

CORONAVIRUS AND EMPLOYMENT

March 2020

Coronavirus (COVID-19) has dominated world headlines in 2020 and is likely to do so for some time to come. New Zealand is not immune from the effects of the virus and just this week the Government announced a \$12.1 billion stimulus package to assist employers and the wider economy in coping with the impact of the virus. COVID-19 brings with it a range of employment law issues that employers should turn their mind to as soon as possible.

HEALTH AND SAFETY IN THE WORKPLACE

Employers have a legal obligation under the Health and Safety at Work Act 2015 (“HSAW”) to take all practicable steps to protect the employees from hazards and risks in the workplace. This extends to taking reasonable steps to prevent the spread of a contagious disease such as COVID-19 within the workplace. Employers should obviously not require any employees with COVID-19 or COVID-19 symptoms to attend work, as they represent an unacceptable contamination risk for colleagues and others in the workplace. If an employee has COVID-19 and insists on attending work then a suspension would likely be justified. Other reasonably practicable steps employers should consider taking to protect their employees include:

- **Educating** employees about the importance of hygiene – washing hands regularly and for at least 20 seconds, using hand sanitiser, not sharing cutlery, sneezing or coughing into a tissue or the elbow and not shaking hands if it can be avoided.
- **Ensuring** the workplace is stocked with hand sanitiser, soaps, wipes to clean down workstations and surfaces.
- **Communicating** important announcements from the Government and Ministry of Health to employees, either in team meetings or by email.
- **Encouraging** employees to arrange Skype/Zoom meetings with clients if appropriate, instead of face to face meetings.
- **Leading** by example (but without panicking) and **ensuring** those in leadership positions take COVID-19 seriously and do not seek to minimise or make light of the virus.

- **Recognising** that there are mental health considerations too. An employer’s health and safety obligations extend to taking steps to protect employees from mental harm. Employers should “check in” with employees who are noticeably worried/distressed about COVID-19 and external support such as EAP should be offered.

SELF ISOLATION AND LEAVE ARRANGEMENTS

The Government had mandated that anybody who has had close contact with somebody who has COVID-19 must self-isolate for a period of 14 days. Anybody returning to New Zealand from overseas must also self-isolate for the same period.

Strictly speaking, an employee who is required to self-isolate but who is not actually sick or does not have COVID-19 does not qualify for sick leave under the Holidays Act. In this situation we recommend employers consider alternative working arrangements, such as allowing the employee to work remotely from home if this is possible (the employee is then paid as usual). If the employee cannot practically work from home then employers might consider allowing them to use any of their remaining sick leave during the self-isolation period or allowing them to take paid sick leave in advance of entitlement. Employers might consider agreeing to paid special leave although there is no statutory or contractual entitlement to do this. Employees cannot be forced to use their annual leave during a self-isolation period; however they can consent to this.

As with all employment decisions, employers must be fair and reasonable. If an employee is required to self-isolate through no fault of their own they may expect to be paid as normal during that period. Employers should assess the circumstances. In the case of an employee who elects to travel overseas for a non-essential reason and is then required to self-isolate, employers may be justified in refusing to offer any paid special leave for the self-isolation period. Employers will need to pay staff who need to self-isolate on returning from work-related travel.

If an employee is actually sick or is caring for a dependent who is sick then the usual sick leave rules apply.

ANNUAL HOLIDAYS

Some businesses (such as the tourism and hospitality businesses) will be impacted more than others. To ease the burden, employers might consider encouraging or even

directing employees to take annual holidays in the coming weeks. An employer is entitled to direct an employee to take annual holidays as long as they provide at least 14 days' notice. However, the employer must first attempt to reach agreement with the employee about when their annual holidays will be taken. Employers who anticipate needing to take this step should rationally discuss with staff the financial or operational reasons behind the request and try to seek agreement where possible about when annual holidays should be taken. Again, what is fair and reasonable will depend on how the business usually operates. An employer that already requires staff to take annual holidays during a customary Christmas/New Year closedown will struggle to justify requiring employees to take a further period of annual leave during the year.

RESTRUCTURING AND FORCE MAJEURE

If the pandemic worsens then redundancies may be inevitable for the businesses that are the hardest hit. The normal rules still apply with regards to restructuring, including the requirement for the employer to have a genuine business reason for proposing the disestablishment of a role and a requirement for the employer to engage in genuine consultation with the employee before any final decisions are made. Employers should consider all other alternatives first. Legal advice, before commencing a restructuring process, is recommended.

Some employment agreements contain a force majeure clause. These can relieve the parties of their obligations (or allow obligations to be suspended) if a triggering event occurs. A public health crisis like COVID-19 may be a triggering event depending on the wording of the clause. Whether a business can use COVID-19 to invoke a force majeure clause will depend on the nature of the business and whether the business is unable to take reasonable steps to avoid or mitigate the effect of the event. We recommend you contact us if you believe it will be difficult to provide work to your employees as a result of COVID-19.

GOVERNMENT ASSISTANCE

The Government's assistance package has been set up to assist employers and employees during this difficult time. Some of the measures announced include:

- **Wage subsidies** – these are designed to help employers retain staff and businesses will qualify if they can demonstrate a 30% decline in revenue for any month between January and June 2020 compared to the year before (this includes projected revenue). This allows businesses to receive a subsidy of \$585.80 per week for a full-time employee and \$350 per week for a part-time employee, paid as a lump sum and for a period of 12 weeks. The maximum a business can claim in accumulative wage subsidies is \$150,000.
- **Leave and self-isolation support** – qualifying employees who are cannot work due to self-isolation or because they have COVID-19 can receive weekly payments of \$585.80 if they are a permanent employee or \$350 per week if they are a part-time employee. The employer is required to apply for the payment (available for a period of 8 weeks from 17 March 2020) and then pay in full to the employee.

There is also support available for self-employed workers and contractors, as well as tax changes to assist businesses. We recommend employers review details of the package (including eligibility requirements) in full by following the links below:

- [Coronavirus information for businesses](#)
- [Covid-19 support - Work & Income NZ](#)

Please contact Glenn or Jeremy if you require legal advice about the impact of COVID-19 on your business or employees

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Disclaimer: The information contained in this document is a general overview and is not legal advice. It is important that you seek legal advice that is specific to your circumstances.

