

Guidance for implementing the COVID-19 Public Health Response (Required Testing) Order 2020 at New Zealand managed isolation and quarantine facilities

27 November 2020

At 11:59 pm on 25 November 2020 changes to the COVID-19 Public Health Response (Required Testing) Order 2020 ('the Required Testing Order') came into effect.

The changes:

- Extend mandatory testing requirements to new groups of border workers,
- Increase mandatory testing frequency for some higher-risk workers from every fourteen days to every seven days,
- Introduce new record keeping duties on certain Persons Conducting a Business or Undertaking (PCBUs), and
- Introduce new duties on workers to provide certain information to PCBUs.

This guidance focuses on explaining these changes to the Required Testing Order in the context of managed isolation and quarantine facilities. This guidance should be read in conjunction with other Ministry of Health guidance about mandatory testing requirements for workers at managed isolation and quarantine facilities (MIQFs).

Ongoing testing is necessary due to the incubation period of COVID-19 and risks of re-exposure. Further ongoing testing will provide reassurance to workers, their employer and their family that they do not have COVID-19. Appendix I sets out an overview of the development of mandatory worker testing requirements.

The requirements for mandatory testing of border workers are in addition to ongoing public health measures being practised at the border, including physical distancing, appropriate use of personal protective equipment (PPE), basic hygiene measures such as hand washing and sanitising, other health screening, and people staying home when sick.

There is no change to current MIQF worker testing requirements

The current testing requirements for workers at MIQFs are not affected by recent changes to the Required Testing Order – existing testing frequencies apply and there are no changes to the groups of workers in MIQFs who are required to be tested under the Required Testing Order. A table setting out these requirements is provided in Appendix IV.

Workers must now provide certain testing information to the employer/PCBU that employs or engages them, as further detailed in this guidance.

New requirements that must be met by PCBUs

Persons Conducting a Business or Undertaking (PCBUs) that employ or engage workers with testing obligations are now required to comply with certain duties. Most New Zealand businesses, whether large corporates, sole traders, or self-employed, are classed as PCBUs. (WorkSafe Oct 24, 2017).

It is the PCBU that employs or engages the affected worker that is required to meet these duties. This is the business that hires the affected worker – for example, as a contractor, a volunteer or employee. Most of the time, it will be the worker’s employer that is the PCBU. For this reason, this guidance refers to “PCBUs/employers”.

Specifically, PCBUs/employers must:

- Notify each affected worker employed or engaged by the PCBU/employer of the requirement to undergo testing and the testing period that applies to the affected person,
- Not prevent any affected worker from being tested during their working hours if testing is available during those hours,
- Keep certain written records.

Record keeping

The records that are required to be kept by PCBUs/employers are:

- The worker’s full legal name and date of birth,
- The worker’s telephone number,
- The testing period that applies to the worker,
- The dates on which the worker has undergone testing and medical examination,
- If the worker has been given a medical exemption, the testing period to which the exemption relates (this does not require the collection of health information about the reason for the exemption).

Records are required to be kept by PCBUs/employers in a form that can be readily accessed. Records must be made available as soon as practicable to an enforcement officer if requested.

Advice prepared by WorkSafe New Zealand to assist PCBUs/employers manage their new duties and understand how they fit with their duties under the Health and Safety at Work Act 2015 is attached at Appendix II.

New requirements for workers to make testing information available to PCBUs/employers

All workers who are required to be tested under the Required Testing Order are now required to provide the PCBU/employer that employs or engages them with the following information, or access to this information:

- The worker’s full legal name and date of birth,
- The worker’s telephone number,
- The testing period that applies to the worker,
- The dates on which the worker has undergone testing and medical examination,
- If the worker has been given a medical exemption.

The worker must provide this information, or access to the information, as soon as practicable. The worker must also update the information as soon as practicable after it changes. This means that the worker must ensure that their PCBU/employer is informed as soon as practicable once they have been tested.

They must also inform their PCBU if they have received a medical exemption for a given testing period.

Further guidance will be provided to workers to assist them to meet this obligation .

What systems will be put in place to support implementation of the new record keeping and information sharing requirements?

The Ministry of Health is developing the Border Workforce Testing Register (the Register). This is a secure database that tracks and records a border worker's COVID-19 testing dates.

The Register will assist workers to comply with their obligation to provide their employers with information about their testing and will assist PCBUs/employers to meet their record keeping obligations.

The Register will automate the relevant testing-related information for all parties, which will assist with keeping the employer informed about when testing is required and when each test has been completed, and enabling the employer to ensure their workers know when they are required to be tested.

To use the Register, PCBUs/employers will need to provide certain minimum information into the Register on behalf of border workers.

Once this information is provided, workers will have met their duty to provide access to testing information to their PCBU/employer, as the information required to be given to the PCBU/employer will automatically be securely provided to the PCBU/employer without the worker taking further actions.

It will also enable PCBUs/employers to meet the new duties to keep records that are easily accessed and converted into written form.

The Register does not record the results of a test, but it does record the date a swab was taken and the date a result was returned.

The Ministry of Health is engaging with PCBUs/employers who are interested in using the Register and would like to invite any interested parties to trial it. This will allow PCBUs/employers to become familiar with the tool and provide feedback.

If you would like to discuss this further, please email BWTRsupport@health.govt.nz and you will be contacted to and arrange a time convenient to you to view the Register and find out more about it.

What process will be used to support implementation of the changes?

The Ministry of Business, Innovation and Employment (MBIE) will notify management of MIQFs and other PCBUs/employers of workers who either work in these facilities, or who transport people required to be in isolation or quarantine under a COVID-19 order to or from these facilities, about the changes to the Required Testing Order and this guidance.

MBIE will provide guidance and information to support PCBUs/employers to communicate the new duties to their employees and workers. A suggested letter for employers to send is attached as Appendix III.

DHBs will report the number of workers who are tested, by centre, to the Ministry of Health by 6.00 pm every day.

Summary of Roles and Responsibilities

Ministry of Business, Innovation and Employment	DHBs/PHUs	PCBUs/Employers	Affected workers
<p>Notify PCBUs/ employers (including MIQF management) of the No 3 Amendment Order, and provide guidance material.</p> <p>Link PCBUs/employers to resources for supporting workers who are dealing with logistic or hardship issues that act as a barrier to getting a test completed on time.</p> <p>Also have the same responsibilities as other PCBUs/ employers of workers on site at the MIQFs.</p>	<p>Provide the health testing staff and arrange schedules to provide testing at MIQFs.</p> <p>Ensure testing data is collected and reported to the Ministry of Health in accordance with prevailing arrangements.</p> <p>Also have the same responsibilities as other PCBUs/ employers of workers on site at MIQFs.</p>	<p>Keep records about workers employed or engaged by them who are required to be tested.</p> <p>Make records available to an enforcement officer if requested.</p> <p>Notify workers of their responsibility to have COVID-19 tests and medical exams, and their required testing frequency.</p> <p>Must not prevent their workers from being tested during their working hours, if testing is available during those workers' hours.</p>	<p>Provide employer with information that will meet the duties of a PCBU/employer.</p> <p>Present yourself for testing every 7 or 14 days (as applicable).</p>

Frequently Asked Questions (FAQs)

1. Why should border workers be tested?

- The aim of these testing measures is to increase the safety of border workers, and to strengthen barriers to prevent COVID-19 entering New Zealand across the border. Workers at borders all have an increased risk of exposure to COVID-19 through interaction with travellers and cargo arriving from overseas. Regular worker testing provides assurance that use of PPE and other public health protection measures are effective.
- It is important to remember that the appropriate use of PPE and other public health measures remain the best ways for border workers to protect themselves from exposure to COVID-19.

2. What types of COVID-19 testing are available to border workers?

- The nasopharyngeal swab, or deep nasal swab, is the preferred option due to its effectiveness in detecting the virus. However, as border workers are undergoing testing regularly, they may ask for the new 'alternative swab option', the oropharyngeal and bilateral anterior nasal swab (ONS). This involves a less invasive swab of one nostril and a throat swab.

3. Where should workers be tested?

- Either at testing sites available at the worksite, a community testing centre, or another healthcare facility, such as a GP.
- Workers must now provide their employer with information about their test to allow the employer to keep the records required by the Order. To ensure a record is kept, if a worker goes to a community testing centre, or another healthcare facility to get tested, they should ensure their test is recorded using the appropriate identifier (SURV code) unique to the facility at which they work. Some PCBUs/employers use a voucher system for referring workers to a GP or a community testing centre, which includes the appropriate SURV code. Workers should contact their employer for information.

4. How does a worker get their test results?

- The worker will be advised of their test results by their testing service provider.

5. Is there any requirement for an employer to pay workers to be tested when testing has to be done in their own time?

- Payment of workers who are tested in their own time is a matter for individual employers taking into account their general employment, workplace health and safety obligations and contractual requirements. Employers are encouraged to support staff to be tested.

6. Do workers need to be off work until they get their test results?

- Staff who are not sick can continue working.
- Staff should stay home if they are sick and contact their medical professional to arrange a test if they are displaying flu-like symptoms.

7. What assistance is available to a worker who cannot work due to COVID-19?

- Work and Income administers a leave subsidy scheme to help employers pay their employees who need to self-isolate due to COVID-19 and can't work from home, in certain situations. Details are available at: <https://www.workandincome.govt.nz/covid-19/leave-support-scheme/>

8. Can a worker be exempted from the requirement to be tested?

- A person can be exempted from the mandatory testing requirements by a suitably qualified health practitioner at the testing site based on medical grounds. A GP or qualified health professional at the testing site, if available, are examples of people who could provide an exemption.

9. What happens if a worker does not get a test at the required intervals?

- It is the responsibility of an affected worker to present themselves for regular testing every 7 or 14 days (as applicable).
- If a worker does not comply with their mandatory testing requirements or the requirement to provide information, we expect their employer would follow up with them in the first instance. *(Cont. over)*

(9. Cont.)

If a worker does not comply with the mandatory testing requirements, and if the worker is either not exempted by a suitably qualified health practitioner based on medical grounds, the worker may be subject to enforcement action under the COVID-19 Public Health Response Act 2020.

10. How will the new requirements be enforced?

- Enforcement officers are appointed to enforce compliance under the Required Testing Order. This includes WorkSafe inspectors, who are authorised to carry out the functions and powers of an enforcement officer with regard to workplaces for which WorkSafe is the regulator.
- Authorities are taking a graduated approach to enforcement of the Required Testing Order. In the case of non-compliance by a PCBU/employer or a worker, the focus is on compliance and education.

11. Do workers need to pay for their COVID-19 test?

- There is no charge to the worker or their employer for the test.

12. How does the Order affect self-employed people who are Affected Workers?

- Someone who is self-employed is likely to be a PCBU in their own right. This means they will need to consider how they comply with the requirements of the Order both as an employer and an affected worker.

13. What is a PCBU?

- A PCBU means a Person Conducting a Business or Undertaking. It is a broad concept used throughout the Health and Safety in the Workplace Act 2015 (HSWA) to describe all types of modern working arrangements which we commonly refer to as businesses. Most New Zealand businesses, whether large corporates, sole traders, or self-employed, are classed as PCBUs.
- In the context of this guidance a PCBU is essentially the employer of workers at an MIQF, including third party employers of contractors, self-employed contractors or sole traders working at the site.

14. Can a worker be exempted from the requirement to be tested?

- A person can be exempted from the mandatory testing requirements by a suitably qualified health practitioner at the testing site based on medical grounds. A GP or qualified health professional at the testing site, if available, are examples of people who could provide an exemption.

15. How should the mandatory 7-day and 14-day testing periods be implemented?

- Worker testing must be done within 7 days or 14 days of work occurring in an affected role.
- Worker testing should be done on each 7th or 14th day as applicable after first performing work, and on an ongoing basis. Routine testing should be evenly spaced at these intervals. However, there may be situations where this routine spacing is not possible, such as when a worker has leave. In such cases, a test earlier in the cycle is acceptable.

16. What happens if a worker is absent from work at the required testing time?

- If workers are absent from work at the required testing time (for example, they are on holiday or not rostered to work during the required testing period), they are still required to comply with their testing requirements under the COVID-19 Public Health Response (Required Testing) Order.
- If the worker is tested while absent from work (but during their current testing period) they must advise their employer of the date and location of their test.
- If workers are absent from work and are not tested during the required testing period, they should be tested as soon as possible after their return to work.

17. Testing of workers who have only infrequent contact with the worksite

- Where someone works in an affected role on a one-off basis, the requirement to be tested is also a one-off. The worker must get tested within the required testing period. A further testing round is not triggered unless and until the worker next performs work in a role which falls under the Required Testing Order.
- If workers perform work in an affected role again prior to having their first test (e.g. they work again 5 days after they first perform work), it is strongly recommended that they undergo a further test on the 14th (or 7th) day after their last test.

Appendix I. Testing Order - History

The COVID-19 Public Health Response (Required Testing) Order 2020 (Required Testing Order) incorporates a number of amendments.

The Required Testing Order is available at:

<http://www.legislation.govt.nz/regulation/public/2020/0230/latest/whole.html#LMS400353>

The linked version of the Order incorporates all of the changes over time that are referred to in this appendix.

This appendix provides a brief overview of the history of the Required Testing Order for additional context.

Overview of changes:

The Order as originally made

The Order as made required one-off testing of higher-risk workers at Auckland International Airport, certain higher-risk workers at the Ports of Auckland and Port of Tauranga, and workers at managed isolation and quarantine facilities (MIQFs).

The first set of amendments

The COVID-19 Public Health Response (Required Testing) Amendment Order 2020 came into force from 11.59 pm on 6 September 2020 and amended the Required Testing Order to require regular routine testing of certain higher-risk border workers at Auckland International Airport, Ports of Auckland and Port of Tauranga.

The second set of amendments

The COVID-19 Public Health Response (Required Testing) Amendment Order (No 2) 2020, which amended the COVID-19 Public Health Response (Required Testing) Order 2020 came into force at 11.59 pm on 16 September 2020.

The amendments extended the testing and medical examination requirement to specified groups of affected persons at all airports and ports unless exempted. In relation to an airport, the exemption applies if an aircraft has not arrived at the airport from a location outside New Zealand for a period of at least 14 consecutive days. In relation to a port, the exemption applies if a ship has not arrived at the port from a location outside New Zealand for a period of at least 14 consecutive days.

This third set of amendments

At 11.59 pm on 25 November 2020 the COVID-19 Public Health Response (Required Testing) Amendment Order (No 3) 2020 came into force. The changes made are summarised in this guidance, and include:

- New duties on PCBUs to keep records and facilitate compliance.
- Requirements for workers to give certain information to their PCBU
- Changes to some of the groups required to be tested and frequency of testing for some affected workers.

In addition to these main changes, testing requirements relating to certain aircrew were added to the Required Testing Order in the COVID-19 Public Health Response (Air Border, Isolation and Quarantine, and Required Testing) Amendment Order 2020.

Appendix II. Managing duties for border and MIQF businesses and services

Managing duties for border and MIQF businesses and services – what you need to know [Provided by Worksafe New Zealand]

If you're a business or service operating at the border – ports and airports – or involved in the operation of managed isolation and quarantine facilities (MIQFs), exposure to COVID-19 is a new critical risk you need to manage.

As part of managing this risk you need to continue to meet your obligations under the Health and Safety at Work Act 2015 (HSWA). You also need to meet public health requirements under the COVID-19 Health Response Act 2020 and its relevant Orders, including the COVID-19 Public Health Response (Required Testing) Order 2020.

The difference between HSWA obligations and COVID-19 public health requirements

Meeting your HSWA obligations means putting measures in place to prevent your workers from being infected with COVID-19, so far as is reasonably practicable. If one of your workers does become infected, then meeting your COVID-19 public health requirements reduces the risk that the virus spreads out into the community.

Meeting your HSWA obligations during the COVID-19 pandemic

It's likely you haven't had to manage the risk your workers could be infected with a pandemic disease before, and your understanding of how to manage the risk is developing. But you'll be familiar with meeting your HSWA obligations for other risks. In the context of this new risk, meeting your HSWA obligations means doing the same kinds of activities with an additional focus.

Here are some examples of what you need to do:

- Follow public health guidance on minimising the risk of COVID-19 exposure and transmission for your workers and others affected by the work,
- Consult with your workers, and their representatives, about managing the risk of COVID-19 infection and take their feedback on board,
- Make sure workers understand and follow the work health and safety procedures at the port, airport, or MIQF they're working at,
- Carry out regular risk assessments, engaging with your workers to make sure all the risks of COVID-19 exposure are identified, assessed, and appropriate control measures are implemented,
- Consult, cooperate and coordinate activities with the other businesses and services you share overlapping duties with, so far as is reasonably practicable, and
- Engage with workers on any work health and safety concerns that arise.

For more information about how to meet your HSWA obligations during the COVID-19 pandemic go to the WorkSafe New Zealand website: <https://worksafe.govt.nz/>

Meeting public health requirements for your workers to be regularly tested for COVID-19

Public health requirements are set out in the COVID-19 Public Health Response Orders. Businesses and services involved in the operation of MIQFs or operating at the border need to meet all

applicable requirements in the Orders. This includes meeting requirements in the Required Testing Order (the Order), which sets out how often workers must undergo testing and a medical exam for COVID-19.

Under the Order your workers are responsible for getting a test and medical exam according to the testing period for their group. You must not prevent workers from getting their regular test and medical exam during working hours, if testing is available during that time. You may also want to make it as easy as possible for workers to comply.

To support your workers to get tested regularly think about:

- How your rosters or work schedules could be adjusted to ensure workers are able to get a test while at work,
- Whether it's possible for workers to be tested at a community site if that's their preference – for example, prior to starting work that day,
- Whether workers will need a buddy to accompany them if their English is limited, and how that could be arranged,
- How to manage fatigue if the worker is on night shift and testing is only available during the day,
- How you can support a worker who's reluctant to be tested, and
- How you'll manage a situation where a worker's reluctant to share testing information with you.

Ask workers and their representatives if there's anything in your control that could prevent them accessing testing, and what you can do to support testing.

The Order also requires you to inform workers of their responsibility to have COVID-19 tests and medical exams, and the testing period that applies. If a worker belongs to two or more of the groups set out in the Order, and is subject to two or more testing periods, the more frequent period will apply to them.

When you're thinking about the best way to inform workers, consider their:

- Age and experience,
- First language,
- Ability to read and write, and
- Culture and context.

Ask workers and their representatives what information they would like to have about COVID-19 tests and medical exams, and how it should be provided. For example, you could give workers written information and then organise for someone to meet with workers to talk through the information and answer any questions. Think about how you can check workers understand the information you provide.

Finally, the Order also requires you to keep and maintain a record of your workers' COVID-19 tests and medical exams, including:

- The worker's full legal name and date of birth,
- A contact phone number,
- The testing period that applies,

- The dates on which the worker underwent testing and a medical exam (update this regularly), and
- If the worker is exempt from testing, the testing period to which the exemption relates.

The record must be easy to access. If an enforcement officer asks for access to the record you must provide it to them as soon as practicable.

Workers must provide you with the necessary information so you can keep this record up to date.

Appendix III. Draft letter to send employees

Important note:

To meet the duty of a PCBU/employer to facilitate compliance with testing and medical examination requirements, PCBUs/employers must provide specific information to their worker, which informs them of:

- The requirement to undergo testing and medical examination; and
- The testing period that applies to the affected person.

This draft letter does not meet these requirements, as it is not specific to the individual worker – it is provided to assist PCBUs/employers with communicating the new Order requirements to their workers only.

Dear [Name of employee]

The COVID-19 Public Health Response (Required Testing Order) 2020 (the Order) requires certain workers at higher-risk of workplace exposure to COVID-19 to undergo regular testing.

Workers in many roles have been required to be tested for some time. Workers in these roles continue to need to be tested. We thank you for your continued cooperation.

We will be providing further information on how and where to get tested and the testing frequency that applies to you. The employer can insert specific requirements applying to the worker here. Note that employee-specific information would need to be included regarding the frequency of testing that applies to the individual in order for the PCBU/employer requirement to be met].

Recent changes to the Order mean that, as your employer, we must notify you of the requirement to be tested and must keep certain written records that enable us to check that you are being tested.

The records we are required to keep are:

- Your full legal name and date of birth,
- Your telephone number,
- The testing period that applies to you,
- The dates on which you have undergone testing and medical examination in accordance with the testing period that applies to you,
- If you are exempted from testing and medical examination on medical grounds, the testing period to which the exemption relates.

You will need to provide us with this information, or enable us to access this information, so that these records can be kept.

You will receive further information about how this information will be collected at our workplace [or employer can insert information here].

If you have questions about how you should provide this information, please discuss these with me.

The purpose of these mandatory testing requirements is to ensure that the measures we have in place to keep you safe are working and will help to keep COVID-19 out of New Zealand communities.

Please continue to use your PPE properly, use physical distancing where possible and stay alert to the symptoms of COVID-19.

You play a vital role in keeping our workplace, communities and whanau safe. I thank you for your efforts so far and for your ongoing cooperation with the testing requirements.

Your sincerely,

[Name of employer]

Attachment: FAQ sheet drawn from this guidance

Appendix IV: Current testing requirements

Excerpt from COVID-19 Public Health Response (Required Testing) Order 2020 -
 Schedule 2 - groups of affected workers at managed isolation facilities and quarantine facilities

Group	Testing centre	Testing period
<i>Part 1: Groups in relation to managed quarantine facilities</i>		
Workers at managed quarantine facility	Community testing centre, testing centre at quarantine facility, or other healthcare facility	Once every 7 days starting on 7 September 2020
Workers who transport to or from managed quarantine facility persons required to be in isolation or quarantine under COVID-19 order	Community testing centre, testing centre at quarantine facility, or other healthcare facility	Once every 7 days starting on 7 September 2020
<i>Part 2: Groups in relation to managed isolation facilities</i>		
Workers at managed isolation facility	Community testing centre, testing centre at isolation facility, or other healthcare facility	Once every 14 days starting on 7 September 2020
Workers who transport to or from managed isolation facility persons to be in isolation or quarantine under COVID-19 order	Community testing centre, testing centre at isolation facility, or other healthcare facility	Once every 14 days starting on 7 September 2020