

COVID-19 coronavirus: working from home? Employers still have obligations to you

Daniel Kelleher

25 March 2020

Have you been asked by your employer to work from home during the next month? Beware that all employers still have obligations to staff during the pandemic crisis - even if they're sitting at the dining room table for the next month.

The house is no longer your haven - it's your place of work now as well.

Daniel Kelleher, a Buddle Findlay partner, said although many New Zealand employees would now be based at home, that home was now technically their legal workplace and came with certain responsibilities from those paying them.

Whether people had adequate technology, desks and chairs, where in the house they had to work from and how appropriate that was, catering for offspring now that schools had shut, sometimes the need to care for older family members - these were all issues to be considered, he said.

Some older office staff with larger homes had studies or areas of their home they could retreat to, but younger staffers were sometimes working from dining room tables which could prove difficult in the longer term, he said.

Many tenants no longer had access to premises and many staff were home-based, he said but those employers who had sent employees home to work should remember that the home was now the workplace and "they continue to have obligations to their employees as their home will be their workplace".

Employers owed a duty to eliminate risks to health and safety so far as was reasonably practicable and to ensure no employees were not put at risk while carrying out work, he said.

On Monday, the Government said it would step up its coronavirus response to Level 4 within 48 hours. All non-essential businesses will need to close from tonight at 11.59pm for at least four weeks.

Kelleher said businesses need to be conscious of their wider health and safety responsibilities under these unusual circumstances.

Landlords should also be aware that the Government had the ability to block access to buildings including under the Health Act, he warned.

"There are also powers under the Building Act. However it seems that for now the Government is relying on the Health Act and the Epidemic Preparedness Act. The latter gives the Government a broad range of powers which include powers under the Health Act but also powers to amend other pieces of legislation," Kelleher said.

As for commercial situations, it could well be that tenants who can't get into their offices because of the month-long quarantine can't escape paying rent.

Chris Farhi, Colliers International's strategic advisory director said commercial leases would also come under the spotlight during these unprecedented times.

Commercial property landlords could be hit with 'no access' lease clauses as the Government steps up its response to Covid-19, he said. These clauses were introduced in 2012 in response to the Christchurch earthquakes.

The Auckland District Law Society deed of lease had a 'no access in emergency' clause which required tenants to continue paying for their offices.

"In the wake of the earthquakes, cordons were put in place that blocked access to some buildings. Tenants were in turn placed in a difficult situation as they were unable to access their premises to conduct business but still needed to pay rent," he said.

"While originally introduced in response to cordons from earthquakes, the clause covers a range of different emergency scenarios including eruptions, tsunamis, floods or even epidemics and contamination."

The no-access clause provided for a fair proportion of payment of rent to stop temporarily if a property was unable to be accessed

in an emergency, and there are rights for the landlord or tenant to terminate the lease if the no access continues for an extended period (the default period being nine months)."

Farhi said there were questions around whether the current pandemic could trigger no-access clauses while still at Alert Level 2.

The planned change to Alert Level 4 as well as the Government's epidemic notice under the Epidemic Preparedness Act 2006 meant that the situation has become clearer.

Kelleher said no-access clauses would now come into play as there was an emergency and tenants providing non-essential services were now unable to access their premises to fully conduct their business operations.

"The ADLS lease is often modified so people need to check their whole lease. A large number of commercial landlords use other forms of lease or completely bespoke leases, so again, you need to check your lease carefully," Kelleher said.

This article was originally published in the [NZ Herald](#), written by NZ Herald property editor [Anne Gibson](#).

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