

COVID-19 UPDATE

ALERT LEVEL 3

FREQUENTLY ASKED QUESTIONS

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LAWYERS

Alert Level 3

PREPARE

Question	Answer
<p>What should I start doing to prepare for a move to Alert Level 3?</p>	<p>Start making plans for your workplace at Alert Level 3:</p> <ul style="list-style-type: none"> • Identify employees who can stay working from home. <ul style="list-style-type: none"> ○ Consider auditing their workspace and ensuring they have the right equipment to increase productivity; ○ Try to improve staff morale with increased communication, virtual events and catch-ups. • Identify those staff who are “high risk” by gathering information on their conditions and risk levels. <ul style="list-style-type: none"> ○ Identify ways to minimise their risks or how they could be redeployed in the workplace including tasks that could be completed from home; ○ Ensure privacy is maintained when collecting employee medical information. • Identify staff who can return to the workplace who are currently unable to work from home. <ul style="list-style-type: none"> ○ Workplaces must work to minimise transmission of the virus including social distancing and hygiene practices; ○ Consider getting MBIE accredited; ○ Use the WorkSafe Guidelines to ensure that the workplace is as safe and healthy as possible; ○ Ensure staff will have no contact with clients / customers or suppliers.
<p>How do I move forward with my employees?</p>	<p>Get on top of your employment relationships:</p> <ul style="list-style-type: none"> • Review your employment agreements with <u>each</u> employee. Consider what your obligations are in terms of holidays, leave, redundancy, etc. <ul style="list-style-type: none"> ○ Consider whether you need a temporary or permanent variation to any employment agreements based on workflow outlook.

- Check what policies you have in place regarding flexible working, health and safety, working from home, holidays, leave, and redundancy.
 - You may need to update or create new policies to cover the current situation.

WORKING

Question	Answer
<p>Can I ask employees to return to the workplace at Alert Level 3?</p>	<p>The guidelines from the government are that workers must work from home if they can.</p> <p>If your employees have been unable to work from home, due to the nature of their job, then they may be able to return to the workplace (depending on the work – review the guidelines here).</p> <p>To be clear though, safe operating procedures should be in place to meet your health and safety obligations. There are clear health and safety expectations regarding social distancing and hygiene practices. Review the guidelines here.</p>
<p>Can an employee refuse to return to the workplace at Alert Level 3?</p>	<p>An employee who <u>can work from home</u> at Alert Level 3 should not be obligated to return to the workplace as this is not in accordance with government guidelines at Level 3.</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 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. The Government has discussed an accreditation scheme which can provide a baseline for ensuring you are meeting your health and safety obligations. 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>

	<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.</p>
<p>How do I know if someone is “high risk”?</p>	<p>The government has provided guidance for people who are at higher risk of being vulnerable to COVID-19. You can review this here.</p> <p>You may need to request relevant medical information from employees who state they are “high risk” so you can determine how to keep them safe in the workplace. If the employee does not provide this information then you may need to direct them to stay away from workplace until you are able to determine how best to keep them safe.</p> <p>You will have privacy obligations to consider, especially if you are provided with information about someone within an employee's bubble. Remember that employers can collect personal information about employees for valid work purposes only. You must protect that information and not disclose or use it for any other purpose.</p> <p>You will not need to provide medical verification to Work and Income if you apply for the COVID-19 Leave Support Scheme for an employee. However, if you are concerned about keeping the employee safe in the workplace appropriately you may wish to consider requesting appropriate medical information from your employee.</p>
<p>One of my employees is in the “high risk” group and can't work from home, what should they do at Alert Level 3?</p>	<p>An employee who is “high risk” may need to take extra precautions in the work place. At first instance, you should discuss with the employee how they can be kept safe at work and while travelling to work.</p> <p>If the employee decides they wish to stay at home then you should consider and consult with the employee around all possible options, which could include redeployment to a role which can be completed at home, paid special leave, annual leave, or even paying a decreased wage (like the wage subsidy amount, if you are in receipt of that).</p> <p>You may be able to apply for the COVID-19 Leave Support Scheme for this employee. The scheme is designed to help support employers to continue to pay an employee in situations where the employee needs to stay away from work and cannot work from home. Like the Wage Subsidy scheme there are</p>

	<p>eligibility criteria which employers and employees need to meet.</p> <p>A “high risk” employee may say that they want to attend work, but you may decide that you do not want them to attend work because of the increased risk they pose. If that’s the case, and they cannot work from home, you should think about whether you can offer them paid special leave. That’s because they are ready and willing to work, but are being asked not to come in. Again, you should consider applying for the Leave Support Scheme to pay the worker for an agreed period of time.</p>
<p>My employee is not “high risk” but their grandmother is. Can they refuse to return to work?</p>	<p>The issue here is what constitutes a bubble. This will become more difficult as employee bubbles expand slightly as Alert Levels are lowered.</p> <p>However, the Government's COVID-19 website defines a bubble as your immediate household – those you live with. It would be reasonable for an employer to rely on this definition when accessing the risks to their staff.</p> <p>If there is a “high risk” individual within an employee's household then you should look to consult with the employee about the health and safety protocols to put in place, possibly consider the option to redeploy that person to another role or applying for the COVID-19 Leave Support Scheme which is available for workers who have someone in their household whose serious health condition puts them more at risk.</p>
<p>An employee says they are unable to attend work as they have no childcare available.</p>	<p>Schools (up to year 10) and ECE centres will be open under Alert Level 3.</p> <p>Difficulties may arise if an employee's typical afterschool care is not available so you may need to agree reduced hours with the employee. Further, because attendance at schools is voluntary, employees may decide that in order to mitigate risk they want to stay at home and look after their children, rather than work.</p> <p>If the child of an employee is “high-risk” so unable to attend school / childcare (or the employee wishes to keep their children at home) you should discuss with the employee what arrangements can be made. This can include redeployment to a role which can be completed from home, use of annual leave, special leave or applying for the COVID-19 Leave Support Scheme. If you are receiving the Wage Subsidy for this employee you cannot apply for Leave Support as well. If you are eligible for both then you should consider apply for the Wage Subsidy Scheme for the employee as this has a longer</p>

duration (the Leave Support scheme only covers a 4-week period).

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 3?</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 3, 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 receiving the wage subsidy for my employees but some are refusing to come to work during Level 3 (my employees are unable to work from home). Should I still pay those employees their wage subsidy?</p>	<p>If there is no genuine reason for the employee refusing to work (see above) and 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. If you are eligible for the wage subsidy, you could also use this to pay for annual leave.</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 or potentially even abandoning their employment.</p> <p>It is still possible to work through employment issues under the Alert Levels so long as you continue to operate under the fundamental employment principles of good faith, good reason and a fair process. We advise against withholding wages, including the wage subsidy, until you have worked through the issue with the employee.</p>
<p>I haven't applied for the wage subsidy, but I don't have the same amount of work to offer my</p>	<p>If you are not receiving the wage subsidy and have not agreed to a variation to the employee agreement then you should pay your employees according to the wages or salary in their employment agreement.</p>

<p>workers when my business reopens under Level 3. What are my obligations to my employees?</p>	<p>You may need to look at a temporary variation to your employment agreements to reduce hours. This will need to be agreed with employees.</p> <p>If you cannot meet your obligations under the employment agreement you may be eligible for the Wage Subsidy scheme.</p>
<p>What is the process if someone calls in sick during Alert Level 3?</p>	<p>If an employee calls in sick the same process applies as pre-lockdown. The employee should stay home and take sick leave. If the employee does not have any sick leave entitlement available then you can agree to give the employee sick leave in advance, use some of their annual leave, or take unpaid leave.</p> <p>This process will be the same if a dependant is sick or unwell.</p> <p>It will be important to confirm what the illness the employee has contracted and if a medical certificate is required before they return to work to ensure they are not bringing illness into the workplace.</p>

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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