



COVID-19 UPDATE

ALERT LEVEL 2

FREQUENTLY ASKED QUESTIONS

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LAWYERS

Alert Level 2

Under Alert Level 2 the same rules will apply. Businesses can reopen if they can do so safely. Alternate ways of working are still recommended where possible and we are all encouraged to “play it safe”.

PREPARE

Question	Answer
<p>Do I need to revise my Safety Plan?</p>	<p>Yes, you should review your Safety Plan at Level 2 to check if any hazards or risks will change for your business. For example:</p> <ul style="list-style-type: none"> - How will you manage customers / clients coming into workplaces / premises; - There are limits to number of people who can congregate together, how will this be managed with staff and customers; - PPE is required in some business sectors; - Non-essential workers can now travel between regions. <p>You should update your plan according to the Alert Level 2 requirements the government has outlined for safe operating. WorkSafe has provided a good template for Level 2 Safety Plan which is available here.</p>
<p>Do I need to engage with employees regarding Level 2?</p>	<p>We recommend that you share your Level 2 Safety Plan with employees. Don't assume that everyone will know exactly what to do from day one.</p> <p>This will be a good time to set out your expectations with employees about how you want them to operate safely in the workplace. This could include hygiene and physical distancing practices you require, or providing information from WorkSafe and the Ministry of Health.</p> <p>Some employees may be anxious about re-entering the workplace, it will be a good time to work through any concerns employees highlight.</p>
<p>I'm collecting employee medical information to prepare my</p>	<p>You can collect personal information from employees about any medical conditions if the purpose is to ensure you are providing a safe and healthy workplace. Lawful use is only using the information for the purpose it was collected for and only</p>

<p>Safety Plan, is this okay?</p>	<p>sharing it with those who need to see it (for the purpose it was collected).</p> <p>This information should be kept safe and once it is no longer required should be disposed of securely.</p> <p>Some employees may not wish to share their medical information – if you are worried about keeping an employee safe in the workplace you may need to direct them to stay away until you are able to best determine how to keep them safe.</p>
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WORKING

Question	Answer
<p>My employees have been working from home, can I ask employees to return to the workplace at Alert Level 2?</p>	<p>At Level 2 we are still trying to reduce the contact and interaction we have with each other. The government is continuing to encourage other methods of working at Level 2. This includes working from home, shift-based working or flexible working arrangements. You may choose not to open and have staff remain working from home if this does not negatively impact on your business and clients.</p> <p>However, all businesses can operate on premise and have workers return so long as they can do so safely.</p>
<p>Can an employee refuse to return to the workplace at Alert Level 2?</p>	<p>An employee who <u>can work from home</u> at Alert Level 2 may continue doing so with agreement from their employer.</p> <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 <u>COVID-19 Leave Support Scheme</u> 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. This will be particularly important if your employee, or someone in their bubble, is “high risk”.</p> <p>Once you are satisfied that the workplace is operating in a safe and healthy way 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>

	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 taking this approach and as an employer you should always remember your obligations to act in good faith.
I need more information on “high risk” employees where should I look?	<p>We have previously provided advice in our Alert Level 3 Frequently Asked Questions summary, which includes:</p> <ul style="list-style-type: none"> - How do I know if someone is “high risk”? - Leave Support Scheme - One of my employees is in the “high risk” group and can’t work from home, what should they do at Alert Level 3? - My employee is not “high risk” but their grandmother is. Can they refuse to return to work? - Privacy obligations <p>There is also information available from government resources:</p> <ul style="list-style-type: none"> - COVID-19.govt.nz - Ministry of Health

HEALTH & SAFETY

Question	Answer
How do I know if my employees require PPE ?	<p>If you use PPE in your workplace prior to COVID-19 then you should continue to use it in the same way.</p> <p>Some businesses will now need to use PPE where workers have close contact (less than 1m) with multiple clients or customers for a period over 15 minutes and are unable to maintain social distancing (i.e. hairdressers, beauty therapists).</p> <p>You can review the government guidelines here.</p>
My business is in a sector which is now required to wear PPE (i.e. hairdresser). Can my employee provide their own ?	<p>An employee can choose to provide their own PPE however it must meet the required standard for the business. For example, if a certain type of facemask is required to be worn then a homemade fabric mask may not be compatible.</p> <p>You cannot make your employees provide their own PPE either, you must pay for the cost of providing PPE.</p>

<p>What happens if I can't get the required PPE needed to open my business before Level 2 starts?</p>	<p>If you have completed your Safety Plan and determined that PPE is required by employees in their roles then you will need to provide the appropriate PPE gear.</p> <p>You should not open your business and employees should not be working until you have this.</p> <p>You can review PPE use for non-health workers here.</p> <p>Information on where to source PPE is available on the Manufacturing NZ website.</p>
<p>My employee wants to wear a facemask to work. It isn't required for our industry. Is this a good idea?</p>	<p>An employee should not be refused the ability to wear a facemask but if they do choose to wear a facemask then it will be important to manage the risks associated with putting it on and taking it off. PPE should also be disposed of safely in the workplace. You may need to create a workplace protocol if employees are choosing to wear gloves or facemasks.</p> <p>The Ministry of Health has resources which can be used to develop these standards in the workplace. It will be important to ensure employees are following these processes to minimise COVID-19 spreading.</p>
<p>I am unclear which social distancing rules apply in the workplace...</p>	<p>This is industry specific and reviewing the information relevant to your business is important – see WorkSafe's guidance here.</p> <p>In general, where contact tracing is operating a distance of 1m is adequate. However, where employees are interacting with multiple customers and there is no contact tracing register then 2m is required (i.e. supermarkets).</p>
<p>Some employees are not keeping to the measures I have put in place. What should I do?</p>	<p>Employees must follow any reasonable instruction given by an employer. There is an expectation that an employee will take reasonable care of their own health and safety and that of others they work with by something they do or don't do.</p> <p>It may be that the employee's actions amount to misconduct. At first instance however, we recommend talking to your employee informally before stepping up to a warning. This is a new type of "normal" for everyone and employees may need to be reminded at first about your expectations.</p> <p>Any response to an employee's conduct must be fair and reasonable. The fundamental principle in an employment relationship remains, even during the COVID-19 crisis, to deal with each other in good faith.</p>

<p>I have more questions about Health and Safety, where should I look?</p>	<p>We have more information available on our website – you can review the Alert Level 3 Health & Safety summary or contact us if you have a specific employment matter.</p> <p>There are valuable resources available on numerous government websites including WorkSafe, Employment NZ and business.govt.nz.</p>
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PAY

Question	Answer
<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 2 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 2, 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>I am needing information about the wage subsidy or workers refusing to work or restructuring...</p>	<p>We have previously provided advice in our Alert Level 3 Frequently Asked Questions summary, which includes:</p> <ul style="list-style-type: none"> - I am receiving the wage subsidy for my employees but some are refusing to come to work during Level 2 (my employees are unable to work from home). Should I still pay those employees their wage subsidy? - I haven't applied for the wage subsidy, but I don't have the same amount of work to offer my workers when my business reopens under Level 2. What are my obligations to my employees? - Restructuring and redundancy (https://www.fitzrowe.co.nz/news/item/covid-19-update-what-employers-need-to-know)

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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