <https://theconversation.com/can-my-boss-make-me-get-a-covid-vaccination-yes-but-it-depends-on-the-job-154054>

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