

## ALERT LEVEL 3 - BEING PREPARED:

### WHAT ARE MY OPTIONS AS AN EMPLOYER?

#### **CAN MY BUSINESS REOPEN?**

That depends on the nature of your business! Simply put, a business can reopen if it safe to do so and certain restrictions/measures are put into place beforehand. All workplaces must operate safely and meet strict health/safety obligations such as:

- physical distancing of 1 metre;
- avoid all physical contact;
- process orders via phone or online;
- deliveries must be contactless.

A business cannot reopen if it requires close personal contact (unless its an essential service). So, hairdressing/beauty salons/gyms will not be able to reopen.

You cannot interact with clients/customers face to face.



#### **CONTINUE REMOTE WORKING**

Whilst businesses can reopen (to a restricted degree), there is still a requirement on staff to work from home unless this is just not possible. Remote working remains the preferred option.

So, if staff can continue to work remotely from home, then the business should allow this to continue for the duration of Level 3. It is important that an employer understands the need to show 'flexibility' and accept that productivity may still be lower than otherwise seen in the office. It is inevitable that staff will be distracted by normal everyday activities. So, make allowances and suggest that staff adopt flexible working arrangements (the normal 9.00am to 5.00pm working day is not always realistic for remote workers).

Staff that work remotely could continue to complete time sheets setting out the hours worked, and the extent of work undertaken. This also allows you to monitor productivity if you have genuine concerns. Staff will continue to receive the wage subsidy during Level 3 (assuming that this has been applied for by the business). Again, there is no obligation on you to top-up those wages to 80%. Level 3 still poses various restrictions on a business so it could be sometime before revenue returns to normal. Therefore, you can reduce staff wages to just the subsidy payment only if this is more financially sustainable for the business. Remember though to consult with staff first before the changes are made.



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#### **RETURNING TO WORK**

When deciding if your business can reopen and staff are safe to return to work, an employer must consider the following important factors: \*remote working – does this remain an option? If so, then this is the preferred measure. If not, can the business accommodate a COVID-19 Safety Plan which is based on these measures?

- Ensure physical distancing between workers of at least 1 metre.
- Avoid faced to face contact.
- Limit interaction between workers and consider creating rosters, shift-based working, staggering meal breaks.
- Flexible work arrangements – these will help limit the number of people in the workplace at once.
- Encourage practicing hygiene standards such as regular hand washing, cleaning surfaces, the use of PPE if required.
- Document how risks will be managed.
- Contact tracing information.

If your business is not able to adopt these measures, then it should remain closed. The health and safety of staff needs to be the paramount concern and if you are not able to eliminate or minimise the risk of COVID-19 in the workplace then tell staff to stay at home and not to return to work. If you are still unsure, then [www.worksafe.govt.nz](http://www.worksafe.govt.nz) has a useful 'safety plan' template to give further information.

#### **WHAT IF STAFF DO NOT WANT TO RETURN TO WORK?**

If you are able to put in place measures to keep staff healthy and safe based on the measures set out above, then any refusal to return to work is potentially 'unreasonable'.

There is an expectation that staff are 'ready, willing and able' to work. So, any unreasonable refusal to work could result in disciplinary action and the possible non-payment of wages.

If a staff member is refusing to return to work because they feel unwell or are immunocompromised, then do not allow that person to return to work. Instruct that staff member to remain at home and contact Healthline on 0800 358 5453 or speak with their local doctor. Businesses should not allow staff to return to work at any alert level if they feel unwell.

#### **PPE - IS IT NECESSARY?**

You only need to provide staff that have returned to work with PPE if it was being used before the COVID-19 outbreak. So, if staff did not require PPE before, they are not required to use PPE now.

Be mindful though of the need to instill good hand washing practices, keeping physical distances; making sure that surfaces are continually cleaned etc. regardless of whether PPE is/is not being used.



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#### **CHANGING T'S & C'S OF EMPLOYMENT CONTRACTS**

If staff are required to return to work but the level of business activity has not returned to a pre-COVID 19 level, then an employer may give further consideration to changing terms and conditions of employment – reducing working hours / changing duties to be undertaken.

If you wish to implement these measures, it is important that an employer engages in a consultation process with those affected staff before any changes are made. Any changes to employment contracts must have been mutually agreed and negotiated in good faith.

- So, set out a proposal in writing to be sent to those affected staff setting out the reasons for the proposed changes and invite them to provide their written feedback.
- Once all of the feedback is collated, then a response can be prepared addressing all of the issues raised (which may be based on similar themes).
- The business can then make a decision and staff will be notified of the decision and the reasons for that decision. This demonstrates evidence of acting in good faith.

#### **WAGE SUBSIDY SCHEME**

Many businesses have already applied for and received the wage subsidy lump sum payment from the Ministry of Social Development (MSD), in which case you can continue using the wage subsidy to pay wages.

If you have not yet applied for the wage subsidy, it's not too late to submit an online application via [www.workandincome.govt.nz](http://www.workandincome.govt.nz). The lump sum payment covers staff wages for 12 x weeks.

If the employer then makes job losses within those 12 x weeks, it could be liable to repay to the MSD a pro-rated amount of the initial lump sum payment. The MSD has already asked a number of businesses to repay the wage subsidy (in whole or in part) due to spurious claims. Remember, the purpose of the wage subsidy is to avoid job losses as much as possible. It is also intended to pay wages, nothing else. This scheme has been open to abuse based on its high-trust model.

If you have the wage subsidy (or intending to submit an application), please ensure that it does get passed on to staff – its intended purpose. During Level 3 the wage subsidy payments remain the same - staff that work 20+ hours per week receive the full weekly wage subsidy of \$585.80 (gross) per week and staff that work fewer than 20 hours per week will receive \$350 (gross).

An employer can still choose to top-up wages to 80% if it is in a financial position to do so. There is still no legal obligation on an employer to do so. Again, remember that if staff wages are usually lower than the wage subsidy weekly payment, those staff members continue to receive their normal weekly earnings. More information can be found on the [www.covid19.govt.nz](http://www.covid19.govt.nz) or [www.workandincome.govt.nz](http://www.workandincome.govt.nz) websites.



FOR MORE INFORMATION ON THE ABOVE, OR SHOULD YOU HAVE ANY QUERIES,  
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