

Workplace Response to COVID-19

Updated September 2020

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Employment issues associated with responding to COVID-19 are not always clear-cut and should be considered on a case-by-case basis, but there are some basic rules.

Legally, practices must keep their employees safe – this is a requirement under the Health and Safety at Work Act. Broadly speaking, this means taking all reasonably practicable steps to understand the risks that arise for employees, the likelihood of those risks arising, the degree of harm that staff could be caused from those risks, the options to eliminate those risks, and if the risks can't be completely eliminated, the options to minimise the risks.

Practices must also of course ensure the safety of others affected by their work, including patients, under the same legislation.

The obligations include providing and maintaining a safe and healthy workplace, safe systems of work, use, handling and storage of substances, providing information to protect people from risks to their health and safety, and monitoring the health of employees, and conditions at the workplace, to prevent illness or injury to employees arising from the work they carry out.

In the case of COVID -19, this means taking all reasonably practicable steps to ensure staff are not exposed to the virus as a result of their work. Of course, in many cases the risk of harm to some patients could be more serious than the risk to staff due to age and pre-existing medical conditions.

This will require taking all reasonably practicable steps to ensure that patients who may carry the virus don't appear unannounced at the surgery, don't enter the waiting room, and so forth. It might include signs at the entrance of the building, lifts, on the door etc, to set up appropriate systems for any visits without appointments, and screening questions asked when appointments are made to identify possible affected patients. Thought should be given to how visits from any patient who may be at possible risk of carrying the virus (e.g. travel from an affected area, contact with someone known to have the virus, symptoms of the virus) will be handled. This will be likely include appropriate personal protective equipment for staff interactions with the potentially affected patient, appropriate measures for the patient and any accompanying support persons, separate rooms which do not involve passing through the waiting room, cleaning and so forth.

In short, the obligations to staff are to take all reasonably practicable steps to keep them safe from contracting COVID-19 at work. This means considering all of the ways this might occur and setting up systems to manage the risk. It also might include discussing with any staff who are at higher risk, any special measures that may need to be taken in their case. It may also include screening for the virus if there is contact with any patient who is found to have the virus.

Bear in mind also the impacts of planning for and dealing with these issues – employees may suffer from stress and anxiety, may find self-isolation or measures for safety difficult to cope with, and may have family or friends impacted by the virus or by its wider impacts. Employers should think about

whether they can provide support such as debriefing and helping with concerns and where they can access counselling and assistance if staff need it.

It would be good practice to be discussing the implications and issues with staff now so that everyone has had the opportunity to have input and is aware of steps the practice will take in the event of particular situations. Recording decisions taken in policies and plans, and reviewing as necessary, will help staff have access to up to date information when they need it.

Payment for an employee affected by COVID-19

Support is available for employers to pay employees in situations where employees need to stay away from work and cannot work from home. Employers can apply for support to pay employees. The self-employed or contractors can apply directly.

COVID-19 Leave Support Scheme

The COVID-19 Leave Support Scheme is available for employers, including sole traders, to pay their employees who can't work if they:

- have tested positive for COVID-19 and are required to remain off work until they've been cleared by a health professional to be released from self-isolation, or
- have come into contact with someone who has COVID-19 and must self-isolate for 14 days (as required by Ministry of Health guidelines)
- are at higher risk if they get COVID-19, and Ministry of Health guidelines recommend they stay at home while public health restrictions are in place
- have household members who are at higher risk if they get COVID-19 and the Ministry of Health recommends the employee also remains at home to reduce the risk to them.

The Leave Support Scheme cannot be paid for employees who:

- are sick with COVID-19 'like' symptoms, and Ministry of Health guidelines require them to self-isolate until they have recovered
- cannot work because they have care of dependents and they are unable to access care for those dependents
- are unable to work as they have a reasonable belief that continued work during COVID-19 is harmful to their physical or mental health
- are unable to work for any other reason, for example, bereavement
- are already receiving COVID-19 Wage Subsidy Extension or Resurgence Wage Subsidy payments.

Payment rates

The Leave Support Scheme will be paid at a flat rate of:

- \$585.80 for people who were working 20 hours or more per week (full-time rate)
- \$350.00 for people who were working less than 20 hours per week (part-time rate).

For more detailed information and to confirm eligibility, see

<https://www.workandincome.govt.nz/covid-19/leave-support-scheme/who-can-get-it.html#null>

Payment for an employee who is waiting for a COVID-19 test

As noted above, an employee who suspects they may be COVID-19 positive and must self-isolate until the test results have returned is not eligible for the COVID-19 Leave Support Scheme. If the employee does not have leave available there is no absolute answer to the question of whether the employer must pay the employee. If the employee's employment agreement or the employer's policy says this will happen, then it must happen. If the employee has come into contact with the virus as a result of work, there is likely to be a perception that the employer should pay the employee.

If an employee has run out of sick leave and is sick, the employee can ask their employer for sick leave in advance, use their annual holidays, ask for advanced annual leave or leave without pay. An employer could also agree to provide additional sick leave or special paid leave. The PHC MECA allows for sick leave to be anticipated at the employer's discretion.

Factors employers might want to consider are whether payment might encourage staff who need to work to be honest and upfront about the fact that they need to self-isolate, whether they can afford to pay, and whether this is the best approach to keep other staff and patients safe, and whether the employee was exposed as a result of carrying out their normal duties.

An employer could decide to close their business temporarily due to coronavirus. In this case, they should first try to negotiate with their employees what type of leave they could take. If no agreement is made, the employer will have to pay the employees during that period. If the business has to close because of a government mandate, the employer won't be required to pay their employees. These rules apply to all types of employees.

There is an argument that if the employer imposes the quarantine, as opposed to compulsory quarantine, then the employee should be paid. This is because the employee is ready, able and willing to work, while the employer is not providing work. This isn't the case if the employee is compulsorily quarantined, as then the employee is not able to work.

Thought should be given to circumstances where the employee has come into contact with the virus as a result of outside work factors. For example, employers might wish to have a policy that an employee choosing to travel to a country with a known high incidence of the virus at the time of departure should ensure they have sufficient annual leave to cover self-isolation on return if necessary. It would make sense to ask employees about their travel plans and proactively check with employees who have travelled to higher risk areas.

Reducing hours

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.

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.

Need more help?

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