



COVID-19 UPDATE

ALERT LEVEL 1

FREQUENTLY ASKED QUESTIONS

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FitzherbertRowe
LAWYERS

Alert Level 1

At Alert Level 1, all business, schools, and other organisations can operate without restrictions in place.

Everyone should review the [Golden Rules](#) for Alert Level 1.

WORKING

Question	Answer
My employees have been working from home, should employees return to the workplace at Alert Level 1?	<p>At Level 1, all businesses can operate on premise and have workers return.</p> <p>Some employees may have enjoyed the benefits of working from home during the lockdown. An employee may wish to apply for flexible working. As an employer you have a “duty to consider” such requests. Part 6AA of the Employment Relations Act 2000 outlines on your obligations and the process when an employee makes a request. You can review an arrangement at any time and make necessary changes as required, including returning to working from the office.</p> <p>Remember, regardless of where the employee works the employer will still need to ensure the workspace is safe and healthy. This is a shared responsibility but may require a health and safety assessment or additional equipment be provided.</p>
Can an employee refuse to return to the workplace at Alert Level 1?	<p>Someone who is <u>sick with COVID-19</u> or has been identified as a close contact of someone with COVID-19 should not be attending work at any Alert Level. You may qualify for the COVID-19 Leave Support Scheme where an employee is required to remain in isolation.</p> <p>If an <u>employee refuses to attend work</u> due to reasonable health and safety concerns you should first address these concerns with the employee. Once you are satisfied that the workplace is operating in a safe and healthy way, based on the appropriate alert level, you can direct an employee to attend work. If the employee still chooses not to come to work, you should let them take annual leave and/or leave without pay – consult with them about that. The wage subsidy could be used to pay for annual leave, if you are in receipt of that.</p> <p>Technically speaking, an employee who does not come to work, after being directed to do so, could be committing misconduct capable of disciplinary action. There may be risks to</p>

taking this approach and as an employer you should always remember their obligations to act in good faith.

HEALTH & SAFETY

Question	Answer
<p>What are the health and safety obligations at Alert Level 1?</p>	<p>At Alert Level 1, most of the public health requirements are no longer required. This means you do not need to:</p> <ul style="list-style-type: none"> - Maintain social distancing between employees or customers / clients - Limit gathering sizes - Keep contact tracing records <p>You will need to enable your employees to keep good hygiene practices in the workplace.</p> <p>The Government has moved the responsibility of contact tracing to the individual and is asking businesses to support the public to do this by displaying the Ministry of Health NZ COVID Tracer QR code at their premises.</p> <p>You will still need to meet your obligations under the Health and Safety at Work 2015 legislation.</p>
<p>I had an employee who was identified as “high risk” during the lockdown, what are my obligations to them now?</p>	<p>The Government has advised that for anyone still feeling concerned about their health or who has underlying conditions they should work with their GP.</p> <p>Encouraging your employee to seek medical guidance is recommended. This will provide the employee and you with a clear understanding of any health and safety practices which may need to remain in place.</p>
<p>Some of my employees feel anxious...</p>	<p>Some employees may feel anxious or stressed about the effects of COVID-19.</p> <p>You may want to consider a staged return for those who do not feel comfortable around large groups or being in close distance to fellow workers or customers. Here, we recommend working through an employee’s concerns to ensure you have addressed any risk points in your workplace protocols.</p> <p>You may wish to offer EAP or connect staff to mental wellbeing helplines.</p>

PAY

Question	Answer
<p>One of my employees is sick, what is the process?</p>	<p>If an employee is sick, then they should stay at home. The Government has provided advice on what symptoms we should be aware of and when to stay home, which is available here. The employee will need to contact their doctor or Healthline to get advice on getting tested for COVID-19.</p> <p>If an employee tests positive for COVID-19, you may qualify for the COVID-19 Leave Support Scheme where an employee is required to remain in isolation.</p>
<p>What happens when my employee has no sick leave left?</p>	<p>Where an employee is sick then sick leave should be used.</p> <p>If an employee has no entitlement or they do not have any remaining sick leave, the employee can ask you if they can take annual leave, unpaid leave, or sick leave in advance.</p> <p>If an employee does test positive for COVID-19 you may be eligible for the COVID-19 Leave Support Scheme.</p>
<p>My employees agreed to a pay reduction to 80% at Alert Level 4. Do I have to return wages to 100% at Alert Level 1 now they are back at the workplace?</p>	<p>In normal circumstances, employees should be paid the agreed wage or salary for every hour that they work.</p> <p>It will depend on what was agreed and why. If the reduction was to reflect the reduced hours of work the employee was performing under Alert Level 4, which can now be restored under Alert level 1, then you should pay employees as normal.</p> <p>However, if your employees agreed to the reduction in an effort to provide financial stability for your business and avoid redundancy, it may be that you will need to formalise a variation to their employment agreement. Remember that any reduction in hours or pay must be mutually agreed.</p>
<p>Will I automatically receive the Wage Subsidy Extension?</p>	<p>No, you will need to apply for the Wage Subsidy Extension <i>but</i> only once your original Wage Subsidy period has ended. The is based on the <i>date from which you applied</i> for the original Wage Subsidy for a period of 12 weeks.</p> <p>The Extension will be available to employers for a period of 8 weeks. You can apply between 10 June 2020 and 1 September 2020.</p> <p>This will be paid as a lump sum at the same weekly rate as the Wage Subsidy.</p>

	<p>To be eligible your business must be able to show a revenue loss of at least 40% for a continuous 30-day period. This needs to be in the 40 days before you apply but no earlier than 10 May 2020. It must be compared to the closest period last year.</p> <p>It is worth noting that if you made separate applications for the original wage subsidy (for different employees), the expiration of the Wage Subsidy will likely be different so the revenue loss period you will need to provide evidence on will be different.</p>
I am needing information about restructuring...	<p>We have previously provided advice on restructuring and redundancy on our website. This document should help you understand the process and key considerations, however we recommend seeking advice tailored to your particular situation.</p> <p>Restructuring and redundancy article: https://www.fitzrowe.co.nz/news/item/covid-19-update-what-employers-need-to-know</p>

STAY AGILE

Question	Answer
Can I throw out those COVID-19 Safety Plans?	<p>The Government has warned that, though we are at Alert Level 1, the world remains in a global pandemic. People and businesses should be prepared to act fast, if needed, to return to higher alert levels. We recommend keeping all material and documents created during the lockdown.</p> <p>If you found any areas of your employment policies or agreements were lacking during lockdown, now is a good time to ensure you are in the best place moving forward.</p> <p>This is a great time to engage with your employees and set out expectations about attendance and how the workplace will operate safely moving forward.</p>
I collected employee medical information to prepare my Safety Plan, what should I do with this now?	<p>This information should be kept safe and once it is no longer required should be disposed of securely. Best practice will be to notify the individual whose information you have collected that you are disposing of the information and how.</p> <p>Keep in mind, 'lawful use' is, only using the information for the purpose it was collected for and only sharing it with those who need to see it (for the purpose it was collected).</p>

	The government has advised that for anyone still feeling concerned about their health or who has underlying conditions they should work with their GP.
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We are here to help.

If you need any further advice on your employment matter.
Please contact Alastair Hall (a.hall@fitzrowe.co.nz) or
Joelle Avery (j.avery@fitzrowe.co.nz).

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