

## COVID-19 Workplace Stream key messages (06/03/2020)

We all need to do what we can to contain COVID-19 and protect public health in New Zealand, by supporting workers to protect, and where necessary, isolate themselves from others.

- Employers must take seriously and manage the health risks to their workers and other people affected in the workplace, and treat employees in good faith. Employers should plan ahead and work with their workers and unions for likely scenarios of COVID-19.
- If a worker is sick with COVID-19, or has been advised to self-isolate under Ministry of Health guidelines for COVID-19, the first consideration for an employer should be to look after their people, contain COVID-19 and protect public health.
- Employers should not require, or knowingly allow, workers to come to work when they are sick with COVID-19, or if they have been advised to self-isolate under public health guidelines for COVID-19. If they do, they are likely to be in breach of their duties under the Health and Safety at Work Act.
- Employers and workers should consider whether working from home is practicable during the self-isolation period. In that case, the worker would be paid normally.
- If an employer requires an employee not to come to work, an employee should be paid. Paid sick leave (and anticipated sick leave) may be used if the person is sick or needs to care for a sick dependent. If paid sick leave is not available, paid special leave should be considered. Other forms of paid leave can be used by agreement between the employer and the employee.
- If an employee, who has been advised to self-isolate under Ministry of Health guidelines for COVID-19, can't practicably work from home, then special paid leave should be considered. Other forms of paid leave can be considered (such as paid sick leave), and used by agreement between the employer and the employee.
- Contractor pay and leave is not covered by this guidance. Employers and contractors can agree to any payment arrangements they wish to.

**Scenario 1: Worker is sick with COVID-19 (as identified by [Ministry of Health guidelines](#))**

<p><b>If the worker does not want to come to workplace but can work from home</b></p>	<ul style="list-style-type: none"> <li>• Worker must notify employer that they are sick with COVID-19.</li> <li>• Employee can take paid sick leave (options for other paid leave apply eg paid special leave).</li> <li>• Worker and employer can agree that worker will work from home if willing and able (worker will get ordinary pay).</li> <li>• Employer should regularly check in with the worker.</li> <li>• The employer is likely to be in breach of their HSWA duty if they require the worker to come to work.</li> </ul>
<p><b>If the worker does not want to come to work and cannot work from home</b></p>	<ul style="list-style-type: none"> <li>• Worker must notify employer that they are sick with COVID-19.</li> <li>• Employee can take paid sick leave (if available).</li> <li>• If paid sick leave is not available, paid special leave should be considered. (Other forms of paid leave can be used by agreement between the employer and the employee).</li> <li>• Employer should regularly check in with the worker.</li> <li>• The employer is likely to be in breach of their HSWA duty if they require the worker to come to work.</li> </ul>
<p><b>If the worker wants to come to work</b></p>	<ul style="list-style-type: none"> <li>• Worker must notify employer that they are sick with COVID-19.</li> <li>• Employer should instruct worker to stay away from work.</li> <li>• If an employer lets a worker come to work, they will likely be in breach of HSWA.</li> <li>• Worker and employer can agree that worker will work from home if willing and able (will get ordinary pay).</li> <li>• Employee can take paid sick leave (if available).</li> <li>• If paid sick leave is not available, paid special leave should be considered. (Other forms of paid leave can be used by agreement between the employer and the employee).</li> </ul>

	<ul style="list-style-type: none"> <li>• Employer should regularly check in with the worker.</li> <li>• If worker comes to work after being told not to, they can be suspended from work.</li> <li>• If a worker fails to follow these reasonable directions they will likely be in breach of HSWA.</li> </ul>
<b>If the employer wants worker to come to work, but worker does not want to</b>	<ul style="list-style-type: none"> <li>• Worker must notify employer that they are sick with COVID-19.</li> <li>• Employer should not ask worker to come to work.</li> <li>• If an employer asks a worker come to work, they will be in breach of HSWA.</li> <li>• If employer asks worker to come to work, the worker has the right to refuse to do so on the basis that going to work would expose other people to a serious risk to health or safety.</li> <li>• Employer should seek and follow latest guidance from the MOH on COVID-19.</li> <li>• Worker and employer can agree that worker will work from home if willing and able (will get ordinary pay).</li> <li>• Employee can take paid sick leave (if available).</li> <li>• If paid sick leave is not available, paid special leave should be considered. (Other forms of paid leave can be used by agreement between the employer and the employee).</li> <li>• Employer should regularly check in with the worker.</li> </ul>

**Scenario 2: Worker has been [advised to self-isolate](#) under public health guidance for COVID-19 (though may not be sick)**

<p><b>If the worker does not want to come to workplace but can work from home</b></p>	<ul style="list-style-type: none"> <li>• Worker must notify employer that they have been advised to self-isolate under public health guidance for COVID-19 and why eg where they have travelled to or that they have had close contact with someone who has COVID-19.</li> <li>• Worker and employer can agree that worker will work from home if willing and able (will get ordinary pay).</li> <li>• For employees, if the employer does not agree to working from home, paid special leave should be considered. Other forms of paid leave can be used by agreement between the employer and the employee.</li> <li>• Employer should regularly check in with the worker.</li> <li>• The employer is likely to be in breach of their HSWA duty if they require the worker to come to work.</li> </ul>
<p><b>If the worker does not want to come to work and cannot work from home</b></p>	<ul style="list-style-type: none"> <li>• Worker must notify employer that they have been advised to self-isolate under public health guidance for COVID-19 and why eg where they have travelled to or that they have had close contact with someone who has COVID-19.</li> <li>• For employees, paid special leave should be considered. Other forms of paid leave can be used by agreement between the employer and the employee.</li> <li>• Employer should regularly check in with the worker.</li> <li>• The employer is likely to be in breach of their HSWA duty if they require the worker to come to work.</li> </ul>
<p><b>If the worker wants to come to work</b></p>	<ul style="list-style-type: none"> <li>• Worker must notify employer that they have been advised to self-isolate under public health guidance for COVID-19 and why eg where they have travelled to or that they have had close contact with someone who has COVID-19.</li> <li>• Employer should instruct worker to stay away from work.</li> <li>• If an employer lets a worker come to work, they will likely be in breach of HSWA.</li> </ul>

	<ul style="list-style-type: none"> <li>• Worker and employer can agree that worker will work from home if willing and able (will get ordinary pay).</li> <li>• For employees who cannot work from home, paid special leave should be considered. (Other forms of paid leave can be used by agreement between the employer and the employee).</li> <li>• Employer should regularly check in with the worker.</li> <li>• If worker comes to work after being told not to, they can be suspended from work.</li> <li>• If a worker fails to follow these reasonable directions they will likely be in breach of HSWA.</li> </ul>
<b>If the employer wants worker to come to work, but worker does not want to</b>	<ul style="list-style-type: none"> <li>• Worker must notify employer that they have been advised to self-isolate under public health guidance for COVID-19 and why eg where they have travelled to or that they have had close contact with someone who has COVID-19.</li> <li>• Employer should not ask worker to come to work.</li> <li>• If an employer asks a worker come to work, they will be in breach of HSWA.</li> <li>• If employer asks worker to come to work, the worker has the right to refuse to do so on the basis that going to work would expose other people to a serious risk to health or safety.</li> <li>• Employer should seek and follow latest guidance from the MOH on COVID-19.</li> <li>• Worker and employer can agree that worker will work from home if willing and able (will get ordinary pay).</li> <li>• For employees who cannot work from home, paid special leave should be considered. (Other forms of paid leave can be used by agreement between the employer and the employee).</li> <li>• Employer should regularly check in with the worker.</li> </ul>

Scenario 3: Worker believes they are at risk of spreading COVID-19 (though has not been advised to self-isolate under health guidance for COVID-19)

OR

Scenario 4: Worker is concerned that attending their workplace places them at risk of exposure to COVID-19

<p><b>If the worker does not want to come to workplace but can work from home</b></p>	<ul style="list-style-type: none"> <li>• Worker must notify employer that they: <ul style="list-style-type: none"> <li>○ believe they are at risk of spreading COVID-19 and why</li> <li>○ are concerned that attending their workplace places them at risk of exposure to COVID-19 and why.</li> </ul> </li> <li>• Employers and workers should be guided by latest guidance from the MOH on COVID-19.</li> <li>• The employer may accept the worker's belief or concern, and agree to the worker working from home. The employer and worker may also agree to other arrangements, including paid or unpaid leave. Employer should regularly check in with the worker.</li> <li>• The employer could require a medical assessment of the "reasonableness of the worker's belief" that they are at risk of spreading COVID-19, or "reasonableness of the worker's concern" about attending work.</li> <li>• <i>If there is no reasonable belief or concern:</i> <ul style="list-style-type: none"> <li>○ worker may in agreement with employer work from home, if willing and able (will get ordinary pay).</li> <li>○ For employees, may take paid leave (including paid special leave) or unpaid leave. <ul style="list-style-type: none"> <li>▪ under either of these options, employer should regularly check in with the worker.</li> </ul> </li> <li>○ If one of these options is not agreed, the worker must go to work.</li> </ul> </li> <li>• <i>If there is a reasonable belief or concern:</i> <ul style="list-style-type: none"> <li>○ worker may in agreement with employer work from home if willing and able (will get ordinary pay).</li> </ul> </li> </ul>
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<b>If the worker does not want to come to work and cannot work from home</b>	<ul style="list-style-type: none"> <li>• Worker must notify employer that they: <ul style="list-style-type: none"> <li>○ believe they are at risk of spreading COVID-19 and why</li> <li>○ are concerned that attending their workplace places them at risk of exposure to COVID-19 and why.</li> </ul> </li> <li>• Employers and workers should be guided by latest guidance from the MOH on COVID-19.</li> <li>• The employer may accept the worker's belief or concern, and agree with the worker that they will take paid leave (including paid special leave) or unpaid leave. Employer should regularly check in with the worker.</li> <li>• The employer could require a medical assessment of the "reasonableness of the worker's belief" that they are at risk of spreading COVID-19, or "reasonableness of the worker's concern" about attending work.</li> <li>• If <i>there is no reasonable belief or concern</i>: <ul style="list-style-type: none"> <li>○ For employees, may in agreement with employer take paid leave (including paid special leave) or unpaid leave. <ul style="list-style-type: none"> <li>▪ under either of these options, employer should regularly check in with the worker.</li> </ul> </li> <li>○ If one of these options is not agreed, the worker must go to work.</li> </ul> </li> <li>• If <i>there is a reasonable belief or concern</i>: <ul style="list-style-type: none"> <li>○ for employees, paid special leave should be considered. Other forms of paid leave can be used by agreement between the employer and the employee. <ul style="list-style-type: none"> <li>▪ under either of these options, employer should regularly check in with the worker</li> </ul> </li> </ul> </li> </ul>

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<b>If the employer wants worker to come to work, but worker does not want to</b>	<ul style="list-style-type: none"> <li>• Worker must notify employer that they: <ul style="list-style-type: none"> <li>○ believe they are at risk of spreading COVID-19 and why</li> <li>○ are concerned that attending their workplace places them at risk of exposure to COVID-19 and why.</li> </ul> </li> <li>• Employers and workers should be guided by latest guidance from the MOH on COVID-19.</li> </ul>



	<ul style="list-style-type: none"> <li>• If latest guidance from the MOH on COVID-19 says worker should not be at work, Employer should not ask worker to come to work. If an employer asks the worker come to work, they will likely be in breach of HSWA. <ul style="list-style-type: none"> <li>○ Worker may in agreement with employer work from home, if willing and able (will get ordinary pay).</li> <li>○ For employees, may in agreement with employer take paid leave (including paid special leave) or unpaid leave. <ul style="list-style-type: none"> <li>▪ under both of these options, employer should regularly check in with the worker.</li> </ul> </li> </ul> </li> <li>• If the latest guidance from the MOH on COVID-19 does not says worker should not be at work: <ul style="list-style-type: none"> <li>○ Worker may in agreement with employer work from home, if willing and able (will get ordinary pay).</li> <li>○ For employees, may in agreement with employer take paid leave (including paid special leave) or unpaid leave. <ul style="list-style-type: none"> <li>▪ under either of these options, employer should regularly check in with the worker.</li> </ul> </li> </ul> </li> <li>• If one of these options is not agreed, the worker must follow the reasonable instructions, policies and procedures of their employer (including those that give effect to their HSWA obligations). This means the employer may instruct the worker to go to work.</li> </ul>
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Type of Leave	When employee initially becomes eligible for leave, and how much	Minimum entitlement ongoing	Ability to accumulate unused leave entitlement	Casual/non-standard hours employee	Alternatives if entitlement exhausted
<b>Sick Leave</b>	Six months of continuous employment with the same employer <b>or</b> six months employment for an average of 10 hours per week and at least one hour in every week, or 40 hours in every month.	5 days of sick leave for every 12 month entitlement period.	Can carry up to 15 days of sick leave, up to a maximum of 20 days in any entitlement year (unless employment agreement specifies for more).	Eligibility exists, but in practice may vary due to intermittent or irregular nature of the work (for instance if not rostered for work it may be difficult to determine what a working day is to ascertain whether sick leave could be used on a specific day)	<p>Sick leave in anticipation.</p> <p>Use annual leave (by agreement).</p> <p>Working from home or place of isolation.</p> <p>Employer negotiated special leave.</p>
<b>Annual Holidays</b>	<p>12 months of continuous employment with the same employer (full-time, part-time, fixed-term, or casual).</p> <p>Can (from day 1 of employment) be paid holiday pay at 8% if employed on a genuine fixed-term agreement of less than 12 months, or if working pattern means providing leave is unworkable</p>	4 weeks of paid holidays for every 12 month entitlement period.	Unused annual leave does not expire (but an employer can require an employee to take annual leave in limited circumstances).	No right to annual holidays. Employer and employee can agree to 8% 'pay as you earn' in lieu of taking annual holidays (due to lack of regular hours).	<p>Annual holidays in anticipation.</p> <p>Working from home or place of isolation.</p> <p>Employer negotiated special leave.</p>