

COVID-19: supporting and paying your employees.

New Zealand is currently in the “Red Light” setting of the COVID-19 Protection Framework. Community COVID-19 cases are on the rapid rise, which means that most businesses are likely to be impacted one way or another; whether that’s because an employee contracts COVID-19, is a close contact, or your business becomes a location of interest. Below are some common scenarios which you might face with your employees, and our Humankind guidance on how to manage these.

How do I pay my employee if...?

SCENARIO 1

My employee, or someone who depends on them for care, is a close contact and has to self isolate:

1. My employee is able to work from home and is well enough to do so – pay their wages as per usual.
2. My employee is unable to work from home – you may be eligible for the [COVID-19 Leave Support Scheme](#) (LSS):
 - a. If you apply for the LSS, then you must comply with the obligations set out in the Declaration, including but not limited to, “... 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 each named employee...”
 - b. If you don’t apply for the LSS, it is arguable you may not be required to pay your employee given they are not “willing, ready and able” to work. However, this view is untested. From a Humankind perspective, we suggest communicating with your employee about what may work for both of you. For example, do you pay them their usual pay through a form of special leave, do they agree to being paid a reduced amount, or is taking annual leave or leave without pay an option for them?

SCENARIO 2

My employee, or someone who depends on them is sick with COVID-19 and has to self-isolate:

1. My employee is able to work from home – pay their wages as per usual.
2. My employee is unwell and/or has care giving commitments and therefore cannot work
 - a. if they have sick leave entitlement, they can use that. If you are eligible for the COVID-19 Leave Support Scheme, then you must comply with the obligations set out in the Declaration. Our view is that the LSS can be used towards paying an employee their sick leave.
 - b. if they do not have any sick leave entitlement (i.e. they are not entitled yet, or they have exhausted their sick leave):
 - i. if both you and the employee agree to it, they can take sick leave in advance; otherwise,
 - ii. if you don’t apply for the LSS, then it is arguable you may not be required to pay your employee given they are not “willing, ready and able” to work. However, that view is untested. From a Humankind perspective, we suggest communicating with your employee about what may work for both of you. For example, do you pay them their usual pay through a form of special leave? Or do they agree to being paid a reduced amount? Or taking annual holiday or leave without pay?

SCENARIO 3

My employee, or someone who depends on them for care, is awaiting COVID-19 test results and has to self isolate:

1. My employee is able to work from home and is well enough to do so – pay their wages as usual.
2. My employee is unable to work from home – you may be eligible for the COVID-19 Short Term Absence Payment (“the Payment”):
 - a. If you apply for the Payment, then you must comply with the obligations set out in the Declaration, including but not limited to, “... to pay the employee their ordinary wages or salary while they are waiting for the relevant COVID-19 test result...”
 - b. If you don't apply for the LSS, then it is arguable you may not be required to pay your employee given they are not “willing, ready and able” to work. However, that view is untested. From a Humankind perspective, we suggest communicating with your employee about what may work for both of you. For example, do you pay them their usual pay through a form of special leave? Or do they agree to being paid a reduced amount? Or taking annual holiday or leave without pay?

SCENARIO 4

My employee has been in contact with someone who is a “close contact”, which means they are not required to isolate by the Ministry of Health. I don't want my employee to come into work until that Close Contact tests negative and/or finishes their isolation, so do I have to pay the employee even if they cannot work from home?

Yes, whether or not the employee is able to work from home, the employee should be paid their wages as per usual as you are requiring them to stay away from your workplace. You are also unlikely to qualify for either the LSS or the Payment in this situation.

SCENARIO 5

My employee is not sick (nor symptomatic), nor are they a close contact, but they have chosen to get a COVID-19 test. Do I have to pay them?

1. My employee is able to work from home – pay their wages as per usual, but you should also discuss with your employee why they have chosen to get a COVID-19 test, and consider whether or not there have been any implications for the operation of the business.
2. My employee is unable to work from home – you are unlikely to be eligible for either the LSS or the Payment. You need to assess the health and safety risks associated with this employee coming into the workplace, and:

- a. If you require them to remain at home over this time, yes, they should be paid their wages as per usual; but
- b. If you do not require the employee to remain at home over this time, then you should ask them to come back into work. If they choose to remain at home, despite being informed it is safe for them to return to work, you need to, discuss the employee's pay with them as two options exist, 1) unpaid leave, or 2) the employee using their annual holiday. Also consider whether any formal steps should be taken with the employee.

SCENARIO 6

My employee does not want to come to work because they are nervous about contracting COVID-19. Do I have to pay them?

It is likely that you will not be required to pay your employee given they are not “willing, ready and able” to work. However, from a Humankind perspective, we suggest talking through the employee's concerns, to try find a solution and a way to get them back into the workplace. For example, talking through other health and safety control measures which are already or can be put in place to protect people. It may be that these concerns are shared by other employees.

If you consider the employee's concerns are unreasonable and / or have no legitimate basis, it may be worth considering whether any formal steps should be taken with the employee.

SCENARIO 7

My employee had COVID-19 and has completed the required self-isolation period. Can I request to see the proof of the negative COVID-19 test before I allow the employee back onto our worksite?

Yes, provided you have a lawful purpose supporting the request. If the request causes a delay in the employee's return to work, they should be paid their wages as per usual.

SCENARIO 8

My employee wants time off work to get the COVID-19 vaccine (dose or booster). Do I have to pay them?

Yes an employee is entitled to reasonable paid time off to get the vaccine, so long as that time off will not unreasonably disrupt your business, or the performance of their duties. If you think when an employee wants to go get their vaccine may disrupt your business or the performance of their duties, we suggest working with the employee to find a suitable (and soon) time when they can go to get the vaccine, and you support them to do so.