

Workplace Response to COVID-19

Updated 28 March 2020

Additional information about COVID-19 and employment responsibilities

New Zealand is now in alert level 4 lockdown. This has raised a range of employment issues for general practice.

Significant reduction in income

A number of employers are reporting a significant and concerning drop in income. Despite primary healthcare being an essential service, many practices are suffering a considerable drop in revenue as a result of the lockdown.

The first issue practices should consider is whether they qualify for the government **wages subsidy**. Employers who have a drop in revenue of 30% or more attributable to COVID-19 will qualify, but they must keep the affected employees employed for at least the duration of the subsidy, which is 12 weeks. The scheme has recently been modified, but it continues to pay \$585.80 gross per week for employees working 20 hours or more, and \$350 gross per week for employees who work less than 20 hours per week.

See <https://www.workandincome.govt.nz/products/a-z-benefits/covid-19-support.html>

If the practice receives the subsidy, they should pay their employees:

- Their usual wages or salary as per their employment agreements, where possible (the subsidy will subsidise the practice's capacity to do so)
- If that is not possible, at least 80% of their salary or wages
- If that is not possible, the usual wages or salary payable for the number of hours the employee works
- If the employee is working minimal or no hours, the employee must receive the full amount of the subsidy as an absolute minimum

What does this mean in practice? It means the subsidy has become more flexible to meet a range of situations. If you need your employees to work the same number of hours as they always have, but you are struggling to pay them due to a fall in revenue, the subsidy provides some assistance to meet the wages bill. If you need to reduce some of your employees' hours, you can use the subsidy to keep them receiving as much of their usual income as you can. You will of course need to still pay the usual rate for the hours the employee is working as a minimum. If you have no work at all for the employee, they must receive at least the full amount of the subsidy, and stay on your books.

If an employee resigns after you've applied for the wages subsidy for them, you need to notify Work and Income and you won't be eligible for further subsidies for that employee. Employers should expect that audits and checks will take place over time to ensure that employers have

complied with the requirements, have passed on all of the subsidy to employees, and have applied for the subsidy in good faith.

Note: the wage subsidy is also available to those GPs who are contractors.

Reducing hours

Some practices have advised that they need to reduce the hours of work of some employees. As noted above, the practice can apply for the wages subsidy if the practice has a 30% or more reduction in revenue as a result of COVID-19.

Hours of work can only be reduced by agreement. This means that the first step in considering a reduction of hours is to discuss, and see whether you can agree, the reduction in hours with the employee. If the employee agrees with the reduction, this needs to be recorded in writing and signed by both parties. This is a variation to the employee's employment agreement and the actual hours to be worked should be recorded, along with any changes to other entitlements, and the duration of the variation, if it is agreed on a temporary basis. This would be compliant with the PHC MECA.

An employer cannot force an employee to reduce their hours of work without the employee's agreement. If the employee does not want to agree to reduced hours, the employer would need to go through a redundancy process, consulting on the proposal first before making any final decisions, and, if the proposal proceeded, the employee should be offered redeployment into the new position with reduced hours. The employee would not have to accept the redeployment, but would be entitled to first refusal of the new position. More detail about the process is set out below.

You should also note that some employment agreements provide for payment of partial redundancy compensation, to compensate the employee for losing some of their hours, if the employee is redeployed into a position which has less hours.

If you have or are applying for the wages subsidy, discuss this with the employee/s and explain what this means you will be able to offer. For instance, if you are looking to reduce their hours from 30 to 15, but with the subsidy, you will be able to pay them 80% of their former income (pay them for 24 hours) you should explain that and seek their agreement to that change.

Redundancy

If you need to consider full redundancy of one or more employees, again, you would need to go through a process prior to making any final decisions. We have briefly outlined the process required below. Do note that where employees are made redundant, the wages subsidy cannot be claimed for those employees, as the wages subsidy is there to keep employees in employment.

Employers should only consider redundancy if either they will not have work for the employees when the current situation has eased, or if they cannot reach agreement with an employee about reduced hours and/or the employee not working, but receiving some payment. This is because most practices will need their staff when things eventually return to normal, and because the subsidy is only available for employees who remain on the

employer's books. A reminder that for employees employed under the PHC MECA, redundancy compensation, as set out in clause 28.5.1, of the MECA is still payable.

Consulting about change

If you are in the situation of needing to make changes such as reducing hours or redundancy, you will need to work through a consultation process with your potentially affected employee/s (unless, in the case of reducing hours, you have already mutually agreed this with the employee/s).

You should check the employment agreement/s before you commence any process, as different agreements may have different (and sometimes additional requirements) to those outlined below.

You will need to advise the employee/s of what you are proposing to do and why, including the reasons behind the proposal. You will need to provide all of the relevant information so that your employee/s understand the situation and can provide feedback on it. This will include financial information, patient revenue, patient numbers, or whatever is relevant to the situation you are dealing with.

Your proposal should be put in writing and should explain how the proposal would impact the employee, and should ask the employee to provide feedback, including any alternatives they would like you to consider. Some time should be allowed for the employee to do so. Usually we recommend that this would be around two weeks, but if your situation is such that you need to act more quickly than that, it should be at least a few days.

Once the time allowed for feedback has passed, you should consider the feedback you have received before making a final decision. Your final decision should be put in writing, and you should respond to the feedback you have received, particularly any alternatives that have been suggested. If you are giving notice of redundancy, this needs to be in writing.

Check the employee/s' employment agreements before you commence discussions, to make sure you understand what you will need to do, and seek advice if you're not sure about anything. For those employees employed under the PHC MECA, refer to clause 28.

If employees are being made redundant, you will need to comply with any requirements around notice periods and compensation. All employment agreements will require some notice and many require the payment of compensation. You will need to make sure you have taken these obligations into account in your planning.

If you are disestablishing a position and establishing a position with lesser hours, as noted above, the employee whose position is being disestablished would be entitled to be redeployed into the new position with lesser hours. You can give notice at the time you write to set out your final decision, and offer the employee redeployment into the new position. If partial redundancy compensation will apply, this should be documented.

If the PHC MECA applies, you should note that the MECA provides for meeting with the employees likely to be affected and the NZNO organiser to outline the possibility of change, developing a proposal which is provided to the potentially affected employees and NZNO, and seeking and considering feedback before making a final decision. Physically meeting with

NZNO will not be possible during a lockdown and meetings with staff could present issues with physical distancing, so practical alternatives such as video meetings may need to be considered instead.

Employees who can't work

You may have employees, now or in the future, who cannot work due to either self-isolation (as a result of recent travel, or as a result of exposure to COVID-19) or due to having COVID -19, or must look after a dependent who either has COVID -19 or is required to self-isolate. Up until 27 March, you could claim for a leave payment for that employee, but the leave payment scheme has now closed to ensure employers are not “double dipping”. You can however apply for the wages subsidy so that you can continue to pay that employee. It is of course essential that an employee in any of these situations does not work.

You may also have employees who do not want to come to work, due to increased vulnerability because of age or underlying health conditions, for either the employee or a family member. In this case, you should respect the employee's decision and ensure they are not required to work. If you have some work from home the employee can do, that should be considered in the first instance, even if it would mean reduced hours. You should seek to agree what will apply with the employee. If you receive the subsidy, the employee is of course entitled to be paid that as a minimum while they are away but remain in your employment. On 27 March, the Minister of Finance referred to implementing a leave payment for employees in this situation, and it is likely we will have more information on this in a few days. It is likely that a leave payment would only apply to employers who are both an essential service, and would not qualify for the wages subsidy (because they have not experienced a 30% or more reduction in revenue).

Need more help?

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