

Enquiries: hr@whittlesea.vic.gov.au

File reference: Covid19

20 October 2021

Justin Young
C/- City of Whittlesea

Dear Justin

Your capacity for work and employment: Outcome of Show Cause

I refer to Council's letter to you dated 15 October 2021 ("Your capacity for work and employment: Authorised worker").

As you are aware, the *COVID-19 Mandatory Vaccination (Workers) Directions* recently came into effect, which mandate COVID-19 vaccination requirements for staff who are "authorised workers" who cannot perform all of their duties from home, on and from 15 October 2021.

You were identified as an employee whose role is subject to this direction.

You were notified of the requirement to comply with the *Mandatory Vaccination Directions* by email dated 6 October 2021 to all staff entitled "Important: Mandatory Vaccine Update", and again by your line management in the week of 11 October 2021. You were requested to provide evidence by Friday 15 October of your vaccination status (or alternatively proof of a booking), to ensure you could continue to perform your role.

You were also advised that should you fail to fulfil these requirements, there may be serious consequences including termination of employment, as you may be considered legally unable to do your job. You were advised that in those circumstances, you would be provided with a Show Cause Notice requiring you to provide evidence of why your employment should not be terminated, and that you would be given 7 days to comply with the requirement to be vaccinated, or to provide grounds for consideration as to why you believe you are exempt from the requirement.

Show Cause Notice

In our letter of 15 October 2021, you were advised that in consideration of the inherent requirements of your role, as an "authorised worker" who cannot perform all duties from home, and your failure to meet the new mandated requirements to be able to perform your role, you were assessed as no longer having the required capacity to perform your role.

Council Offices

25 Ferres Boulevard, South Morang VIC 3752
Mail to: Locked Bag 1, Bundoora MDC VIC 3083

Phone: 9217 2170

National Relay Service: 133 677 (ask for 9217 2170)

Email: info@whittlesea.vic.gov.au

Free telephone interpreter service

 **131 450**

Council advised it was also considering if any disciplinary action should be taken with respect to the breach of your employment obligation to follow lawful and reasonable directions, including ending your employment.

Council required you to provide evidence that you satisfy the requirements of the *COVID-19 Mandatory Vaccination (Workers) Directions*, and to respond and “show cause” why your employment should not be terminated as a result of the specified breaches of your contract of employment, by COB Friday 22 October 2021.

We received your response via email on 17 October 2021.

Council notes that you have requested indefinite leave and/or to be directed to perform your duties from home for the duration of any applicable public health orders. We advise that Council declines these requests on the following grounds:

- Your role requires you to work outside of your usual place of residence, and cannot be performed entirely from home;
- Indefinite leave is declined on reasonable business grounds, as it is not operationally viable for Council to grant this request.

Outcome

Council has now considered all the information available to it regarding your capacity to perform your role and your failure to follow a lawful and reasonable direction, including your response to the “show cause” letter.

It has been determined that you no longer have the required capacity to perform your role, and that you have also committed serious misconduct in the course of your employment by failing to follow a lawful and reasonable direction.

You are advised that Council is terminating your employment effective today, for the reasons set out in this letter.

Next Steps

While your conduct constitutes serious misconduct, Council has decided not to dismiss you summarily (without a notice payment). Therefore, you will receive a payment in lieu of notice of termination equivalent to 4 weeks of salary in accordance with Council’s Enterprise Agreement, as well as payment of any outstanding wages and leave entitlements.

You are required to return all Council property in your possession.

I would also like to take this opportunity to remind you that notwithstanding the termination of your employment, you will continue to be subject to post-employment obligations pursuant to your contract of employment and at common law, including your obligation not to disclose or misuse Council’s confidential information.

Council Offices

25 Ferres Boulevard, South Morang VIC 3752

Mail to: Locked Bag 1, Bundoora MDC VIC 3083

Phone: 9217 2170

National Relay Service: 133 677 (ask for 9217 2170)

Email: info@whittlesea.vic.gov.au

Free telephone interpreter service

 **131 450**

We thank you for your service to the City of Whittlesea community and wish you all the best in your future endeavours.

Yours sincerely



Craig Lloyd
Chief Executive Officer

Council Offices

25 Ferres Boulevard, South Morang VIC 3752

Mail to: Locked Bag 1, Bundoora MDC VIC 3083

Phone: 9217 2170

National Relay Service: 133 677 (ask for 9217 2170)

Email: info@whittlesea.vic.gov.au

Free telephone interpreter service



131 450