

Employee's Rights in the COVID-19 context

This note has been written by Sarah Burton, Wellington Community Justice Project. It covers the types of employment, income rights, leave rights, and workplace health and safety rights in the COVID-19 context.

Your employment type

Am I an essential worker?

An essential worker is a person who works for an essential business.

An essential business is defined as a business which is essential to the provision of life, as well as the businesses that support them, as described on the [New Zealand Government COVID-19 website](#).

- A list of essential businesses by sector can be found on the [New Zealand Government COVID-19 website](#).

A non-essential worker is a person who works for any business that is not deemed essential.

What is my employment type?

You will likely fall into one of the following categories: permanent full-time worker, permanent part-time worker, fixed-term or temporary worker, casual worker, self-employed worker, or independent contractor.

A **permanent full-time worker** is an employee who has a guaranteed number of work hours per week. For the purposes of the wage subsidy scheme, this is someone who works more than 20 hours a week in a regular work pattern.

A **permanent part-time worker** is an employee who has a guaranteed number of work hours per week. For the purposes of the wage subsidy scheme, this is someone who works less than 20 hours a week in a regular work pattern.

A **fixed-term worker** is an employee who is full-time or part-time, but whose employment will end on a specified date or when a certain event happens. There needs to be a genuine reason based on reasonable grounds for the employment being fixed-term, which could include:

- cover for another employee on leave;
- cover for a seasonal peak; or
- to complete a project.

A **casual worker** is an employee who generally does not have set hours of work, regular work pattern or ongoing expectation of employment. The employer does not have to offer the employee work and the employee does not have to accept work offered to them. Casual workers work when it suits both themselves and the employer.

A **self-employed worker** is a person who conducts business by themselves. They are not an employee of another party. Types of self-employment include:

- independent contractors;

- sole traders; or
- small business owners.

An **independent contractor** is a type of self-employed worker. They work for another party to perform a service under a contract. They are not an employee of the other party and are not paid a salary or wage. They earn money by charging the other party for their services.

For more information on employee types, see [the MBIE website](#).

Income Rights

Can my employer stop paying me if I work for a non-essential business and I cannot work from home?

In general, if you are not 'ready, willing and able to work', then your employer does not have to pay you. If you are required to stay at home under the conditions of the current alert level and cannot complete any work, then you are arguably not 'ready' or 'able to work'.

However, if your employer has had at least a 30% drop in revenue because of COVID-19, then they can apply for the wage subsidy for you. Your employer must tell you if they have applied for the wage subsidy and must pass on the wage subsidy to you.

If your employer does not qualify, you can talk to them about whether you can use special paid leave or any other type of leave.

Can my employer stop paying me if I work for a non-essential business and I am now working from home?

If you are still working the same hours from home, then you are entitled to the same amount of pay unless you and your employer have agreed otherwise.

What if I work for a non-essential business and my employer wants me to work reduced hours or for reduced wages from home?

Unless your contract says that your employer can change your hours of work, then your employer cannot reduce your hours or wages without your agreement.

Any changes must be made in "good faith" per the [Employment Relations Act 2000](#). This means they must:

- tell you their proposed changes; and
- give you time to consider and give feedback.

You do not have to accept reduced hours, however, be aware that this may have consequences. For example, if no workers accept reduced hours your employer may have to consider redundancy.

What if I work for an essential business but I cannot work as I am abiding by government requirements e.g self-isolating for 14 days?

In general, if you are not 'ready, willing and able to work', then your employer does not have to pay you. Because you are required to stay at home to abide by government requirements and cannot complete any work, then you are arguably not 'ready' or 'able to work'.

However, if your employer has had at least a 30% drop in revenue because of COVID-19, or their ability to support you has been negatively impacted by the COVID-19 restrictions, then they can apply for the [essential workers leave payment](#) scheme for you. If your employer does not qualify, you can talk to them about whether you can use special paid leave or any other type of leave.

Should my work be paying for work-related costs due to working from home, e.g my wifi bill?

In general, no if it is an expense that you would already pay anyway. However, if, for example, your wifi bill is higher than normal, you should talk to your employer about reimbursement.

Will I receive a bonus or benefits if I am an essential worker?

No, unless your employer has decided otherwise.

Will I receive payments for public holidays during the COVID-19 lockdown?

If you are still working, you should receive public holiday pay if the relevant Friday or Monday would otherwise be a working day. This should be based on your work pattern pre-lockdown, unless you have since agreed to a new permanent work pattern with your employer.

If you cannot work because of the lockdown, you likely will not receive public holiday pay, as you cannot work and so the public holiday would not otherwise be a working day.

What type of wage support can I get?

You may be eligible to receive the following types of wage support:

- the COVID-19 wage subsidy scheme;
- the COVID-19 leave subsidy scheme; or
- the COVID-19 essential workers leave payment scheme.

What is the COVID-19 wage subsidy scheme?

This is a scheme where the Government gives businesses money to help them pay employees affected by COVID-19. It is designed to pay an employee for 12 weeks.

A business can claim money for its employees if they:

- are not a state sector organisation;
- have lost or will lose 30% in revenue because of COVID-19;
- will keep the employees that they claim for, for the 12 weeks of the grant;
- will pay those employees, at a minimum:
 - for any work they do at their normal rates;
 - at least 80% of their income if it is reasonably possible; and
 - the full wage subsidy, unless the employee usually earns less than that.

They will receive:

- \$585.80 per week for full-time employees, before tax; and
- \$350.00 per week for part-time employees, before tax.

What is the COVID-19 leave subsidy scheme?

This was a scheme designed to help pay employees who had to self-isolate, were sick or had to care for someone with COVID-19. It is no longer available as of 27 March 2020, but if your employer applied for it before that date then the application will still be processed.

What is the COVID-19 essential workers leave payment scheme?

This is a scheme where the Government gives essential businesses money to help them pay employees who cannot come into work and cannot work from home.

An essential business can claim money for its employees if they are not a state sector organisation and:

- they have lost or will lose 30% of their revenue because of COVID-19; or
- their ability to support their employees has been negatively impacted by COVID-19 restrictions;

and the employees they are claiming for are:

- at a higher risk if they get COVID-19 and so are recommended to stay at home by the Ministry of Health; or
- required to self-isolate for 14 days because they have come into contact with someone with COVID-19; or
- have tested positive for COVID-19 and cannot come to work until they are cleared by a health professional; or
- living with household members who are at higher risk if they get COVID-19 and so are recommended to stay at home by the Ministry of Health.

They will receive:

- \$585.80 per week for full-time employees, before tax; and
- \$350.00 per week for part-time employees, before tax.

How do I get the wage subsidy?

Your employer can apply for the scheme through the [Work and Income website](#). If your employer has a lot of employees, they can apply [using a CSV file](#).

Your employer needs your consent to share your information with the Ministry of Social Development. This includes your:

- first name;
- last name;
- date of birth;
- Inland Revenue number; and
- number of hours you work per week or fortnight.

More information on what you are consenting to can be found on the [Work and Income website](#).

How do I get the wage subsidy if I am a casual worker?

Your employer can still apply for the wage subsidy for you if you are a casual worker. They can work out whether to apply for the part-time or full-time subsidy by averaging your hours for your last year of work. If you have worked for less than a year, then they can average your hours from the time that you have been employed.

How do I get the wage subsidy if I am self-employed or an independent contractor?

If you meet the criteria, you can apply for the wage subsidy for yourself on the [Work and Income website](#).

How do I know if my employer has applied for the wage subsidy scheme?

You can search for your employer on the [Work and Income website](#). However, if you cannot find them, talk to your employer as:

- their application may not have been processed yet;
- they may not have applied;
- they may have been declined;
- they may not have been added to the list yet; or
- they may be listed under a different name.

What do I do if my employer is withholding my wage subsidy?

Your employer must pass on the wage subsidy if they have applied for you. Firstly, talk to your employer and, if it cannot be resolved, you can make a complaint to Employment New Zealand. More information and the complaints page can be found [here](#).

Do I pay tax on the wage subsidy?

Yes. Because payments from the wage subsidy are wages, your employer will deduct money for things like PAYE, Kiwisaver, student loans or ACC.

Does my employer have to pass on the full wage subsidy?

Yes, unless your weekly income is normally less than the amount of the wage subsidy. In that case your employer is only required to pay you your normal salary.

How do I get the essential workers' leave payment scheme?

If you are an essential worker, your employer can apply through the [Work and Income website](#).

What does my employer need from me to apply?

Your employer needs your consent to share your information with the Ministry of Social Development. This includes your:

- first name;
- last name;
- date of birth;

- Inland Revenue number; and
- number of hours you work per week or fortnight.

More information on what you are consenting to can be found on the [Work and Income website](#).

Leave rights

Can my employer make me use my annual leave?

No. You and your employer must agree on when to take leave, per the [Holidays Act 2003, s 18](#). They must consult the idea with you in good faith. If you still do not agree on when to take leave, they must give you 14 days' notice before they require that you use your annual leave.

Can my employer make me use my sick leave?

No. Your sick leave can only be used if you, your partner or someone dependent on you is sick, per the [Holidays Act 2003](#).

What is special leave?

Special leave is a form of leave that you agree upon with your employer.

For example, your employer may allow you to take discretionary leave. Discretionary leave is given to you by choice of your employer. You and your employer can negotiate how long you will take leave, whether or not you will be paid for the leave, and if so, how much you will be paid.

It does not fall under any of the other statutory categories of leave. Because there are no legal requirements for your employer to grant you special leave, you can only use it during the lockdown period if your employer agrees to it.

Can I voluntarily use my sick leave, annual leave, bereavement leave, or other leave at this time?

Yes, if you satisfy the criteria. Existing laws related to leave still apply during the COVID-19 lockdown.

Sick Leave

You can use your sick leave if you, your partner or someone dependent on you is sick, per the [Holidays Act 2003, s 65](#).

Your employer may require that you provide proof of sickness or injury, like a certificate from a health practitioner, if you need to take off 3 or more days. They can also ask you to provide proof if you need to take off less than three days as long as they:

- tell you as early as possible; and
- agree to pay for your reasonable expenses to get the proof.

Annual Leave

You can use your annual leave if you and your employer agree on when it will be taken. Your employer cannot unreasonably say no.

Bereavement Leave

You can use three days of your bereavement leave if you suffer the death of your:

- spouse/partner; or
- parent, parent-in-law or grandparent; or
- child or partner's child; or
- sibling; or
- grandchild.

You can use one day of your bereavement leave if you suffer the death of someone accepted by your employer as a bereavement. Your employer must consider the relationship between you and the deceased, as well as any other cultural or significant factors.

What if it is difficult to obtain documentation e.g medical certificates at this time?

Talk to your employer about whether it is practical to get documentation. If you do need a medical certificate, try your best to get one after a phone or online consultation.

Can my employer make me redundant?

Yes, but there still needs to be a fair redundancy process.

What is the fair process my employer needs to follow to make me redundant?

Their decision to make you redundant must be justified per the [Employment Relations Act 2000 s 103A](#) and grounded in genuine business reasons. They must comply with any workplace policies and the terms in your contract.

They also must complete a full and fair consultation process with you, which includes:

- creating a proposal about the changes which is then shared with you;
- giving you time to consider the changes, seek advice and give feedback on how the proposal could be changed;
- genuinely considering the feedback they receive before making a final decision.

They must give you notice of your redundancy, complying with the amount of time in your contract or a 'reasonable' amount of notice if there is no clause in your contract.

Workplace Rights

I am an essential worker; do I have to work through the lockdown period?

As essential businesses are open, you will have to work according to your employment agreement, unless you and your employer have agreed otherwise.

The exceptions to this are if you take leave, or cannot come in to work because you are:

- at a higher risk if they get COVID-19 and so are recommended to stay at home by the Ministry of Health; or

- required to self-isolate for 14 days because they have come into contact with someone with COVID-19; or
- have tested positive for COVID-19 and cannot come to work until they are cleared by a health professional; or
- living with household members who are at higher risk if they get COVID-19 and so are recommended to stay at home by the Ministry of Health.

Under the [Health and Safety at Work Act 2015](#), you can also stop working if you believe that it will expose you or someone else to a serious risk to your/their health or safety arising from an immediate or imminent exposure to a hazard. You can only stay off if you tell the business, try to fix the issue and then reasonably still believe that the risk remains.

Do I have to work my usual hours?

You must work your usual hours unless you and your employer agree otherwise.

I am a non-essential worker; do I have to physically come into work?

At Alert Level Four:

No. Non-essential workers must work remotely/from home, or not work at all.

At Alert Level Three:

It depends. You must work from home if you can. You may have to physically come into work if you cannot work from home and your workplace reopens while abiding by the Level 3 restrictions, unless you and your employer agree otherwise.

At Alert Level Two:

Most businesses will be able to open at Alert Level 2, although still encouraged to use alternative ways of working if they can. If your workplace opens while abiding by Level 2 restrictions, then you will have to physically come into work unless you and your employer agree otherwise.

Can my employer change my employment agreement because of COVID-19?

No, unless you agree. Any changes must be made in 'good faith' per the Employment Relations Act 2000. This means they must:

- tell you their proposed changes; and
- give you time to consider and give feedback.

You do not have to accept any proposed changes.

Can I work from home instead?

Yes, if you and your employer both agree to you working from home.

Is COVID-19 considered a health and safety issue?

Yes, any infectious disease is considered a health and safety issue.

What does my workplace have to do to address COVID-19 as a workplace hazard?

Your workplace must take measures to minimise the risk of exposure and spread of COVID-19 in the workplace. This could include, but is not limited to:

- eliminating or minimising staff interactions;
- encouraging working from home where possible;
- making sure that the workplace is clean and hygienic; or
- providing personal protective equipment like gloves.

What if I feel that my workplace is not taking enough measures against COVID-19?

You should discuss your concerns with your employer or your manager and try to work together to find a solution. If you are still not happy, you can contact:

- your workplace health and safety representative, if you have one;
- your union; or
- WorkSafe, by [submitting an online form](#).

If you still feel your concerns have not been addressed, under the [Health and Safety at Work Act 2015](#), you can also stop working if you believe that it will expose you or someone else to a serious risk to your/their health or safety arising from an immediate or imminent exposure to a hazard. You can only stay off if you tell the business, try to fix the issue and then reasonably still believe that the risk remains.