



# COVID-19: Guidance for payroll professionals

## Introduction

The response to COVID-19 is an unprecedented situation that requires employers and employees to deal with new and rapidly evolving situations, legal obligations, and legal permissions; while remembering that employment law obligations, including the need to act in good faith, have not changed.

This resource provides a set of key messages for payroll professionals around what employment law looks like in the COVID-19 environment to help answer any questions that are presenting.

## Primary messages

- › Employment law obligations have not changed during the COVID-19 pandemic.
- › Employees must be paid in accordance with their employment agreement and general employment law obligations.
- › Leave entitlements including calculation of pay must be in accordance with employment agreements and the Holidays Act. **General requirements for leave and holidays** continue to apply during the COVID-19 pandemic.
- › In terms of both leave and pay arrangements, employers and employees should seek first to reach agreement in good faith on what approach will be taken. See the table at '**leave and pay entitlements during COVID-19**', which sets out the range of options that can be agreed and the option that, if the parties cannot agree, the employer can direct the employee to take entitled annual leave with at least 14 days' notice.

## "Normal income" or "normal wage or salary"

- › The terms "normal pay", "normal income", "normal wage or salary" are not defined for the purposes of the Wage Subsidy, Wage Subsidy Extension or Leave Support Scheme.
- › If the worker is working, they should be paid for their work in the usual way and according to the obligations that always apply.
- › To work out what someone would have been paid, who is not working or working less than normal, an employer should be clear how they are calculating what the employee would normally have received in an equivalent period.
- › An employer could choose to use the Ordinary Weekly Pay calculation from the Holidays Act 2003 (s8), based on 'ordinary' weekly gross earnings before the lockdown.
- › Those not working at all or working reduced hours should agree with their employer how that time

will be treated. For example, if any leave is being used for their time off work, as this will influence what pay is due to them, as well as any impact on their leave entitlements.

- › For casual employees, Work and Income has recommended that average hours over the past year should be calculated to determine whether to apply for the full-time or part-time wage subsidy rate.
- › Whatever approach the employer uses should be principle-based and applied consistently to all employees. We also can't stress enough the need for and value of worker engagement and ensuring that good faith underpins these calculations.
- › Note that the Wage Subsidy (where employers applied after 4pm on 27 March) tied ordinary wages and salary to those in the relevant employment agreement on 26 March. Under the Wage Subsidy Extension, ordinary wages and salary are tied to the relevant employment agreement on the date the employer applies for the Wage Subsidy Extension.

## Restructuring

- › Where changes to current working arrangements are proposed by an employer, there are specific good faith requirements that must be followed under general employment law.
- › Employers must still follow good faith and other employment law obligations in making proposals on how they will manage reductions in work or hours, including where they are only proposing to pass on the Wage Subsidy.
- › Consultation on changes can occur on an expedited basis if the employer needs to make rapid adjustments to cope with their circumstances under COVID-19 alert restrictions.
- › An employer cannot use a subsidy to pay for any contractual redundancy payments.

See **Modifying employee agreements during COVID-19 for more information.**

## **Wage Subsidy, Wage Subsidy Extension and Leave Support Scheme**

- › The Government's **Wage Subsidy Scheme** was developed to support employers and their staff to maintain an employment connection and ensure an income for affected employees in the short-term as they adjusted to the initial impact of COVID-19. The **Wage Subsidy Extension** is available to help employers who are significantly impacted by COVID-19 after the Wage Subsidy ends. Under the **Wage Subsidy** and **Wage Subsidy Extension**, an employer must make their best endeavours to pay employees at least 80% of their normal wages or salary. If the employee is continuing to work their normal hours, a reduction in their pay to 80% still requires good faith consultation and written agreement. Employers are required to pass on at least the full value of the relevant subsidy rate (\$585.80 a week for full-time employees and \$350 a week for part-time employees) except where the employee's normal wages are less than the relevant subsidy rate. In this case, the employee should be paid their normal wages and employers can use any excess subsidy to help pay the wages of other affected employees.
- › The Government's **Leave Support Scheme** is designed to support public health goals and financially help workers who can't come into work because Ministry of Health guidelines recommend they stay at home and they can't work from home. Employees and employers should work together to identify if they are eligible for the scheme. For eligible employers, they must make their best endeavours to pay eligible employees at least 80% of their normal wages or salary. If that isn't possible, employers need to pay at least the full value of the relevant subsidy rate (\$585.80 a week for full-time employees and \$350 a week for part-time employees). If the employee's normal wages are less than the relevant subsidy amount, the employer must continue to pay the employee their normal wages. Employers can use any excess subsidy to help pay the wages of other employees.

## **Subsidy payment application to PAYG or KiwiSaver payments**

- › The **Wage Subsidy, Wage Subsidy Extension** and **Leave Support Scheme** payments are paid to employers to support the payment of workers. A number of terms that have meaning for employment law contexts (eg ordinary pay or wages) are not defined for the purposes of those schemes.
- › Normal employment law obligations apply to determine what employees will be paid (depending on whether they are working, contractual obligations and what has been agreed about pay, if the employee is not working as normal), including where an employer is receiving a **Wage Subsidy, Wage Subsidy Extension** or **Leave Support Scheme** payment to support the payment of an employee's wages or salaries. This applies to all elements of wages and salaries, including PAYG (pay-as-you-go) holiday pay and KiwiSaver contributions. Where an employee is working, then they must be paid at their contracted rate, including PAYG holiday pay and KiwiSaver contributions. Minimum wage obligations must also be complied with.
- › KiwiSaver employer contributions and PAYG payments are required by law to be additional to any payment for wages when assessing the payment for minimum wage purposes. So if the subsidy is being used to support an employee at or near the minimum wage, and the employee has been working, then all work must be paid \$18.90 per hour at least, and the employee will also need to be paid 8% additional to that if they receive PAYG, and any employer contribution to KiwiSaver will need to be paid on top of the hourly or salaried amount.

## **What help is available?**

Should you have further queries on this, please go through our standard channel:  
[www.employment.govt.nz/about/contact-us/](http://www.employment.govt.nz/about/contact-us/)

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