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## Wage Subsidy Update...

**SAVE THE DATE**

**THURSDAY 4  
MARCH 2021  
1.00PM**

Applications soon to open-up for the wage subsidy scheme...

For those businesses needing financial assistance to help manage their wage bill, be sure to apply for the wage subsidy with applications being accepted with effect from 1.00pm tomorrow (Thursday, 4 March 2021).

Work and Income has confirmed that an online application form will be accessible from 1.00pm tomorrow via its website ([www.workandincome.govt.nz/covid-19/wage-subsidy](http://www.workandincome.govt.nz/covid-19/wage-subsidy)).

Wage subsidy payments will start from Monday, 8 March 2021 and will be paid for 2 weeks at the rate of:

- \$585.80 per week for each full-timer (working 20 or more hours per week)
- \$350.00 per week for each part-timer (working 19 hours or less per week)

To be eligible, a business must experience a downturn in revenue of at least 40% over a consecutive 14-day period between the 28 February and 21 March 2021 (this is compared with a normal 14-day period during the period 4 January to 14 February 2021).

Word of caution - a business cannot apply for the wage subsidy on behalf of an employee if that individual is already in receipt of a Leave Support or Short-Term Absence Payment. This is considered 'double dipping' so make sure that your wage subsidy application only includes those employees not already in receipt of Covid-19 related financial aid.

**Your wage subsidy questions answered...** Read below our most commonly asked questions by businesses concerned about the wage subsidy payment and their employment obligations.

## An Employer's Obligations...



## and whether the payment goes far enough!

Interestingly, some feel that the wage subsidy scheme does not go far enough for employees - the payment amount is below the minimum wage for a full-timer working an average 40 hours per week (currently \$18.90 per hour) and places the onus on an employer to apply (there are concerns that some employers are not intending to apply to the detriment of its workforce).

Well, there is no obligation on any employer to apply for the wage subsidy - it is a commercial decision and a lot will depend upon 'business eligibility'. An employer may only apply for the wage subsidy if the business satisfies the financial test (40% drop in revenue over a defined period). An employer cannot be forced to apply. The scheme is designed to 'assist' businesses retain employees not to replace wages in full. So, in practical terms, if you can only afford to pay employees the wage subsidy payment, then you should be prepared to reduce working hours to no more than 31 hours per week (based on the current minimum wage rate) to ensure that you do not breach minimum wage laws.

### Do I have to pay my employees the full wage subsidy payment?

Yes, employers are expected to pass on the wage subsidy payment in full which should be payable as part of a person's ordinary wages processed in payroll. The exception being for those employees who earn less than the wage subsidy payment - in that case, they receive their normal wages and any excess subsidy payment can be used towards the wages of others. Wage subsidy payments are subject to income tax for the employee - they are wages after all, so attract PAYE, ACC levies, KiwiSaver deductions etc.).

### My employee says the wage subsidy payment is not enough - do I have to pay their wages in full?

No, providing that the parties have consulted about reductions in pay beforehand. An employer cannot just reduce an individual's pay; this would be unlawful and place the employer in breach of its contractual obligations. If a business cannot afford to pay wages in full, it will need to consult with employees in 'good faith' to explain why changes in pay are being proposed, and seek their feedback, before making a decision not to pay full wages.

An employer will need a genuine and fair reason to reduce wages (i.e. drop in revenue brought on by Covid-19 /cashflow are common current themes) and then explain those reasons to its affected employees.

### What is meant by 'good faith'?

In simple terms, employers/employees adopt a 'common sense' approach by treating one another with respect e.g. engaging in discussions which do not mislead or deceive the other and show that they are communicative and responsive to questions or concerns. An employer is also required to provide those affected by any proposed changes, sufficient information for them to understand the reason for any changes. In the present climate, changes based on reduced hours or reduced pay will need to be supported by information which evidence the reasons for those changes such as a drop in income.

NB: if changes are implemented, it's always a good idea to record those changes (even if only temporary) in writing (signed by both parties, if possible) to confirm a mutual understanding. Quite often we find employers have got themselves into hot water by having verbal discussions with staff (in

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earlier lockdowns) to agree reduced working hours/wages, only to find that the employee then retracts (or somehow forgets) about their earlier consent to the changes and at a later date raises a personal grievance alleging breaches of agreement. So, retaining a paper trail of any mutual consent to changes in working arrangements, is a must.

## How can I consult with employees in a lockdown?

This is a commonly asked question – just because employees may not be physically present in the workplace, does not stop an employer from complying with its employment obligations. So, if an employee is not able to attend the workplace, you can implement a good faith consultation process online or in writing. Many businesses now regularly use online platforms to conduct day to day activities – particularly with the fast increase in remote working.



So, face to face consultation meetings can still take place even from the comfort of your own home! Another option is to conduct a process in writing via email, particularly if employees do not have access to online facilities.

Interestingly, during a Covid-19 related process, the law does acknowledge that a lengthy process is not always appropriate – time is of the essence. Here, it is reasonable for an employer to engage a shortened process (24/48 hours) if rapid adjustments are necessary, providing that ‘good faith’ discussions take place (whether verbal or in writing).

## Do I still need to comply with my legal obligations as an employer even though Covid-19 is causing difficulties for my business?

Yes, the laws governing employment in New Zealand has not changed – employers are still bound by all of their contractual and statutory obligations (those set out in the employment agreements and legislation). Any changes to an employees terms and conditions (or working arrangements) must be discussed in ‘good faith.’

## Can an employee suspend their KiwiSaver contributions whilst receiving the wage subsidy payment?

Yes, it’s common for an employee to ‘suspend’ their KiwiSaver contributions if their wages are negatively affected in some way due to Covid-19 (e.g. inability to work due to self-isolation, cancellation of shifts, reduced working hours, reduced pay etc.). So, do not be surprised if you’re asked– it’s a common problem. Contributions can only be ‘suspended’ though if the worker personally contacts Inland Revenue via its website:

([www.ird.govt.nz/kiwisaver/kiwisaver-individuals/making-changes-to-my-kiwisaver/taking-a-savings--break/take-a-savings-suspension](http://www.ird.govt.nz/kiwisaver/kiwisaver-individuals/making-changes-to-my-kiwisaver/taking-a-savings--break/take-a-savings-suspension))

and requests a “savings suspension” – an employer cannot apply on their behalf.

A suspension will only be granted if they have been a KiwiSaver member for at least 12 months and the suspension is for a minimum of 3 months (there are exceptions for those experiencing ‘severe financial hardship’ but the onus is on the individual to prove hardship to Inland Revenue). Once approved, the employee will be issued with a ‘Savings Suspension Notice’. At that point, an employer can stop KiwiSaver deductions and the compulsory CEC/ESCT payments.

## What are the consequences for getting it all wrong?

Well, we have already seen this week, two big nationwide retailers falling foul of their legal obligations. Both eyewear retailer, OPSM and clothing retailer, H&M have been found underpaying staff during last week’s spontaneous 3-day Alert Level 3 lockdown. They are now facing large wage arrears claims from those employees that were forced onto reduced pay without consent and received only 60% of their normal earnings. Employees were given the option of utilizing annual leave to top-up their weekly wages but many chose not to do so.

H&M blamed the reduction of pay on a failure by the Government to implement the wage subsidy scheme to cover that 3-day period. OPSM have yet to comment.

An employer cannot force anyone to work for reduced pay without conducting a good faith consultation process (even if a shortened process). Whilst employers may have the right to request employees to utilize annual leave, this will only be lawful if they provide at least 14 days’ notice in advance. Given that this timeframe is not always practical, an employer will need to engage in a genuine process with those affected to seek their consent. Those that do not agree forfeit 100% of wages.

In addition to facing claims for wage arrears, employers will also be exposed to personal grievances for unfair disadvantage due to breaches of their contractual obligations towards employees, which could ultimately see the imposition of a fine by the Employment Relations Authority (currently \$20,000 for a business per offence) – so it has the potential to be a costly exercise for those held to be in contravention of the law.

## Resources

- Ministry of Social Development ([www.msd.govt.nz](http://www.msd.govt.nz))
- Work and Income ([www.workandincome.govt.nz](http://www.workandincome.govt.nz))
- Inland Revenue ([www.ird.govt.nz](http://www.ird.govt.nz))
- Covid-19 Official Site ([www.covid19.govt.nz](http://www.covid19.govt.nz))
- Employment NZ ([www.employment.govt.nz](http://www.employment.govt.nz))

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