

COVID-19 employment update – Government support package and the impacts of Government directives on workplaces

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NB: Since this article was published there have been some changes to the Government support package, as follows. The special leave payments have been discontinued, and a new essential services leave support scheme introduced. The \$150,000 cap on the wage subsidy was removed on 23 March and from 27 March employers applying for the wage subsidy are required to retain employees for the duration of the period they receive the subsidy. In addition, the relevant Government website no longer refers to the wage subsidy as being available to schools, tertiary institutions, or DHBs.

As at 19 March 2020 COVID-19 has now spread to 173 countries and territories around the world, with 218,557 confirmed cases and 8,940 deaths. New Zealand has 28 confirmed cases. The Ministry of Health maintains that with continued vigilance the chance of a widespread community outbreak is expected to remain low in New Zealand. To this end, the Government has issued a number of directives and has introduced financial support for businesses and employers, which will be well received as they continue to grapple with the changing impact of the virus on their bottom lines. Following on from our [previous legal update](#) regarding COVID-19 and the workplace, we outline the conditions attaching to the Government's support package and discuss some of the impacts on workplaces of the Government's recent and expected directives.

Government financial relief for businesses

The Government has announced a \$12.1b dollar relief package to combat the economic effects of COVID-19, in an attempt to support those businesses and industries who have been and are likely to take a severe hit. The Government's relief package is considerably bigger than those announced so far by Australia, the United Kingdom and the United States. Of assistance to all COVID-19-impacted businesses is a wage subsidiary package and special leave payments for employees who are self-isolating or have been diagnosed with COVID-19 (or are caring for dependents in those two situations). It also includes targeted financial support for the aviation sector, benefit increases, tax changes and additional funds for the health sector to fight the virus.

The Government has made clear that this is not a one-off package. It will continuously monitor the development of the situation and alter its response accordingly.

What is the COVID-19 wage subsidy?

The purpose of the COVID-19 wage subsidy is to offer short-term financial support to businesses that might otherwise need to consider reducing the size of their workforce or reducing employees' hours to cope with the effects of COVID-19. Similar subsidies were used by the Government following the 2011 Christchurch earthquake.

The subsidy is specifically for wages and is calculated at a rate of \$585.80 per week for employees working 20 hours or more per week, and \$350 per week for employees working less than 20 hours per week. It is paid as a one-off lump sum and will cover a period of 12 weeks, up to a maximum payment of \$150,000. It is only available for businesses that are registered and operating in New Zealand, and have experienced a decline of at least 30% in actual or predicted revenue due to COVID-19 (over the period of a month when compared with the equivalent month in 2019). The business must also have taken active steps to mitigate the effects of COVID-19, including activating its business continuity plan and seeking advice and support from relevant financial and industry stakeholders.

The wage subsidy is conditional on the business making best efforts to retain employees during the 12 week period, and paying them a minimum of 80% of their normal wages for that period.

The wage subsidy payment is not available for state sector employers, including government departments and agencies, and crown entities (but will be available to other public bodies, such as schools, tertiary institutions and DHBs).

Employers can apply to the Ministry of Social Development's Work and Income branch for the wage subsidy. The Government has advised employers who are eligible to apply as soon as possible, however some employers will be insured for business interruption, covering the payment of wages and salaries while the business is closed. Employers should check with their insurers before making decisions about how to respond, so as not to jeopardise their cover.

What is the COVID-19 leave payment?

The COVID-19 leave payment scheme is available when an employee is unable to work because they are sick with COVID-19 or are required to self-isolate in accordance with the Government's directive, or because they are caring for a dependent who is sick with COVID-19 or is required to self-isolate in accordance with the Government's directive.

The payment amounts are equal to that of the wage subsidy scheme and are available on an 'as needed' basis. At this stage, payments are available for 8 weeks from 17 March 2020. Employers should apply to the Ministry of Social Development's Work and Income branch on behalf of affected employees and must pass on the full amount of any approved payments to those employees. Self-employed people can apply directly. Approval will be granted for periods of up to 14 days at a time, so multiple applications may be required depending on the affected employee's circumstances.

For employees who are required to self-isolate, the COVID-19 leave payment is only available if they aren't able to work from home and haven't left to travel overseas post-16 March 2020. Employees must have been working for their employer when they went into self-isolation, and there must have been an expectation that they would otherwise have continued to work for that period of time.

Existing holiday and leave entitlements such as annual leave and sick leave sit alongside the COVID-19 leave payment, but do not have to be used prior to receiving this payment. However, it is unclear how this will work in practice.

As for the wage subsidy payment, the COVID-19 leave payment is not available for state sector employers. The Government has signalled that it expects state sector employers to pay employees as normal during periods of self-isolation.

More information about the COVID-19 leave payment scheme and links to the online application form for employers are available via [MBIE](#) and [WINZ](#). We are advising a number of clients about how best to manage staff absences and leave in light of COVID-19. Please get in touch if you would like specific advice on this.

Impact of border restrictions and health directives

In an effort to limit the outbreak of COVID-19 the Government has introduced strict border and quarantine measures. From Sunday, 15 March 2020 all travellers who have been overseas (except from Pacific Island nations) are now required under a health directive from the Government to self-isolate for 14 days and register with Healthline.

As above, if an employee travels overseas after 16 March 2020 (except for travel to Pacific Island nations), the employee will not be eligible upon their return to New Zealand to the Government leave payment while they self-isolate. As a result, employees may be looking to their employer to pay for this period or to be allowed to take annual holidays or sick leave. The employer will need to pay if the employee was required to travel for business reasons. But if the travel was for personal reasons, their employer may be upset by losing their worker for an additional 14 days where the employee knew that self-isolation was required, and therefore may be reluctant to pay or provide leave. On the other hand, the employer may be happy for the employee to take additional leave at this time, particularly if they are experiencing a downturn in business.

Therefore, we recommend that employers turn their mind to this now. If losing an employee for another 14 days would pose problems, then we suggest that the employer advise all employees of the implications of having to self-isolate after personal travel, which could include not paying those employees and not allowing them to take paid leave (unless they qualify for sick leave). Alternatively, an employer may be willing for the employee to work from home or to take additional annual holidays, but for this to be agreed prior to departure. Not only is doing this consistent with the duty of good faith, but by front-footing the issue, the employer is likely to limit any future disputes with employees over their entitlement to work and get paid upon their return.

Alternative working arrangements

Where possible, employers should encourage employees to work flexibly, whether this means working from home, dialling in for meetings or sending work to be completed and reviewed through email. Each individual's circumstances will need to be assessed on a case by case basis.

Many employers are likely considering whether it may be practicable for its employees to work from home. Before sending people home to work, employers should consider whether the use of any other special leave by the employee is an option, if the employee has the appropriate equipment to effectively carry out work from home, and whether they have a safe place to work. This is key, as an employer's health and safety obligations will continue to apply, regardless of where the employee is working.

If these options are not workable, employers should consider whether the wage subsidy package may be able to assist. Longer term, we anticipate some businesses will need to look at restructuring to reduce hours of work or consider downsizing. In these circumstances, the usual good faith obligations will apply and it will be important to continue to reassess and explore alternatives as the situation develops.

In the event schools shut down

Schools can be shut down under the Health Act 1956 to prevent or restrict the spread of any infectious disease. In this case,

employees may be unable or unwilling to come into work because they need to look after children who can't go to school. In these circumstances, if alternative working from home arrangements cannot be made, an employer and employee may agree that the employee will take annual holidays, or special leave with or without pay (or sick leave, if the child is sick). We recommend that agreed timeframes be put in place and that communication be maintained, so that both parties know where they stand.

What can employers do if there is a Government lock-down

As we have seen in China and Italy, Governments locked-down cities in an effort to reduce the number of transmissions. In a lock-down, all employees who work in non-essential services will be directed to stay home and will only be permitted to leave their homes to obtain food or medicine.

If this occurs and alternative work arrangements cannot be put in place, and the Government's wage subsidy does not apply or is inadequate, employers will need to consider whether they can afford to continue to pay employees or whether employees take annual holidays, leave without pay, or to agree to a period of reduced pay, perhaps in exchange for part-time work where some work is available.

If agreement cannot be reached or these options are not workable for other reasons, the first port of call for all employers is their employment agreement. There may be specific clauses that dictate how an absence from the workplace in the event of a pandemic is to be treated. Some employment agreements contain 'force majeure' or 'business interruption' clauses that state the employer may stop paying employees if their business is shut down for reasons beyond the employer's control, such as a pandemic.

Ultimately employers might have to consider redundancies. Especially if their work has been badly affected by the COVID-19 pandemic, such that the employer will not be resuming business as usual for some time, if at all. Please get in touch if you would like specific advice on this.

Workplace health and safety remains paramount

Providing a healthy and safe work environment for your workers and clients should be a paramount consideration for all employers. Below we set out some practical considerations which employers should be mindful of in terms of maintaining a healthy and safe work environment:

- Whether any gatherings, conferences or meetings can be postponed or held via video conference or Skype
- Reducing the number of external visitors coming to the office premises
- Suspending unnecessary work-related travel
- Flexible work hours that do not require travel at peak travel times
- Reiterate good hygiene practices and display signs/posters around the office with the official guidelines
- Provide hand sanitiser, soap, tissues, disinfectants for surfaces, closed bins for workers to use and any protective equipment that needs to be provided
- The health and safety measures adopted by other businesses who share the same place of work/ premises
- Any insurance policies taken out by the business
- Whether an emergency management plan or pandemic or infectious diseases plan should be developed
- Appointing a COVID-19 risk manager who could act as a point of contact for workers who may feel they are at risk of being diagnosed with, or exposed to, COVID-19
- Briefing health and safety officers on what to look out for and what to report to senior management or a COVID-19 risk manager.

Moving forward

As the number of COVID-19 cases in New Zealand continues to rise, and with the Government's recent health directives, employers and employees now face a multitude of legal and practical issues, none of which are straightforward. We recommend that employers take proactive measures in response to the issues discussed above and continue to frequently monitor official guidance. We are doing the same, and are here to help if you need more specific advice to suit your business' needs.

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