



COVID-19 FREQUENTLY ASKED QUESTIONS

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Employees required to stay home

What are an employer's obligations where an employee is required to remain away from work because they are sick, and are required to self-isolate?

Where an employee is sick and is required to remain away from work, they are entitled to sick leave for the period they are sick. If their sick leave entitlement is exhausted, the employee would then be on unpaid sick leave.

Where an employer requests that an employee remain away from work because of concerns they could have COVID-19, are they required to pay wages during that period?

Where an employer requires an employee to remain away from work on health and safety grounds (e.g. because they fear the employee may have COVID-19), the employer would be required to pay special leave that employee.

Where an employee is required to self-isolate due to a government directive, is the employer required to pay them wages during that self-isolation period?

The general principle is that if an employee is ready, willing and able to work, they are entitled to be paid. However, if an employee is required to remain away from work as a result of a government directive, they are not "able" to work and therefore the employer is not obliged to pay them.

It is of course open to the employer to agree with the employee that the employee will be paid sick leave or use annual holidays during this period.

What about where an employee comes back from overseas and is required to self-isolate due to the government directive, is the employer required to pay them wages during that self-isolation period?

Again, the general principle is that in the event that an employee is unable to attend work because of a government directive to self-isolate, the employer would not be required to pay them for this period, because the employee is not able to work.

However, if the employee was overseas for work related reasons, and at their employer's request, it is likely that the employer would be required to pay them because the self-isolation is a consequence of work related activity.

Can an employer force an employee to go home if they think they're sick?

Employers are required to provide a safe workplace for all of the people in it. If there is a reasonable basis for believing an employee may be sick, and a fair and reasonable process in the circumstances is followed, they can be sent home and/or requested that they produce a medical certificate confirming they are fit for work.

Where an employee or their dependent is sick, but it is not confirmed to be COVID-19, can the employer request that the employee self-isolates for 14 days as a precautionary measure?

Where an employee is sick or is required to be absent to care for a dependent who is sick, sick leave would be payable. If they have no sick leave, the absence would be unpaid unless the parties agree that the employee can use their annual holidays.

However, if an employee is ready, willing and able to work (i.e. they're not sick), but the employer requires their absence from work because they believe the employee should stay away as a precautionary measure, they would be required to pay special leave during that period.

Can an employer require employees to take sick leave or annual holidays?

An employer cannot require an employee to take sick leave. However, if the employer reasonably believes the employee should be away from work, an employer can direct them to leave work after following a fair process. If there is no evidence that the employee is in fact sick, the employer would be required to pay special leave.

An employer can require an employee to take annual holidays on 14 days' notice, where that employee has an entitlement to annual holidays (rather than simply accrued annual holidays). The parties must try and reach agreement first, however.

An employer could negotiate with an employee for that employee to take unpaid leave, although the employee would need to agree.

Refusing to come to work

Can an employee refuse to come to work if they think a colleague is sick or if there is some other risk?

An employer has an obligation to take all reasonably practicable steps to provide a safe workplace and should respond responsibly to this situation.

If an employee considers that there is a serious and imminent risk to health and safety they could potentially strike, or refuse to perform work in accordance with the Health and Safety at Work Act.

If an employee refused to come to work because they considered the workplace to be a risk, the question would be whether that concern was reasonable. If it was not, and there was an ongoing, unreasonable refusal to work, that would give rise to a disciplinary issue.

Requiring medical information

Can an employer request a medical certificate clearing an employee of COVID-19?

An employer can require an employee to provide a medical certificate, confirming their fitness for work, but this would need to be based on reasonable grounds. In respect of COVID-19, there would have to be evidence of a real risk that the employee is infected.

Employers are entitled to request that an employee undergoes a medical assessment, if there are reasonable grounds to believe that the employee is unfit for work. However, this would require the employee's consent and you would need to follow a fair and reasonable process in seeking their agreement to undertake such an assessment, including the particular questions you want answered by a medical professional, and any consequences for refusing to undertake such an assessment.

In respect of COVID-19 there are additional issues, as the Ministry of Health has issued guidelines on who may access such tests, which may mean that practically, there may not be an ability to test for COVID-19 in circumstances where an employee doesn't meet the Ministry of Health criteria.

What are the self-isolation requirements generally? For example, if an employee comes into contact with someone who has a confirmed COVID-19 or similar symptoms – can an employer require the employee to self-isolate, get a medical clearance and what are their obligations to pay the employee during this period?

The requirements of self-isolation have been determined by the Ministry of Health, and are set out [here](#).

Outside of the government directives to self-isolate, an employer can only require that an employee remain away from work on health and safety grounds. However, this would have to be based on reasonable grounds and given it would be at the direction of the employer, the employer would be required to pay the employee special leave during that period.

As above, you could request an employee undergoes a medical assessment, but this would need to be based on reasonable grounds, and follow a fair and reasonable process.

Government subsidies

What are the subsidies released in the Government's 'COVID-19 rescue package'?

COVID-19 Leave Payment

The 'COVID-19 Leave Payment' is available for eight weeks from 17 March 2020. Employers can apply for the leave payment for individual employees more than once. The leave payment will be paid to employers where an employee is eligible, and they must pass on the payment in full to their employees.

The COVID-19 Leave Payment is available for employees who:

- Need to self-isolate;
- 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 who are sick with COVID-19.

Employees who work 20 hours or more each week will be entitled to \$585.80 per week.

Employers who work less than 20 hours per week will be entitled to \$350 per week.

Employers receiving the payment for employees who are required to self-isolate can receive it for 14 days. As people may be required to self-isolate more than once, employers will be able to apply for this on an 'as needed' basis. It can be paid for the entire period an employee is sick (or looking after a dependent person who is sick) with COVID-19 but the employer must apply every 14 days.

An employer and employee can agree for the employee to use any form of paid leave (e.g. annual leave) to cover their period of self-isolation. However, employees are not required to have used any or all their paid leave entitlements before they can receive this payment.

NOTE: State sector employers cannot receive the payment as it is expected that they will pay employees their normal wages through periods of self-isolation.

COVID-19 Wage Subsidy

The COVID-19 Wage Subsidy is available to employers, contractors, sole traders or people who are self-employed. In order to be entitled to the Wage Subsidy, employers must:

- Be registered and operating in New Zealand;
- Have employees who are legally working in New Zealand;
- Must have experienced a minimum 30% decline in actual or predicted revenue over the period of a month when compared with the same month last year, and that decline is related to COVID-19;
- Must have taken active steps to mitigate the impact of COVID-19;
- Must make best efforts to retain employees and pay them a minimum of 80% of their normal income for the subsidised period.

The COVID-19 Wage Subsidy is only available for wages, and will be paid to business 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.

Making business changes in light of COVID-19

Can an employer require employees to reduce their hours?

An employer is not able to require an employee to reduce their hours unless that employee agrees. A reduction in hours might be able to be achieved if the employer restructures their business, following a lawful process.

Can an employer cease using casual staff?

Genuinely casual employees are only employed during each particular work assignment. As such, employers are under no obligation to provide any further work to employees beyond each engagement/assignment.

Be aware: Where a regular pattern of work has developed, there is a risk that the true nature of the employment relationship may have become permanent one. The courts will consider length of employment, and how long a regular pattern of work has existed.

Can an employer cease using contractors?

Whether an employer can cease using contractors depends on the terms of the particular contract for services.

Many contractor agreements simply provide for terminating the agreement on one month's notice, in which case, employers are able to simply provide notice of termination.

However, if the contract limits the circumstances in which termination can occur, for example where termination has to be for "reasonable cause", it may be necessary to follow a process akin to a lawful restructure, in order to justify termination.

Can an employer stop making discretionary payments?

Whether an employer can stop making discretionary payments depends on the terms of the particular contract, and whether it explicitly provides that the payment is discretionary.

If an employer proposes stopping discretionary payments, they should first propose the change and provide an employee with an opportunity to comment before confirming the decision.

Can an employer stop paying allowances?

This will depend on the terms upon which the allowance is offered. If it is discretionary, it may be able to be stopped.