

ALERT LEVEL 4 LOCKDOWN:

WHAT ARE MY OPTIONS AS AN EMPLOYER?

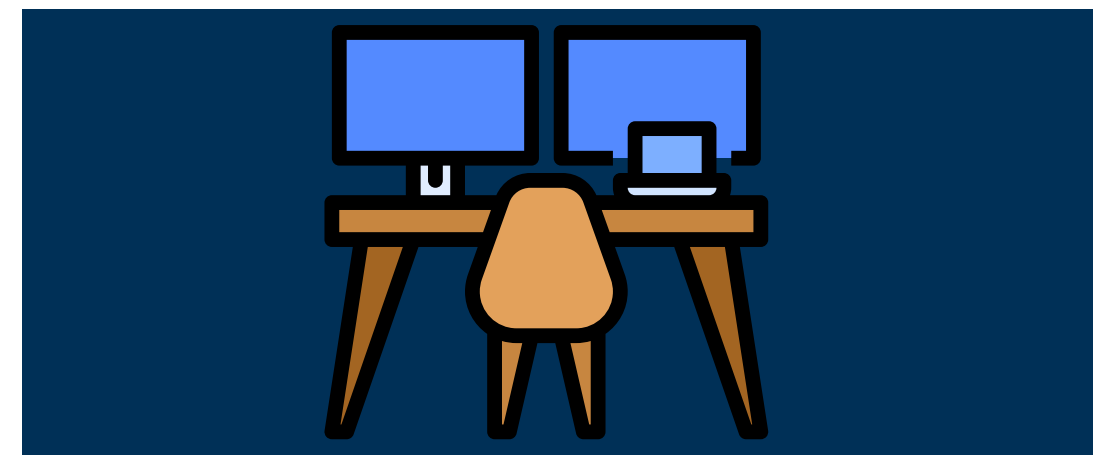
REMOTE WORKING

If it is possible for staff to work remotely from home, then the business should allow for this and encourage staff to do so. We understand that the issue for an employer may be 'productivity', but you will just have to accept that staff may not be as productive as they otherwise would be in the office.

The main factor though is to try to keep some form of work flowing as much as possible. Not everyone though will have a role that enables them to work remotely. Whilst some remote workers may be working their normal hours, others may not. You will need to show a degree of flexibility and make allowance for the fact that they are at home and normal every day distractions will be a reality.

So, you may decide to address this by paying staff for the 'hours worked.' Staff could receive their usual hourly rate (even if on a salary) and be required to complete time sheets setting out the hours worked, and the extent of work undertaken. The remote workers can then top-up their wages by utilising annual leave (subject to prior agreement between the parties).

Do not enforce the use of annual leave. Wages payable for remote workers can be paid using the wage subsidy only (assuming that you have applied in the first place). Alternatively, you have the option to voluntarily top-up those wages to 80% if your business is in a financial position to do so.



WAGE SUBSIDY SCHEME

Many businesses have already applied to the Ministry of Social Development (MSD) for access to the wage subsidy scheme. The intention is to help employers manage their wage bill and avoid job losses as much as possible. Those staff that work 20+ hours per week will receive the full weekly wage subsidy of \$585.80 (gross) per week. For those staff that work fewer than 20 hours per week, a weekly wage subsidy of \$350 (gross) applies per staff member.

An employer may then (if it can commercially afford to do so) choose to top-up a staff member's weekly wage of up to 80%. However, there is no legal obligation on an employer to do so; it just has to use "best endeavours". So, if an employer is not in a financial position to top-up wages to 80% (because it has little or no revenue coming in), then staff will receive the wage subsidy payment only.

The wage subsidy payment is a gross payment so it will still be subject to the usual deductions such as PAYE, Kiwisaver, etc. Be mindful, if a staff member usually earns less than the wage subsidy (whether full or part-time), then the employer only has to pay the staff member their normal earnings. Any surplus can then be put towards other staff wages. To apply for the wage subsidy:

- the business will require IRD numbers and dates of birth for all staff;
- the application can be submitted online via www.workandincome.govt.nz;
- it usually takes 3 - 5 days to process an application, and once accepted, a lump sum payment is then paid to the employer to be used towards staff wages only.

The lump sum payment covers staff wages for the next 12 x weeks. So, the aim is to keep staff employed for the duration. If, however, an employer is compelled to make job losses even with the wage subsidy payment, it is important to remember that it could be liable to repay the MSD a pro-rated amount of the initial lump sum received.



ML

MONSELLIER
LAW EMPLOYMENT

ALERT LEVEL 4 LOCKDOWN:

WHAT ARE MY OPTIONS AS AN EMPLOYER?

80% OF WAGES (TOP-UP).

If your business is successful with its wage subsidy application, then it has the option of either:

- just paying staff the wage subsidy (or their ordinary weekly earnings if lower than the subsidy) or;
- topping-up staff wages to 80% of their ordinary weekly earnings.

Firstly, to calculate a person's ordinary weekly earnings, we suggest that you take the average number of hours worked over the last 12 x months (or the duration of employment if less than 12 x months).

Secondly, there is no legal requirement on an employer to pay 80% of wages – an employer just has to use its “best endeavours”. Therefore, if the business genuinely needs to act sensibly and take precaution as much as possible, then the commercially sensible decision would be to just pay staff the wage subsidy.

You then have the option of allowing staff to top-up their wages to 80% using annual leave (if agreed). Do not enforce the use of annual leave. If staff are using annual leave to top-up, be mindful to cap the use of annual leave taken. If you start allowing staff to use annual leave without any capped limit meaning that they continue to receive either 80% or 100% of normal wages, then you may risk the MSD querying why the business is making staff use annual leave when it can still clearly afford to pay staff their normal earnings.



CHANGING T'S & C'S OF EMPLOYMENT CONTRACTS

An employer can change the terms and conditions of employment such as reduce a person's wages and/or reduce hours if there is a sound commercial reason to do so. But it cannot lawfully do so without consulting with the affected staff first, otherwise the business will be exposed to a personal grievance and a possible breach of contract claim by those affected.

So, if a business intends to change terms and conditions of employment such as reducing wages and/or reduce working hours, then a consultation process will be required. This is appropriate as long as the business has a genuine commercial reason for making the changes and follows a consultation process (most likely to be conducted by email) with the affected staff.

Normally, a consultation process would involve face to face meetings but given the lockdown, this is not possible. A written consultation process is the best alternative here. Before making those changes, be sure to consult with staff to gauge their feedback (this can be done via email or telephone conversation).

This demonstrates that the business is acting in good faith.

- Set out a proposal in writing which could be sent to those affected staff setting out the reasons for the propose changes and then 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 maybe based on similar themes).
- The business will then make a decision and staff are notified collectively.

ALERT LEVEL 4 LOCKDOWN:

WHAT ARE MY OPTIONS AS AN EMPLOYER?

REDUNDANCIES

If after having considered all of the above (including having applied for the wage subsidy), you form the reasonable view that job losses are inevitable, then you can engage in a restructure/redundancy process. Given the current economic climate, employers will have a fair reason for making job losses – to ensure that their businesses remain operational and financially viable in the long term (not just the immediate future).

However, if you can, stay clear of making job losses for the duration of the wage subsidy scheme unless it is absolutely essential. Otherwise, just be prepared to repay some of the wage subsidy lump sum payment back to the MSD. You can revisit this option once the wage subsidy runs out.

- The first step is also to prepare a 'Proposal' to restructure the business and identify which roles are to be affected. Remember it is the 'roles' that are possibly being disestablished. So, make sure the Proposal is based on sound commercial reasons and not a personal agenda towards certain staff members.
- Identify those roles that are surplus to business need. Once the business has identified the 'redundancy pool' (the affected roles), then it can engage in a consultation process which can also be conducted en masse during lockdown.
- The consultation process will be conducted in writing and staff will be required to provide their written feedback. Providing that the business complies with the obligation to act in good faith by consulting with staff and seeking their feedback before making a decision, then the process will be deemed fair and reasonable.
- So, make sure you take on board any feedback received before making a final decision. Then let staff know that you have considered their feedback so that they feel valued and listened to. You will then need to confirm the decision in writing. If staff are being made redundant, remember that they are still entitled to their notice period set out in the employment agreement.



FOR MORE INFORMATION ON THE ABOVE, OR SHOULD YOU HAVE ANY QUERIES,
PLEASE FEEL FREE TO GET IN TOUCH.

021 319 477

021 794 977

admin@monsellierlaw.com