

COVID-19: Life after lockdown – important information for businesses ahead of Alert Level 3

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The message is clear – stay home, save lives. For many, the Prime Minister's announcement that New Zealand will be moving to Alert Level 3 at 12am on Tuesday 28 April changes little, as people are required to remain in their bubbles and must continue to work from home unless this is not possible. However, the move out of lockdown will be welcomed by those businesses that can recommence either all or part of their operations, and it is predicted that around 400,000 New Zealanders will return to work next week.

Below we discuss the sectors that are likely to fall within the 'safe' business category and remind those businesses of the steps they must take prior to re-opening and their obligation to adopt strong health and safety measures to keep workers safe.

Do you provide an essential or 'safe' service?

In our previous [legal update](#), we discussed who was likely to fall within the 'essential businesses' exemption and could continue to operate at Alert Level 4. Whilst it was 'essential only' at Alert Level 4, the message from the Government is that it will be 'safe only' at Alert Level 3.

'Safe' businesses permitted to open are those that are able to fulfil their usual health and safety obligations, maintain strict physical distancing and meet stringent health and safety rules. For those businesses that are usually accessed by the public, this means they can only open for online or telephone orders, and they must use contactless delivery or 'click and collect' methods for orders and purchases.

There cannot be any contact with the public. For retail, this means that any type of retail goods can be sold at Alert Level 3. However, shops cannot be open to customers (unless they are essential businesses) and any purchase and delivery must be contactless.

No wining and dining will be allowed at Alert Level 3. Restaurants, bars and cafes cannot re-open. However, some will be able to sell prepared food and non-alcoholic beverages, provided they do so by contactless delivery and collection (including drive-through). MBIE has also reminded businesses that they must still have the requisite permit or licence to operate.

The major sectors likely to reap the benefits of the Alert Level 3 rules include construction, manufacturing and forestry. The likes of plumbers, electricians and builders can also operate and work on people's homes, provided it is safe to do so and two-metres of separation is kept from those in the house.

Are your employees able to safely continue working from home?

The Government has said that workers should continue to work from home unless this is not possible. We consider this direction should be interpreted strictly, meaning that mere inconvenience or dismay towards working from home will not be enough. Whilst increased flexibility has been afforded to some businesses at Alert Level 3, employers must not compel workers to go into the workplace where they are able to continue working from home. Hence, employees should not be rushing back to the office.

Moving forward, we consider greater emphasis will be placed on the duty of employers to ensure a safe workplace at home. Recognising that it may not be possible to provide ideal working from home arrangements, employers should still consider whether workers have the necessary equipment to carry out their job effectively and safely from home. For instance, employers could provide information and tips to workers about how to work effectively from home and acknowledge that working from home with children and other distractions means productivity levels may not be as high. Employers may also be able to re-distribute office equipment to the homes of workers at Alert Level 3 where this is possible and safe to do so.

What measures will businesses need to have in place at Alert Level 3?

"Make your business COVID-19 safe" is the refrain. Businesses that re-open during Alert Level 3 must operate consistently with public health guidance and cannot operate if the business requires close physical contact. As above, this means that

customers cannot enter a business premises unless it is a supermarket, dairy, petrol station, pharmacy or other permitted health service.

Businesses have been advised to prepare this week 'on all fronts' and to get ready to open. This means that employers can re-enter premises to carry out 'necessary work' ahead of Alert Level 3, which includes work required to prepare the premises for opening (and to meet public health guidance), as well as minimum basic operations required to maintain or clean the premises, plant and equipment, to receive and maintain stock, or to enable workers to be able to continue to work remotely from their homes. However, in doing so, they must stick to the social distancing rules. Any person may leave their residence to undertake necessary work at any premises currently closed.

Additionally, businesses must carefully consider how to safely operate at Alert Level 3 and prepare a COVID-19 safety plan that sets out how they will do so. In preparing the plan, businesses should have regard to the following key controls identified by [WorkSafe New Zealand](#):

- Supporting people with flu-like symptoms to self-isolate
- Ensuring separation distances
- Disinfecting surfaces
- Maintaining good hygiene
- Keeping recordings to facilitate contact tracing.

The COVID-19 safety plan should be discussed with all workers, including contractors and suppliers, before work operations start. Equally, employers should review and update their plan as the COVID-19 situation develops and as further official guidance is released.

We recommend that employers review industry specific guidance and consider the following questions when preparing their plan:

- Whether there are any risks arising from restarting the business or a business activity that has been shut down during Alert Level 4? If so, how will these be managed?
- How will you ensure all workers know how and are able to keep themselves safe from exposure to COVID-19?
- How will you gather information on the wellness of your staff to ensure they are safe and well to work?
- How will you operate the business in a way that keeps workers and others safe from exposure to the virus?
- How will you evaluate and review whether your processes and measures are effective?

Businesses are not required to send their COVID-19 safety plan to WorkSafe.

For those essential businesses operating under Alert Level 4, a start-up plan is not required. However, such businesses should continue to consider what additional health and safety measures need to be put in place, examples of which were detailed in our previous [legal update](#). We recommend that essential businesses share their current plan with workers.

Based on the information above and prior to re-opening, we suggest all businesses should consider whether they will be able to operate safely at Alert Level 3. Employers should document their thinking about how they will manage risks and seek feedback from workers on proposed measures or risks associated with COVID-19 and recommencing operations.

Are your employees vulnerable or are they at greater risk of contracting COVID-19?

Employees who may be sick, or have come into contact with an infected person, should not go to work at any level. To reduce the spread of COVID-19 and to assist employees who are expected to return to work at Alert Level 3 but who have concerns about their health or the health of someone in their household, the Government has extended the COVID-19 Essential Workers Leave Support scheme to all employees who work for 'safe' businesses re-opening at Alert Level 3. This scheme was previously available only to those working for essential businesses (as discussed in our previous [legal update](#)), however, the new criteria means the scheme is accessible to all businesses, organisations and self-employed people, and not just essential businesses.

The (now renamed) COVID-19 Leave Support Scheme will cover those workers who are unable to work from home but who need to self-isolate because they, or someone in their bubble, are sick, have come into contact with someone who has contracted COVID-19 or is at higher risk of becoming severely sick if they do contract the virus. Where an employee raises such concerns, the employer should engage in meaningful discussion with the employee and consider all options. In addition to considering whether to apply for the COVID-19 Leave Support Scheme on behalf of that employee, employers could consider whether the employee is able to continue working from home or what changes in the workplace could be made in order to minimise the risk of infection. Any changes to hours of work or work conditions should be negotiated in good faith and mutually agreed.

Applications for the COVID-19 Leave Support Scheme will open from Friday 1 May 2020 and payments will be for four weeks. Full-time workers will be entitled to \$585.80 per week and part-time workers can receive \$350 per week. Businesses can re-apply for those same workers after the four weeks or make further applications for other eligible workers. Employers who received the previous COVID-19 Essential Workers Leave Support for an employee will need to wait until the four-week period of that payment has ended before applying for the same person under the COVID-19 Leave Support Scheme. Employers cannot receive the COVID-19 Leave Support Scheme and the COVID-19 Wage Subsidy for the same employee.

We also remind employers that where an employee feels it is not safe to go to work, they are entitled to refuse to undertake work, provided they consult with their employer about their concerns in the first instance.

What happens if workplaces breach the Alert Level 3 official guidance?

The Government issued a strong direction that enforcement measures would be used to ensure everyone complied with its directives at Alert Level 4, and we predict the same will apply at Alert Level 3. The consequences for businesses would appear to be the same for those who failed to follow the Government directions at Alert Level 4, being fines up to \$4,000 and imprisonment for up to six months.

WorkSafe expects employers to continue to look after their people and to eliminate or minimise work health and safety risks so far as reasonably practicable. WorkSafe said that the Health and Safety at Work Act 2015 (HSWA) "applies just as much now as at other times" and that it would be following up on notifications and concerns by email or phone about essential services that may not be managing their COVID-19 related risks properly. Similarly, at Alert Level 3, WorkSafe has indicated that it will be actively checking that businesses are doing what they need to do, in accordance with their written plans and their duties under the HSWA. Hence, it is likely WorkSafe will intervene where an employer breaches their health and safety obligations.

What is Alert Level 2 likely to mean for businesses?

The key aim for Alert Level 2 will be to "reduce levels of people movement and interaction".

Restaurants, bars and cafes can re-open at Alert Levels 1 and 2, subject to public health measures required at both levels, including social distancing and restrictions on gatherings. Hairdressers, salons and gyms will also be allowed to open at Alert Level 2.

The Government has indicated that at this alert level, businesses will still be encouraged to use alternative ways of working where possible. 'Alternative ways of working' could include staggering shifts or meal breaks to reduce the amount of interaction between workers on site, limiting the number of workers on the premises and adopting more flexible working arrangements. Again, any change to hours of work, pay or work conditions should be consulted on in good faith and agreed in writing.

We would be happy to assist with any further guidance regarding any of the information above.

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