



DYHRBERG DRAYTON
EMPLOYMENT LAW

What's New Update: Workplace response to COVID-19 (novel coronavirus)

Updated 6 April 2020

At 11.59 pm on Wednesday 25 March, the Government moved Aotearoa New Zealand to COVID-19 Alert Level 4 – Eliminate Contact. This means all individuals are asked to stay home, all education facilities are closed, and all businesses except essential services and lifeline utilities are required to close.

This update is intended to provide general information regarding the implications of COVID-19 for workplaces with the implementation of COVID-19 Alert Level 4. We are monitoring the Government's announcements and will update information regularly. However, given the uncertainty of the rapidly evolving situation, we encourage clients to reach out to a member of the Dyhrberg Drayton Employment Law team for advice regarding any specific situations.

You can contact us on:

T: 04 550 4060 or 04 550 4062 (these numbers will divert to our mobiles)
E: steph@ddelaw.co.nz or johanna@ddelaw.co.nz

General overview

Generally, an employee is entitled to be paid in accordance with their employment agreement if they are *'ready, able and willing'* to work. Where an employee is required to self-isolate by the Government lockdown, they may not be *'able'* to work and arguably are not entitled to be paid. There is a grey area in New Zealand law about whether employees forced from the workplace for reasons beyond their control remain entitled to pay.

It is clear that if an employee is able to work from home, they are entitled to be paid their ordinary salary. It is not clear that an employer can force employees to work at home or another location. An employer can decline to allow work from home, but this should be on reasonable grounds

(health and safety, security, inability to deliver the work properly or supervise).

If an employee declines to work from home for health and safety reasons or because they don't have a suitable working environment, this would be a reasonable refusal and employers should consider payment, if possible. If they refuse simply because they don't want to work at home, in our view they would not be entitled to pay. Any arrangement you have already put in place to cover non-working employees would apply.

If an employee is not able to perform their duties from home, we recommend the employer explore the Government subsidies explained in more detail *below*. Alternatively, employees could be offered paid leave such as annual leave, special leave, or annual leave in advance. Paid sick leave may only be used if the employee, or a dependant, is sick.

Employers and employees continue to have mutual obligations of good faith and to be communicative throughout this time. We recommend employers try very hard to retain and pay employees if possible; this is a good faith expectation and will make resuming full operations far easier when the state of emergency lifts.

Government subsidies

The Government has introduced a \$12.2 billion plus package to support business affected by COVID-19. See attached detailed information, step by step, about what the entitlements are and how to access them. Note the Government may update and expand entitlements as the lockdown progresses, so keep checking the COVID-19 government website.

The support includes:

- a Wage Subsidy Scheme;
- an Essential Workers Leave Scheme; and
- business cashflow and tax measures.

The Government has also removed the stand-down period for access to WINZ benefits.

The package originally included a Leave Payment Scheme. However, as of 3:00 pm Friday 27 March this is no longer available, and has been folded into the Wage Subsidy Scheme. A number of other changes were also made to the Wage Subsidy Scheme. Applications for the Wage Subsidy Scheme already submitted prior to 3:00 pm 27 March will continue to be processed and paid, and the declarations in force prior to the changes will continue to govern them.

Wage Subsidy Scheme

Employers that are significantly impacted are entitled to apply for a 12-week wage subsidy, paid as a lump sum, amounting to:

- \$7,029.60 (\$585.80 per week) for a full-time employee; and
- \$4,200 (\$350 per week) for part time employees (less than 20 hours per week).

To qualify a business must:

- be registered and operating in New Zealand;
- employ persons legally working in New Zealand;
- have experienced a 30% decline in actual or predicted revenue over a month period compared to the same month last year due to COVID-19;
- have taken active steps to mitigate the impact of COVID-19 (such as activating a business continuity plan or seeking advice or support from your bank);
- use best endeavours to pay employees at least 80% of their ordinary pay for the subsidised period; and
- retain the employees named in the application for the period it receives the subsidy.
- Note the consent of employees must be obtained before sharing their information (on the application form).

Employers must pass on these payments to their employees for the 12-week period. Where an employee's usual wage/salary is higher than the Wage Subsidy weekly payment, employers must make up the difference unless there is a request and agreement by employees to be paid less than

their full pay. Employers must use their best endeavours to pay employees at least 80% of their ordinary pay.

Updated guidance has provided clarification around the amount payable under the subsidy. For employees who work part time, they should be paid the full subsidy, unless that would be more than their usual pay. The advice from Work and Income is that any difference should be used for the wages/salary of other affected staff.

The changes introduced on 27 March reminded employers of their ongoing obligations under the Employment Relations Act 2000. Employers are not to unlawfully compel or require employees to use their leave entitlements for the period for which the subsidy is received.

The further guidance placed additional obligations on employers seeking to access the scheme, including retention of the employees named in the application for the period for which the subsidy is received for those employees. Participating employers' names will also be published on a publicly accessible register, to provide accountability.

Employers can apply for the Wage Subsidy Scheme [here](#).

Essential Workers Leave Scheme

On 2 April the Government announced a leave scheme to support businesses providing essential services whose employees take leave from work to comply with public health guidance. This came into effect midday Monday 6 April.

The scheme allows essential businesses to pay employees at the same rates as the Wage Subsidy Scheme where they:

1. Are at higher risk if they contract COVID-19, and Ministry of Health guidelines recommend they stay at home during lockdown (and potentially longer); or
2. Come into contact with someone who has contracted COVID-19 and must self-isolate for 14 days (as required by Ministry of Health guidelines); or

3. Have tested positive for COVID-19 and are required to remain off work until they've been cleared by a health professional to be released from self-isolation; or
 4. Have household members who are at higher risk if they contract COVID-19 and Ministry of Health recommend the worker also remains at home to reduce the risk to them.
- allowing depreciation on commercial and industrial buildings from the 2020/2021 tax year;
 - removing the hours test from the In-Work Tax Credit (**IWTC**) from 1 July 2020; and
 - a Business Finance Guarantee Scheme where businesses with a turnover of between \$250,000 and \$80 million will be eligible for loans of up to \$500,000 for a term of up to three years, at competitive, transparent rates.

The scheme alleviates pressure on employees of businesses providing essential services who cannot work from home and supports the Government's wider goal of stopping the spread of COVID-19.

The Scheme requires Employers to have discussed with employees how to best support them at this time and for Employers to be unable to financially support their employee due to the current public health restrictions.

Employers will be required to pay employees either their usual weekly income, if less than the Leave Payment, or, at a minimum, the full Leave Payment if their usual weekly income is higher (while making best endeavours to pay at least 80% of the employee's usual income).

Payments will be made as a lump sum on a four-weekly basis, and employers will be able to re-apply during the fourth week, for that same employee, if required.

Employers cannot access the Essential Workers Leave Scheme where they have received payment under the Wage Subsidy Scheme.

Employers can apply for the Leave Scheme [here](#).

Business cashflow and tax measures

Further measures to assist businesses include:

- providing discretion for Inland Revenue to remit use-of-money interest for businesses negatively affected by COVID-19;
- increasing the provisional tax threshold to \$5,000 from the 2020/2021 tax year;
- increasing the small asset depreciation threshold to \$1,000 – and to \$5,000 for the 2020/2021 tax year;

Unwell employees

Subject to our comments above for essential workers who are unwell, where an employee of a non-essential business is unwell, or a person dependent on the employee is unwell, we consider employers should apply for the Wage Subsidy Scheme. In this case, the employee should have their remuneration topped up through paid sick leave (if available). If paid sick leave is not available, paid special leave should be considered. Other forms of paid leave, such as annual leave, can also be used if the employer and employee agree to this.

An employer is likely to breach the requirements of the Health and Safety at Work Act 2015 (**HSWA**) if they require the employee to come to into a place of work contrary to the Government's directives. Similarly, an employee is likely to breach their obligations under the HSWA if they fail to follow a lawful and reasonable direction to remain at home.

If an employee contracts COVID-19, the employer will be entitled to disclose information to colleagues and customers who have been exposed to that employee. However, for privacy reasons, employees' medical information should not be disclosed beyond where it is necessary to protect public health and safety.

School closure

With schools and day-cares closed, employees may need to care for children and/or dependants. As discussed above, this may be accommodated where an employee is able to work remotely.

Employers in essential services should discuss care arrangements with employees and

implement reasonable measures to accommodate caregiving requirements.

Employers in essential services

Employers in essential services continue to have obligations under the HSWA to take all reasonable steps to mitigate employees' risk of exposure to COVID-19.

Where possible, employers in essential services should direct employees to practise physical distancing, with employees to interact no closer than 2 metres. Employers may want to look at whether it is possible to use smaller rotations of staff. Disinfectant, sanitiser and other protective equipment should be made readily available to employees.

Scheduled leave

An employer cannot cancel pre-approved leave. However, an employer and an employee can reach an agreement to withdraw or alter pre-approved leave.

If an employee has been planning to travel overseas, employers should raise the border restrictions and Government advice not to travel. The employer may advise the employee that if they cannot agree on how to manage a situation where the employee is unable to return, or the employee's self-isolation upon return, this will become unpaid leave.

It would be reasonable for an employer to decline new leave requests for overseas travel.

Advice for struggling businesses

Where a business is struggling as a result of COVID-19, we consider it likely the requirements of good faith would require an employer to exhaust all options e.g. government support, prior to considering options such as redundancy. Employers should be seeking financial advice and contacting their banks to discuss temporary relief measures.

Variation to working arrangements

Employment law requires an employer to act in good faith when proposing changes to working arrangements. That means an employer should

consult/discuss proposed new ways of working with employees, consider their views and then make reasonable decisions. Unilateral changes (with no process) are unlawful. Ideally changes should be made with the employee's agreement and recorded.

After exploring all options (including the Government's assistance packages), some employers may decide they need to make changes to employees' working arrangements, even where employees don't agree. There will be circumstances where this will be a lawful and reasonable instruction. Ensuring there has been consultation will be important. For some employers for whom changes or accommodations can't be made to save jobs, redundancies will have to be considered. Any proposed restructure and/or redundancy must be for genuine business reasons and include a fair and reasonable consultation process (in the circumstances). Notice under the agreement must be given (or paid in lieu) and any contractual redundancy compensation paid. If the business is insolvent, the rules applying to payments under insolvencies will apply.

Employers who applied for the Wage Subsidy Scheme prior to 27 March were not obliged to retain the employees for whom they applied. However, we consider where an employer does not retain these employees, this may be relevant when considering justification for the redundancy.

For employers who applied for the Wage Subsidy Scheme after 4:00 pm on 27 March, they must retain the employees for whom they applied, as they will otherwise be in breach of their obligations.

If the employment agreement has a force majeure clause, this may provide for immediate termination of employment for unforeseen events. The wording of the clause will need to be carefully considered. Good faith would still apply and advice should be sought.

Longer-term business closure

If an employer considers they are likely to need to close permanently, we recommend taking careful legal advice. A formal restructuring process should

be followed, including a fair and reasonable consultation process, in all the circumstances.

Health and safety obligations

Employers must take all reasonably practicable steps to ensure employees' health and safety, including when working at home or in another remote location. The working area must be safe and secure. Appropriate furniture needs to be used to avoid back and neck problems. The lighting, heating and ventilation should be adequate. Make sure staff have the equipment they need and internet access. Talk all of these issues through with employees when discussing whether they can work remotely.

Discuss whether it is realistic to expect the employee to work. They may be caring for

dependants including children home from school or day-care. They may have other pressures, including a partner's job being in jeopardy. Be open and communicative.

Employees will be stressed and anxious. Keep in regular communication and provide the support you can. If your staff have access to EAP counselling, most providers are offering phone or online contact. Some membership organisations provide this support for free.

Employers should ensure that employees' contact details and emergency contacts are up to date.

We are available by email and phone to assist you: please seek advice if in any doubt.



COVID-19 Wage Subsidy Guidance

Entitlements: Wage Subsidy Scheme

All New Zealand employers who have been adversely affected by COVID-19 are eligible to apply. This includes:

- shareholder-employees;
- partnerships where each partner is paid a wage, salary or draws an income for the work they do;
- registered charities;
- NGOs;
- the self-employed and sole traders;
- contractors;
- registered charities;
- incorporated societies; and
- post-settlement governance entities.

If you're an employer, contractor, sole trader or self-employed, you may qualify to get the COVID-19 wage subsidy.

The COVID-19 Wage Subsidy will be paid at a flat rate of:

- \$585.80 for people working 20 hours or more per week
- \$350.00 for people working less than 20 hours per week.

The subsidy is paid as a lump sum and covers 12 weeks per employee. Businesses can only apply for this subsidy once for the same employee.

The Government has removed the cap of \$150,000 per business on wage subsidies that can be paid to employers affected by COVID-19.

Step 1: Determine eligibility of you/your business

My business has been impacted by COVID-19 and I am/or about to experience at least a 30% decline of actual revenue.

You must meet the following criteria to be eligible:

- a. The business must be registered and operating in New Zealand.

This means that a business is:

- registered with the New Zealand Companies Office, and
- physically located in New Zealand, and
- their employees legally work in New Zealand.

Sole traders are not required to be registered with the New Zealand Companies Office, but must have:

- a personal IRD number for paying income tax and GST, and
- government licences and permits for their business needs, and
- qualifications or registrations for their trade or profession.

Sole traders must still meet the requirements to be physically located and legally working in New Zealand.

b. The employees must be legally working in New Zealand.

Legally working in New Zealand means a person is both working in New Zealand and is legally entitled to work in New Zealand. A person is legally entitled to work in New Zealand if they:

- are a New Zealand or Australian citizen (including a person born in the Cook Islands, Niue or Tokelau), or
- have a New Zealand residence class visa, or
- have a New Zealand work visa or a condition on their New Zealand temporary visa that allows them to work in New Zealand.

c. The business must have experienced a minimum 30% decline in actual or predicted revenue over the period of a month when compared with the same month last year, and that decline is related to COVID-19

This means a business has experienced a 30% decline in:

- actual revenue,¹ or
- predicted revenue (e.g. for businesses who have seen a reduction in bookings such as accommodation providers), and
- that decline is related to COVID-19.

The business must experience this decline between January 2020 and 9 June 2020.

Determining a Decline in Revenue:

- The business must compare one month's revenue against the same month the previous year (e.g. February 2020 compared with February 2019). The revenue of the month in the affected period must be at least 30% less than it was in the month it was compared against; or
- Where a business has been operating for less than a year, they must compare their revenue against a previous month that gives the best estimation of the revenue decline related to COVID-19.

d. The business must have taken active steps to mitigate the impact of COVID-19

A business must take active steps to mitigate the financial impact of COVID-19 on their business. This could include:

- activating their business continuity plan
- drawing on their cash reserves (as appropriate)
- making an insurance claim
- seeking advice and support from:
 - their bank
 - the Chamber of Commerce
 - a relevant industry association
 - the Regional Business Partner programme.

¹ Revenue means the total amount of money a business has earned from its normal business activities, before expenses are deducted.

- e. The business must make best efforts to retain employees and pay them a minimum of 80% of their normal income for the subsidised period

Employers are required to agree they will retain the employees named in their application for the period they receive the subsidy in respect of those employees.

Employers are also required to agree that, for the duration of the subsidy, they will make best efforts to pay those employees a minimum of 80% of their normal wage or salary. If this is not possible, Employers must pass on at least the full rate of the wage subsidy to each employee named in the application. Where the wage subsidy is higher than an employee's salary/wages, the Employer is entitled to use this to account for the difference in salary/wages for other staff.

Step 2: Apply Online

Apply [here](#) for employers, or [here](#) for those who are self-employed.

You will need:

- your business IRD number;
- your business name;
- your NZ business number (if applicable);
- your business address;
- the names of your employees and their dates of birth;
- your employees' IRD numbers;
- contact details for your business and your employees;
- your bank account number.

You will be required to make a declaration (see **below**).

Casual Employees and Subsidy Rate

Casual employees may have variable hours, so to assess their subsidy rate, the employer should average their hours over the last year. If this average is 20 hours or more, they can apply for the full-time rate, and if it's under 20 hours they can apply for the part-time rate. If they have worked for less than a year, the employer should average the hours worked during their total employment period.

Next Steps

MSD will then check if you qualify and may contact you via phone if they need further information regarding your application. If it's approved, MSD will email and text to confirm that they have approved the application and made a payment. If it's declined, MSD will notify you.

The subsidy is being administered under a high trust model and employers will not be asked for verification before the subsidy is approved. However, MSD will have the ability to check applications and verify information at a later date. Where false or misleading information has been provided, employers can be subject to fraud investigation.

Application Form – Employers



COVID-19 Wage Subsidy and Leave Payment Application Form

Employer Application

Required information is flagged with " * "

* I am applying because

My business has been impacted by COVID-19 and I am/about to experience at least a 30% decline of actual revenue ▼

* I confirm that I have read and understood and agree to this [declaration](#)

* Business IRD Number

* IR Customer Name

NZ Business Number (NZBN)

* Business address

* Contact Name

* Note: Contact Email and Contact Mobile may be used for further communication regarding your application.

* Contact Email

* Contact Mobile

Contact Other Phone

* Bank Account

Bank (2) Branch (4) Account (7) Suffix (2-3)

Your account suffix will either be 2 or 3 digits depending on your bank. Please enter it exactly as it appears.

Affected employees you wish to claim a subsidy for.

If you wish to claim a subsidy for yourself, enter your own details as well as those of your employees.

First name	Last name	Date of Birth	IRD Number	Employment Type
<input type="text"/>				
		(dd/mm/yyyy)		

Add Employee

Submit

Declaration – COVID-19 Wage Subsidy

By submitting this form, you are declaring that:

You must meet the eligibility criteria

- You meet the eligibility criteria for the Wage Subsidy (**subsidy**):
 - you operate a **business** (being a registered business, sole trader, self-employed person, registered charity [1], incorporated society [2], non-government organisation, or post settlement governance entity) in New Zealand that employs and pays the employees named in your application; and
 - the **employees** (including you if you are a sole trader or self-employed person) named in your application are legally employed by your business and are employed in New Zealand; and
 - your business has 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, and that revenue loss is attributable to the COVID-19 outbreak; and
 - before making your application for the subsidy, you have taken active steps to mitigate the impact of COVID-19 on your business activities (including but not limited to engaging with your bank, drawing on your cash reserves as appropriate, making an insurance claim); and
 - you are not currently receiving the COVID-19 Wage Subsidy or COVID-19 Leave Subsidy in respect of any of the employees named in your application.

Your obligations to use the subsidy to retain and pay your employees

- You acknowledge that the granting of your application and your receipt of the subsidy does not override your existing obligations under the Employment Relations Act 2000;
- You will not make any changes to your obligations under any employment agreement, including to rates of pay, hours of work and leave entitlement, without the written agreement of the relevant employee; [3]
- You will retain the employees named in your application as your employees for the period you receive the subsidy in respect of those employees;
- You will not unlawfully compel or require any of the employees named in your application [4] to use their leave entitlements for the period you receive the subsidy in respect of those employees; [5]
- You will use the full amount of the subsidy to pay each of the employees named in your application in fulfilment of, or towards the fulfilment of, the wages or salary obligations contained in each of their employment agreements for the period you receive the subsidy.
- You will use your best endeavours to pay at least 80 per cent of each named employee's wages or salary for the period you receive the subsidy. The wages or salary obligations are:
 - as specified in the employee's employment agreement as at 26 March 2020; or
 - if you ended your employment relationship with any employee named in your application as a result of your business being adversely affected by the COVID-19 outbreak and have re-employed that employee on or after 17 March 2020, as specified in the employee's employment agreement as at the date that employment relationship ended.
- You will, where the wages or salary of an employee named in your application is lawfully below the amount of the subsidy, pay the employee the full amount of the subsidy instead of the wages or salary that would otherwise be payable. You will not under any circumstances compel or require the employee to repay to you the difference between the full amount of the subsidy and their wages or salary.

Providing information about you, your business and your employees to the Ministry

- You will provide the Ministry of Social Development [6] with information about you, your business and (with their consent) the employees named in your application to the extent required by the

Ministry of Social Development or its auditors to make decisions about your application, and to audit and review any subsidy that is granted (to you or another applicant) and how any subsidy granted is paid to employees.

Consent to the Ministry sharing information about your application with other agencies

- You consent to the Ministry of Social Development sharing information about you or your business provided with respect to your application (both at the time of application, and any information provided at a later time) with other agencies (including non-government agencies) to the extent necessary to make decisions about your application, and to audit and review any subsidy that is granted (to you or another applicant) and how any subsidy granted is paid to employees.

Consent to other agencies providing information about you to the Ministry

- You consent to other agencies (including non-government agencies) providing information about you or your business to the Ministry of Social Development or its auditors, to the extent necessary in order for the Ministry of Social Development to make decisions about your application, and to audit and review any subsidy that is granted (to you or another applicant) and how any subsidy granted is paid to employees.

Discuss your application with your employees and gain their consent to information sharing

- The employees consent to:
 - the information about them in your application being provided to the Ministry of Social Development; and
 - you providing the Ministry of Social Development with any further information about them required in order for the Ministry of Social Development to make decisions about your application, and to audit and review any subsidy that is granted (to you or to another applicant) and how any subsidy granted is paid to employees; and
 - you advising the Ministry of Social Development if they end their employment relationship with your business at a time when you are receiving a subsidy with respect to them.
- The employees named in your application have consented (in writing, if practicable) to the following matters:
- You have discussed this application with the employees named in it.
 - The employees consent to the information about them provided to the Ministry of Social Development with respect to this application (both at the time of application, and any information provided at a later time):
 - being used by the Ministry of Social Development to make decisions about your application, and to audit and review any subsidy that is granted (to you or to another applicant) and how any subsidy granted is paid to employees; and
 - being shared by the Ministry of Social Development with other agencies (including non-government agencies) to the extent necessary in order for the Ministry of Social Development and its auditors to make decisions about your application, and to audit and review any subsidy that is granted (to you or to another applicant) and how any subsidy granted is paid to employees; and
 - being used by the Ministry of Social Development to make decisions about other assistance and entitlements to the extent your application and any subsidy granted is relevant to them (for instance, where your application is relevant to an employee's application for other assistance).
 - The employees consent to other agencies (including non-government agencies) providing information about them to the Ministry of Social Development and its auditors, to the extent necessary in order for the Ministry of Social Development to make decisions about

your application, and to audit and review any subsidy that is granted (to you or to another applicant) and how any subsidy granted is paid to employees.

Advise your employees they may contact the Ministry about your application

- You have advised the employees named in your application that:
 - they can contact the Ministry of Social Development if they have any queries about your application and the subsidy you receive in respect of them; and
 - the Ministry of Social Development’s contact details are:
 - PrivacyOfficer@msd.govt.nz; and
 - under the Privacy Act 1993 they have the right to request access to all information held about them and to request corrections to that information.

Publication of information about you

- You consent to the Ministry of Social Development publishing information about your business and the level and duration of any subsidy provided to you (excluding any personal information about the employees named in your application) on a publicly accessible register.

Notify changes in eligibility

- You will notify the Ministry of Social Development within 5 working days if anything changes that may affect your eligibility or entitlement to the subsidy, including if any of the employees named in your application end their employment relationship with you.

Repaying the subsidy

- You agree to repay the subsidy or any part of the subsidy paid to you if you:
 - fail to meet any of the obligations about how you must use the subsidy; or
 - were not or stop being eligible for the subsidy or any part of the subsidy;
 - provide false or misleading information in your application; or
 - receive insurance such as business interruption insurance for any costs covered by the subsidy.

Provision of true and correct information

- You acknowledge and agree that all of the information you have provided to the Ministry of Social Development is true and correct.

Consequences of non-compliance with the obligations in this declaration

- You acknowledge that you may be subject to civil proceedings for the recovery of any amount you receive that you are not entitled to and/or to prosecution for offences under the Crimes Act 1961 if you:
 - have provided false or misleading information; or
 - fail to meet any of the obligations about how you must use the subsidy; or
 - receive any subsidy or part of a subsidy that you were not entitled to receive.

Authority to make this declaration

- You are making this declaration of behalf of your business and you have the authority to do so.

The Ministry may amend this declaration

- You acknowledge that the Ministry of Social Development may amend this declaration at any time and at its discretion.

Declaration forms part of your application

- You acknowledge that this declaration forms part of your application.

In submitting your application you also acknowledge and/or agree:

- The Ministry of Social Development collects the information in this application to determine whether you are eligible to receive assistance.
 - The Ministry of Social Development will use the information provided in this application for the purposes addressed in this document, including to assess your eligibility to receive the subsidy and to audit and review any subsidies granted. We may also use the information to contact you or for research and reporting purposes, or to advise you on the matters relating to the assistance you applied for.
 - The Ministry will not use the information provided in this application for any other purpose unless required or authorised by law.
 - Under the Privacy Act 1993 you have the right to request access to all information held about yourself and to request corrections to that information.
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[1] Incorporated under the Incorporated Societies Act 1908 and registered under the Charities Act 2005; or registered the Charities Act 2005.

[2] Incorporated under the Incorporated Societies Act 1908.

[3] It is unlawful for you to unilaterally vary an employment agreement to reduce an employee's wages or salary in order to receive the subsidy. You must continue to comply with your obligations under the Employment Relations Act 2000.

[4] Including essential workers who are unable to work for COVID-19 related reasons including their own illness or caring for dependants.

[5] Other than as you are lawfully permitted to do, including as provided for in an employee's employment agreement.

[6] "Ministry of Social Development" includes the Chief Executive of the Ministry of Social Development and her staff.

COVID-19 Essential Workers Leave Scheme Guidance

Entitlements: Essential Workers Leave Scheme

The COVID-19 Essential Workers Leave Support is available for **essential businesses** to pay their employees who can't work, because they have essential service workers who:

- are at higher risk if they get COVID-19, and Ministry of Health guidelines recommend they stay at home while we're in lockdown (and potentially longer); or
- come into contact with someone who has COVID-19 and must self-isolate for 14 days (as required by Ministry of Health guidelines); or
- have tested positive for COVID-19 and are required to remain off work until they've been cleared by a health professional to be released from self-isolation; or
- have household members who are at higher risk if they get COVID-19 and Ministry of Health recommend the worker also remains at home to reduce the risk to them.

This includes health and disability funded workforces that are not employed by the State Sector, for example, in home care workers, workers in primary health organisations and nurses and other staff in rest homes or other residential care facilities. It also includes those organisations that are contracted to, or funded in whole or part, by organisations in the State Sector, such as the Ministry of Health and District Health Boards.

The employer must also:

- have had a conversation with its employee about how to best support them. For example, they may choose to use any sick or discretionary leave they have, instead of getting the Leave Support. Where the employer cannot pay the full amount of this leave to its employee, it can apply for the Leave Support to top it up; and
- not be able to financially support its employee due to the COVID-19 public health restrictions.² For example, the cost of paying for its employees' leave and paying for replacement staff is significant.

This also includes those who are self-employed.

Note: employees are not required to have used any or all of their paid leave entitlements before the employer applies for the Leave Support on their behalf. However, the employer can agree with its employee to use any form of paid leave entitlements to cover the period they cannot work.

The COVID-19 Essential Workers Leave Support will be paid at a flat rate of:

- \$585.80 for people who were working 20 hours or more per week (full-time rate)
- \$350.00 for people who were working less than 20 hours per week (part-time rate).

It will be paid as a lump sum and covers 4 weeks per employee. If the employer needs to apply for its employee again after the 4 weeks is up, it can do this in the 4th week.

Calculating the Rate

If the employee worked variable hours the employer can use an average to work out what rate to apply for, using the average hours worked each week:

- over the last 12 months, or

² If the public health restrictions have impacted an employer's ability to support its staff when they need to take leave, such as needing to pay its employees so they can stay home and fund replacement staff, it has been negatively impacted.

- over the period of time you they have been employed (if it's less than 12 months).

If the average hours are:

- 20 or more, apply for the full-time rate
- less than 20, apply for the part-time rate.

Application Form – Employers



**COVID-19 Essential Service Workers
Leave Scheme Application**

Employer Application

Required information is flagged with "*"

* I am applying because

* I confirm that I have read and understood and agree to this [declaration](#)

* Business IRD Number

* IR Customer Name

NZ Business Number (NZBN)

* Business address

* Contact Name

* Note: Contact Email and Contact Mobile may be used for further communication regarding your application.

* Contact Email

* Contact Mobile

Contact Other Phone

* Bank Account

Bank (2)	Branch (4)	Account (7)	Suffix (2-3)
<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>

Your account suffix will either be 2 or 3 digits depending on your bank. Please enter it exactly as it appears.

Affected employees you wish to claim a subsidy for.

If you wish to claim a subsidy for yourself, enter your own details as well as those of your employees.

First name	Last name	Date of Birth	IRD Number	Employment Type
<input type="text"/>				
		(dd/mm/yyyy)		

Declaration - COVID-19 Essential Workers Leave Support Scheme

By submitting this form, you are declaring that:

You must meet the eligibility criteria

- You meet the eligibility criteria for the Essential Workers Leave Support scheme subsidy (**subsidy**):
 - you operate a **business** (being a registered business, sole trader, self-employed person, registered charity [1], incorporated society [2], non-government organisation, or post settlement governance entity) in New Zealand that employs and pays the employees named in your application; and
 - your business is an **essential business** (as defined in official Government guidelines); and
 - your business has either:
 - experienced a minimum 30 per cent 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, and that revenue loss is attributable to the COVID-19 outbreak; or
 - had its ability to support the employees named in your application negatively impacted by the COVID-19 public health restrictions; and
 - the employees (including you if you are a sole trader or self-employed person) named in your application:
 - are legally employed by your business; and
 - are employed in New Zealand; and
 - have advised you, and you agree, that they cannot work because:
 - they have contracted COVID-19, or have come into contact with someone who has contracted COVID-19, and are required to self isolate in accordance with official Government public health guidance; or
 - they are in the category of people that are at most risk of severe illness from COVID-19 (as defined in official Government public health guidance); or
 - they have a person or persons in their household who are in the category of people that are at most risk of severe illness from COVID-19 (as defined in official Government public health guidance) and they need to stay away from work to reduce the risk of transmitting the virus to that person or persons.
 - you are not currently receiving the COVID-19 Wage Subsidy, COVID-19 Leave Payment, or any other government funding to cover any of the situations in this leave support scheme in respect of any of the employees named in your application.

Your obligations to use the subsidy to retain and pay your employees

- You acknowledge that the granting of your application and your receipt of the subsidy does not override your existing obligations under the Employment Relations Act 2000 or other relevant legislation;
- You will not make any changes to your obligations under any employment agreement, including to rates of pay, hours of work and leave entitlement, without the written agreement of the relevant employee; [3]
- You will retain the employees named in your application as your employees for the period you receive the subsidy in respect of those employees;
- You will not unlawfully compel or require any of the employees named in your application to use their leave entitlements for the period you receive the subsidy in respect of those employees; [4]
- You will only use the subsidy for the purposes of meeting your named employees' ordinary wages and salary and your obligations in relation to this subsidy;
- You remain responsible for paying your employees' ordinary wages and salary for the employees named in your application;
- You will for the period you receive the subsidy:
 - use your best endeavours to pay at least 80 per cent of each named employee's ordinary wages or salary; and
 - pay at least the full amount of the subsidy to the employee; but
 - where the ordinary wages or salary of an employee named in your application was lawfully below the amount of the subsidy before the impact of COVID-19, pay the employee that amount.
- The ordinary wages or salary of an employee are:
 - as specified in the employee's employment agreement as at 5 April 2020; or
 - if you ended your employment relationship with any employee named in your application as a result of your business being adversely affected by the COVID-19 outbreak and have re-employed that employee on or after 17 March 2020, as specified in the employee's employment agreement as at the date that employment relationship ended.

Providing information about you, your business and your employees to the Ministry

- You will provide the Ministry of Social Development [5] with information about you, your business and (with their consent) the employees named in your application to the extent required by the Ministry of Social Development or its auditors to make decisions about your application, and to audit and review any subsidy that is granted (to you or another applicant) and how any subsidy granted is paid to employees.

Consent to the Ministry sharing information about your application with other agencies

- You consent to the Ministry of Social Development sharing information about you or your business provided with respect to your application (both at the time of application, and any information provided at a later time) with other agencies (including non-government agencies) to the extent necessary to make decisions about your application, and to audit and review any subsidy that is granted (to you or another applicant) and how any subsidy granted is paid to employees.

Consent to other agencies providing information about you to the Ministry

- You consent to other agencies (including non-government agencies) providing information about you or your business to the Ministry of Social Development or its auditors, to the extent necessary in order for the Ministry of Social Development to make decisions about your application, and to audit and review any subsidy that is granted (to you or another applicant) and how any subsidy granted is paid to employees.

Discuss your application with your employees and gain their consent to information sharing

- You have discussed this application with the employees named in it.
- The employees named in your application have consented (in writing, if practicable) to the following matters:
 - The employees consent to:
 - the information about them [6] in your application being provided to the Ministry of Social Development; and
 - you providing the Ministry of Social Development with any further information about them required in order for the Ministry of Social Development to make decisions about your application, and to audit and review any subsidy that is granted (to you or to another applicant) and how any subsidy granted is paid to employees; and
 - you advising the Ministry of Social Development if they end their employment relationship with your business at a time when you are receiving a subsidy with respect to them.
- The employees consent to the information about them provided to the Ministry of Social Development with respect to this application (both at the time of application, and any information provided at a later time):
 - being used by the Ministry of Social Development to make decisions about your application, and to audit and review any subsidy that is granted (to you or to another applicant) and how any subsidy granted is paid to employees; an
 - being shared by the Ministry of Social Development with other agencies (including non-government agencies) to the extent necessary in order for the Ministry of Social Development and its auditors to make decisions about your application, and to audit and review any subsidy that is granted (to you or to another applicant) and how any subsidy granted is paid to employees; an
 - being used by the Ministry of Social Development to make decisions about other assistance and entitlements to the extent your application and any subsidy granted is relevant to them (for instance, where your application is relevant to an employee's application for other assistance).
- The employees consent to other agencies (including non-government agencies) providing information about them to the Ministry of Social Development and its auditors, to the extent necessary in order for the Ministry of Social Development to make decisions about your application, and to audit and review any subsidy that is granted (to you or to another applicant) and how any subsidy granted is paid to employees.

Advise your employees they may contact the Ministry about your application

- You have advised the employees named in your application that under the Privacy Act 1993 they have the right to request access to all information held by the Ministry of Social Development about them and to request corrections to that information.

Publication of information about you

- You consent to the Ministry of Social Development publishing information about your business and the level and duration of any subsidy provided to you (excluding any personal information about the employees named in your application) on a publicly accessible register.

Notify changes in eligibility

- You will notify the Ministry of Social Development within 5 working days if anything changes that may affect your eligibility or entitlement to the subsidy, including if any of the employees named in your application end their employment relationship with you.

Repaying the subsidy

- You agree to repay the subsidy or any part of the subsidy paid to you if you:
 - fail to meet any of the obligations about how you must use the subsidy; or
 - were not or stop being eligible for the subsidy or any part of the subsidy;
 - provide false or misleading information in your application; or
 - receive insurance such as business interruption insurance for any costs covered by the subsidy.

Provision of true and correct information

- You acknowledge and agree that all of the information you have provided to the Ministry of Social Development is true and correct.

Consequences of non-compliance with the obligations in this declaration

- You acknowledge that you may be subject to civil proceedings for the recovery of any amount you receive that you are not entitled to and/or to prosecution for offences under the Crimes Act 1961 if you:
 - have provided false or misleading information; or
 - fail to meet any of the obligations about how you must use the subsidy; or
 - receive any subsidy or part of a subsidy that you were not entitled to receive.

Authority to make this declaration

- You are making this declaration on behalf of your business and you have the authority to do so.

The Ministry may amend this declaration

- You acknowledge that the Ministry of Social Development may amend this declaration at any time and at its discretion.

Declaration forms part of your application

- You acknowledge that this declaration forms part of your application.

In submitting your application you also acknowledge and/or agree:

- The Ministry of Social Development collects the information in this application to determine whether you are eligible to receive assistance.
- The Ministry of Social Development will use the information provided in this application for the purposes addressed in this document, including to assess your eligibility to receive the subsidy and to audit and review any subsidies granted. We may also use the information to contact you or for research and reporting purposes, or to advise you on the matters relating to the assistance you applied for.
- The Ministry will not use the information provided in this application for any other purpose unless required or authorised by law.
- Under the Privacy Act 1993 you have the right to request access to all information held about yourself and to request corrections to that information.

[1] Incorporated under the Incorporated Societies Act 1908 and registered under the Charities Act 2005; or registered the Charities Act 2005.

[2] Incorporated under the Incorporated Societies Act 1908.

[3] It is unlawful for you to unilaterally vary an employment agreement to reduce an employee's wages or salary in order to receive the subsidy. You must continue to comply with your obligations under the Employment Relations Act 2000.

[4] Other than as you are lawfully permitted to do, including as provided for in an employee's employment agreement.

[5] 'Ministry of Social Development' includes the Chief Executive of the Ministry of Social Development and their staff.

[6] For clarity, information 'about employees' in these bullet points does not include identifiable information about other people (e.g. members of employees' households).