

# HUMANKIND

## COVID-19 – Considerations for employers

Updated 30 March

### Guiding principles

We encourage all employers to keep the following in mind:

- Each employee will experience the impacts of COVID-19 in a different way. We encourage all leaders to have empathy with each employee, while still making the necessary decisions.
- Lead with humanity and act with kindness and in good faith. This includes being open, responsive, and communicative with employees at all times.
- Your duties and obligations under Health and Safety at Work Act 2015, the Privacy Act 1993; and the Employment Relations Act 2000; and
- The requirement to comply with employees' employment agreements and all relevant policies.

## 1 Working from home

If it is possible for your business to continue to operate remotely, consider:

- How to set up employees for productivity;
- How to maintain collaboration, connection and workplace culture;
- How you will move your regular rituals and routines to the remote environment, such as meetings, shared lunches, team coffees and even the 5 minute quiz;
- What systems and tools are needed to enable employees to work effectively and connect often (such as video conferencing and messaging services);
- Your health and safety obligations; and
- Having one person or a team of people who are responsible for the remote working experience.

## 2 Keeping employees safe in the workplace

If you are an essential service and working from home is not possible, you need to look at how you can put in place alternative ways of working to keep your employees safe including:

- Ensuring that your employees follow physical distancing practices and are working 2 metres apart where possible;
- Encouraging people to spread out while in communal spaces or in meetings;
- Using appropriate PPE;
- Using phone calls or video calls instead of face-to-face meetings;
- Exploring the possibility of rotating people between from working from home and being in the workplace, or putting in place a roster to enable the minimum number of people to be in the workplace at one time.
- Exploring shift-based working and staggered meal breaks,

Also ensure your workplaces are regularly cleaned and sanitised, and have hand sanitiser available for every person to use when they enter or leave your workplace.

# 3

## Reducing employees' hours

**In order to stay afloat, you can consider reducing your employees' hours. It is recommended you:**

- Seek advice first; and
- Where possible, do this by agreement; or
- If agreement is not reached, consult with your employees and seek their views.

You may also be eligible for the COVID-19 Wage Subsidy (see [www.covid19.govt.nz](http://www.covid19.govt.nz)). To qualify you must be able to demonstrate that:

- Your business is registered and operating in New Zealand
- Your employees are legally working in New Zealand
- Your business has experienced a minimum 30% decline in actual or predicted revenue over the period of a month when compared with the same month last year (or to a previous month for new or high growth businesses), and that decline is related to COVID-19
- Your business has taken active steps to mitigate the impact of COVID-19
- You are making best endeavours to pay employees a minimum of 80% of their normal pre-COVID-19 income for the subsidised period.
- You are making best efforts to retain employees and pay them a minimum of 80% of their normal income for the subsidised period.

If you apply for the Wage Subsidy after 3pm on 27 March, you must retain your employees for the duration of the subsidy. You also cannot make any subsequent changes to your employment obligations, and in particular, to the employee's pay, hours or leave entitlements, without their agreement.

# 4

## Paid and unpaid leave

**If it's not possible for an employee to work from home, employees should still be paid the wage subsidy if you meet the criteria.**

Employees can also elect to take accrued leave or be given 14 days' notice of the requirement to take leave.

If an employee runs out of annual leave, they can take leave in advance (record this in writing and let the employee know they may be required to pay it back if their employment terminates) or you can choose to grant them paid special leave. Alternatively they can be placed on leave without pay if you consult with them first and seek their views of this.

While they are on leave, think about how to keep connected with your employees and check in with them regularly.

## 5 Temporary close down

### If you are required to close your business temporarily:

- Review your employment agreements – they may allow suspension without pay in these circumstances otherwise you still may be required to continue paying employees;
- Continuing paying the wage subsidy, if you are eligible for it;
- Consider placing employees on annual leave (either by agreement or by giving 14 days' notice) or seeking their agreement to take leave without pay;
- Be aware that unless their employment is terminated, employees continue to be employed by you even if they are not being paid, and some obligations continue (such as the accrual of leave under the Holidays Act).

## 6 Reduction in staff numbers or permanent close down

Review employment agreements for a '**force majeure**' or '**business interruption**' clause. We strongly recommend that employers seek advice before seeking to rely on these clauses. They:

- May release you from your contractual obligation to pay employees in the event of an extreme unforeseen event;
- Have a high threshold and can only be used if the business is permanently closed (as opposed to a short break); and
- May have limited application given the wage subsidy.

Preferably, you can follow a restructuring/redundancy process to terminate some or all your employees' employment. This requires a strong business case and you must still follow a fair and reasonable process including consulting with affected employees before making any final decisions. This option is not available for employers who apply for the wage subsidy after 3pm on 27 March 2020 as they must retain employees for the 12 weeks the wage subsidy is paid.