



## Centre for Labour, Employment and Work

### Covid-19 emergency and employment issues

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Employers have a legal obligation to ensure the health and safety of workers as far as reasonably practicable and to actively manage health and safety risks. Those obligations extend to the risks posed by COVID-19.

Self-isolation also presents unique challenges. Employers are now able to utilise the COVID-19 wage subsidy scheme to ensure they are able to support themselves and their employees, but many will still be faced with making temporary closures or redundancies.

#### Alert Levels

New Zealand's 4-level Alert system specifies the public health and social measures to be taken against COVID-19. Alert Level 4 was implemented on 25 March 2020, meaning everyone must stay at home except for essential workers, with travel allowed only in limited situations.

A state of national emergency has also been declared, granting the government full powers to implement measures that will slow down the spread of the virus, eradicate the disease, and mitigate its impacts.

#### Employers' Health and Safety Obligations

Under the Health and Safety at Work Act 2015, employers have an obligation to ensure the health and safety of workers as far as reasonably practicable. Employers have a duty under the Act to eliminate health and safety risks, or where it is not reasonably practicable to eliminate those risks, to minimise them as far as is reasonably practicable.

The employer's duty includes managing the health and safety risks presented by COVID-19. Employers should take a proactive approach. This could first involve identifying what the health and safety risks are and ensuring their current health and safety policies and procedures are up to date. Employers may also develop risk management and communication plans which specify who an employee should contact if they contract Covid-19 or enter self-isolation, and how employers will keep employees informed.

In particular, there are also many practical measures an employer can take while operating an essential service under the Alert Level 4 lockdown. These include encouraging workers to follow personal hygiene practices strictly, such as correct hand washing, coughing and sneezing techniques. Workplaces should be kept clean. Employers must also provide appropriate personal protective equipment to employees who are required by the nature of their duties to have contact with others.

Social distancing at work will be important. Essential businesses that remain open during the lockdown must operate in a way that minimises the risk of COVID-19 transmission and must follow all guidance from the government.

### **Wage Subsidy Scheme**

The government has announced a financial package to combat the economic effects of COVID-19. These initiatives include the COVID-19 Wage Subsidy Scheme. The wage subsidy is designed to encourage employers to retain staff. Finance Minister Hon Grant Robertson has said that this scheme is a *"high trust system in order to ensure that money reaches workers and businesses as soon as possible"*.

The wage subsidy is exempt from GST and income tax and is classified as "*excluded income*" for tax purposes. Payments made to employees will be subject to the ordinary payroll deductions (such as PAYE, student loan, KiwiSaver etc).

The wage subsidy is paid as a lump sum for 12 weeks per employee, at a flat rate of \$585.80 for people who work for 20 hours or more per week and \$350.00 for people who work less than 20 hours per week. Employers should be passing on the full subsidy to workers, except in the case where the person's normal income is less than the level of the subsidy.

In order to qualify for the wage subsidy, businesses must meet a number of requirements. The business must have experienced a minimum 30% decline in actual or predicted revenue over the period of a month when compared to the same month last year, or a reasonably equivalent month for a business operating less than a year. Revenue loss must be attributable to the COVID-19 outbreak.

Additionally, before making an application for the subsidy, the employer must have taken active steps to mitigate the impact of COVID-19 on business activities. This includes engaging with its bank, drawing on the business' cash reserves as appropriate and making an insurance claim.

Recipients of the COVID-19 wage subsidy must use their *"best endeavours"* to pay the employees at least 80% of their ordinary wages or salary. If that is not possible then the employer needs to pay at least the full amount of the subsidy to the employees named in its application and retain those employees for the full 12-week period.

### **Statutory Leave Entitlements**

An employee who is sick, or whose spouse or dependent is sick, is entitled to take paid sick leave. Under the Holidays Act 2003, the minimum statutory entitlement of sick leave is five days per year following the completion of six months' continuous service. An employee can accumulate up to 20 days' sick leave. However, an employer can provide an employee with additional sick leave over and above the minimum statutory entitlement. Some employees may have a contractual entitlement to additional sick leave. Employers can also offer sick leave in advance.

If an employee has exhausted their sick leave entitlements, they may ask their employer to use any annual leave entitlement, or to take annual leave in advance.

The government is currently considering arrangements for those working for essential services who require sick leave due to COVID-19.

Employers and employees can also agree for an employee to take annual leave at any time. If an employer requests its employees to take annual leave and any employees do not agree, the parties must consult with each other in good faith about when the relevant employee wishes to use their annual leave entitlements. If, however, the parties cannot come to an agreement after consultation, the employer then has the right to direct the employee to take annual leave with at least 14 days' notice.

If an employee falls within a “high risk” category (for example, if they are immuno-compromised or if they are over 70 years of age), the employer should consult with the employee to identify whether there are any alternative working arrangements that could eliminate the risk to that person (e.g. working from home) or whether it is appropriate for them to take paid or unpaid leave. In these circumstances, it is possible that the wage subsidy may be available to support the employee. It is uncertain whether a person who is immuno-compromised will qualify for sick leave under the Holidays Act when the government advises they stay at home and this would also depend on the reason the employee is immuno-compromised.

## Conclusion

The COVID-19 outbreak presents novel and unprecedented employment issues.

Employees and employers must keep in mind that all usual and existing employment law obligations continue to apply. These include all statutory and contractual obligations, including all health and safety and good faith obligations.

Parties to employment relationships should keep up to date with the latest government guidance at [www.covid19.govt.nz](http://www.covid19.govt.nz) and employers are encouraged to seek legal advice on the specific circumstances confronting them.