

# COVID-19 – WHAT EMPLOYERS NEED TO KNOW – 25 MARCH 2020

We are working hard to get your business specific questions answered. We will be providing further clarity and information once they become available. In the meantime we have included information addressing some of the common enquiries.

## Wage Subsidy:

Wage subsidies will be available for all employers that are significantly impacted by COVID-19 and are struggling to retain employees as a result. The scheme will be open to all businesses, including sole traders and the self-employed.

Wage subsidies will be available for businesses in all sectors and all regions that can show a 30% decline in revenue for any month between January and June 2020 compared to the year before (including projected revenue).

The basic elements are that the subsidy is available for all The COVID-19 Wage Subsidy will be paid at a flat rate of:

- \$585.80 for people working **20 hours or more** per week
- \$350.00 for people working **less than 20 hours** per week.

The subsidy is paid as a lump sum and covers 12 weeks per employee. Businesses can only get this subsidy once.

The WAGE subsidy is only for supporting employers to maintain staff **in their continuing employment**, and they're paid the subsidy plus topped up to 80%.

Whilst the sum is provided to the employer based on the number of staff employed as above, the employer can use the total sum in a manner that is reasonable to maintain employment i.e if a part timer usually earns \$100 you would not pass on \$350!

The Government has removed the cap on wage subsidies that can be paid to employers affected by COVID-19. The cap of \$150,000 per business is gone.

- This applies to all New Zealand employers, contractors, sole traders, self-employed people, registered charities and incorporated societies. You are now able to apply for a wage subsidy for all your staff.
- If you have already applied for and been granted the wage subsidy for your employees and MSD has capped the amount paid, you don't need to do anything because MSD will top up the difference.
- If you have applied for the wage subsidy for your staff, and claimed only enough to meet the cap, once you have used this subsidy, you can reapply.

**Best Efforts:** When an employer applies for the Wage subsidy they undertake to use 'best efforts' to pay their employees at least 80% of their normal pay. Ultimately this may not be possible, but an employer must be prepared to justify why it has not been able to do so.

The subsidy is to be applied in a way which allows maximises job retention

So, In applying for the Wage subsidy, you undertook to make 'best efforts' to pay employees not less than 80% of their normal pay.

In most cases there will probably be a shortfall between the subsidy and 80%.\*\*

You can discuss and **agree** with your employees how that gap will be addressed. You *can* utilise annual holiday entitlements/anticipatory annual holidays or any other contractual or statutory entitlement in making up the wage/salary to 80%. However, you should note that *in the absence of agreement*, you will only be able to *direct* employees to take annual holidays where a) an actual entitlement exists and b) upon giving not less than 14 days' notice.

You can also negotiate unpaid leave and /or a reduction in the hours of work. (here we make the assumption that the relevant employment agreements do not permit you to unilaterally make these changes). There is no statutory provision for leave without pay. This requires agreement.

\*\* Whilst the Wage subsidy scheme requires you to top up to 80% there is arguably a requirement to pay 100% unless you reach agreement otherwise. Whilst it may be possible to argue that the 'doctrine of frustration of contract' applies in these circumstances (which would negate mutual obligations under the employment agreement) or you may be able to rely upon a force majeure provision (if you have one) (the effect of which would bring the employment relationship and most obligations under it to an end), the law here is uncertain. The object of the business support measures put in place by the government is to preserve employment relationships where it is possible to do – recognising that employers are going to need their staff when we emerge from this pandemic.

Our advice is to discuss any difficulty you have with sustaining 80/100% of wages with your employees with the objective of reaching agreement to vary the existing terms of employment – and permitting some reduction. Ensure that you record any agreement in writing signed by both parties.

### **Leave and self-isolation support:**

Self-isolation is an important way to slow the spread of COVID-19. COVID-19. Leave Payment covers full-time, part-time and casual employees, and contractors who are legally working in New Zealand and who:

- Need to self-isolate (as determined by the Ministry of Health guidelines),
- Cannot work because they are sick with COVID-19, or
- Cannot work because they are caring for dependents who are required to self-isolate or are sick with COVID-19.

The COVID-19 Leave Payment will be available for eight weeks from 17 March 2020. Employers will be able to apply for this more than once.

The COVID-19 leave payment will be paid at a flat rate of:

- \$585.80 to a person working 20 hours or more per week
- \$350.00 to a person working less than 20 hours per week.

It will be paid to employers who have eligible employees and they must pass the payment onto their employees in full.

There are many many questions where a definitive answer is evolving. If you have any issues, or want any more information, please again contact our local Rapid Response team on [RRT\\_Canty@msd.govt.nz](mailto:RRT_Canty@msd.govt.nz)

### **Payments of subsidies:**

- Subsidy to the employer is without tax.
- As the subsidy is to help employers to pay wages, once paid as wages these are subject to all normal deductions, including tax.
- The advice is that tax is paid by the employee (through PAYE) rather than the employer. The \$585.80 and \$350 are gross and need to be treated like any other payment to employees with PAYE, KiwiSaver etc dealt with.

### **Essential Business:**

Only businesses that are essential to the provision of the necessities of life may remain open during the Level 4 Alert period.

- This means food, medicine, healthcare, energy, fuel, waste-removal, internet and financial support will continue to be available. List of essential businesses available here.
- Alert Level 4 means New Zealanders not working in essential services must stay at home and stop all interactions with others outside of your household.
- If you are unsure if your business is an essential service you can get in touch with MBIE at **0508 377 388** or email [essential@mbie.govt.nz](mailto:essential@mbie.govt.nz)
- The essential services list identifies work that can continue from business premises at Level 4, as long as it is done in a way that limits or eliminates the risk of spreading COVID-19.
- It may be possible to deliver some essential services entirely with staff working remotely from home. However, if essential workers are required to leave home to work, then their business must:
  1. Minimise personal interactions, amongst staff and with customers and
  2. Ensure all appropriate health, hygiene and safety measures are in place.

It is for an industry or business to decide how best to meet these aims in a practical way – the approach must be workable. This could include the likes of:



- Working from home as far as possible
- Limiting staff interaction through personal distancing and split shifts
- Limiting interaction with and between customers e.g. through online or phone orders, contactless delivery and/or managed entry
- Frequent cleaning of counters and EFTPOS terminals
- Personal protection equipment for staff
- Hygiene basics including hand washing and sanitisers

Visit the COVID19 Govt website [here](#) for more information.

**If you have any queries around essential services you can get in touch with the team at MBIE on 0508 377 388 or email [essential@mbie.govt.nz](mailto:essential@mbie.govt.nz).**