

## Here we go again, what we know so far.....

### Can you require your employees to get vaccinated?...

By Sabrina Sachs



The short answer is “NO”.

Under the New Zealand Bill of Rights Act 1990 (NZBORA) each person has the right to refuse medical treatment. Therefore, unless the government passes a law making the vaccine mandatory, employees are well within their rights to refuse to be vaccinated.

However there are still things that an employer can do, and the short answer is not necessarily the only answer. Whilst an employer cannot make their employees get vaccinated, an employer can:

1. Make vaccination as accessible as possible for employees; and
2. Make vaccination mandatory for the performance of a certain role.

Employers have been encouraged to do the following to increase the uptake of the vaccine:

1. Allow employees to get their vaccinations during work hours without the use of annual leave and without losing any pay; and
2. Make sure employees are informed by distributing relevant information on the vaccine; and
3. Assist in setting up on site vaccination site, if appropriate.

Whilst ‘making a vaccine mandatory for a specific role’ is still a relatively untested solution, WorkSafe NZ (WorkSafe) has suggested that businesses and services “can require a specific role to be performed by a vaccinated person” *if* a health and safety risk assessment has been done to support the decision.

In this risk assessment WorkSafe NZ has indicated that employers should consider:

1. The likelihood of an employee being exposed to COVID-19 while carrying out their role; and

2. Any possible consequence of that exposure on others – namely the likelihood of community spread.

Of course, employers will first need to assess whether any changes can be made to the role to facilitate a low-risk if there is work performance by a non-vaccinated employee. Employees will need to be consulted about any proposed changes to their role and informed of any possible outcomes.

Be aware that this route could potentially open employers up to claims of discrimination under the Human Rights Act 1993, particularly if employees cannot get vaccinated for reasons of religion or disability. To protect themselves from these claims, employers need to ensure that mandatory vaccination for these roles is the *only* way to ensure risk levels remain at a normal level.

Right now the waters are still muddy, and we can only hope that more detailed guidance is forthcoming in the wake of such unprecedented global events.

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### Wage Subsidy Scheme

By Sally Palmer



Please note that the below article is intended as general guidance only and is based on information available to us as of 8:00 am on 19 August 2021. This information is being updated by the government regularly so please always check [www.covid19.govt.nz](http://www.covid19.govt.nz) for the most up-to-date information or contact us for advice on your specific situation.

The Wage Subsidy Scheme (WSS) is available nationally when there is a regional or national move to Alert Levels 3 and 4 for a period of seven days or more and helps eligible businesses to keep paying their employees for two weeks and protects their jobs during that two-week period. Currently only the Auckland and Coromandel Peninsula regions are expected to be at Alert Level 4 for a period of seven days or more. The rest of the country is only expected to have an Alert Level 4 duration for a period of three days and therefore aren't eligible to apply for the WSS.

The rates for the August 2021 WSS have been raised to reflect increased wage costs. Full time employees (working 20 hours per week or more) can now receive \$600.00 per week and part time employees can now receive \$359.00 per week. This will be paid to employers as a two-week lump sum within three days of applying.

Applications for the WSS can be made via the Work and Income NZ website and will be open from 9:00 am on Friday 20 August 2021 for two weeks.

Employers can register to receive email updates:  
<https://www.workandincome.govt.nz/covid-19/wage-subsidy/wage-subsidy-enquiry-form-august-2021.html>.

If employers are receiving the wage subsidy, they must try their hardest to pay the employee named in their application at least 80% of their usual wages while they're receiving the subsidy for them. If that isn't possible, employers need to pay at least the full amount of the relevant part-time or full-time wage subsidy.

If an employee's usual wages are less than the subsidy, they must be paid their usual wages. Any 'left-over' subsidy amount should be used to pay the wages of other affected employees.

Employers could previously get the wage subsidy for their casual employees for their usual hours (if applicable) and we expect that to be the case again this time. Employers must continue to employ their casuals (if they receive the wage subsidy for them) for the duration of the wage subsidy period.

To be eligible for the WSS, employers must expect to have a revenue loss of at least 40% because of the alert level increase. The business must also be registered and operating in New Zealand and employees named in their WSS application must be retained for the period of the wage subsidy. They must also take 'active steps' to mitigate the financial impact of COVID-19 and of course they can only claim the wage subsidy for employees legally entitled to work in New Zealand.

To apply for the WSS, employers must have first discussed the application with the named employees and obtained their consent for the information in the application being provided to and used by the Ministry of Social Development, for it to be shared with other agencies to make decisions about the application and to review and check the integrity of any wage subsidy granted. We strongly recommend that consent is obtained in writing, such as via an email.

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Employers can't receive more than one COVID-19 payment for the same employee at the same time. This includes situations where the employee may be receiving the Short-Term Absence Payment, payments under the Leave Support Scheme or the WSS.

It's important to remember that the usual "rules" around employment relationships continue, even in lockdown situations. Both employers and employees are required to act in good faith towards each other. If you have any questions about your specific situation, please contact us for tailored advice.

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## Supporting Employee Wellbeing through Lockdown

By Sheridan Climo



The effects of lockdown, whether employees can work from home or not, are likely to exacerbate levels of stress and anxiety, it is therefore important for employers to take a proactive approach in managing the risks of employee wellbeing to maintain both positive working relationships and work productivity.

Under the Health and Safety at Work Act 2015, employers have a duty to ensure the safety of their employees. This also extends to mental health and general wellbeing which are likely to be at a greater risk under lockdown conditions. So, what can employers do to help?

Communication is key!

1. The use of online platforms to re-connect with staff in remote working environments has become increasingly popular. Ensuring that teams stay connected, whether this is by team meetings, or other online social activities, are effective ways to keep in touch with employees, and gauge whether there is any significant change in stress or workload levels that need to be managed.
2. Acknowledge the difficulties with working under Level 4 lockdown and manage employee expectations. Providing regular updates on how your business is managing during lockdown, including plans to return to normal working conditions as the country reverts down alert levels, helps to alleviate anxiety amongst employees in these stressful times

3. Promoting external resources that are available to employees should they need to reach out. Whether your business subscribes to support services, or a general list of publicly accessible services, should be provided to employees. Fantastic resources to pass on to your team to encourage employees to seek assistance if they are not coping are Menter, EAP, Whakatau Mai: The Wellbeing Sessions, to name a few. Try offering a range of services to assist those employees struggling during lockdown.

The above suggestions are only a few of many ways to address employee wellbeing and serve as a reminder about the importance of effective communication and managing wellbeing concerns during these stressful times.

## Annual leave – to use or not to use (the ongoing dilemma)!

One of the first questions we always get asked by employers is whether or not they can insist that employees use their annual leave during lockdown. This is even more prevalent now with employees carrying huge annual leave balances due to border restrictions. So, it's entirely understandable that an employer wants employees to use annual leave during a lockdown – the workforce get paid and the annual leave liability gets reduced. A win-win (so to speak!)

If only it was that easy!



The law only allows an employer to insist that an employee takes annual leave if 1) the parties are unable to mutually agree when the leave will be taken, and 2) the employer has provided at least 14 days' notice of the requirement to use annual leave. So if an employee refuses to use annual leave, an employer cannot insist on the use if it has not provided at least 14 days' notice.

In theory, an employer can insist on the use of annual leave only if it satisfies the two conditions above. But this does not work in 'short-sharp' lockdowns where the ability to give 14 days' notice is impossible. Instead, the employer should discuss with employees whether they can work from home (if yes, great – if not, then what are the options?)

1. Use of annual leave by agreement (employees can agree to use annual leave if there is sufficient leave available)
2. Leave in advance (if no leave available or an employee has less than 12 months service)
3. Leave without pay
4. Wage subsidy scheme (if applicable)

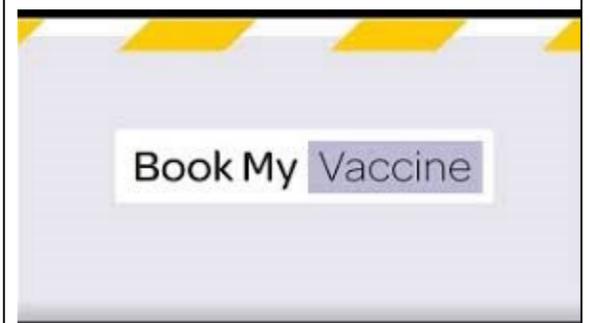
The starting point is always to communicate with employees and discuss the options with them. Engaging employees in those discussions and seeking their agreement, demonstrates good faith by the employer. More often than not, employees prefer to use annual leave (or leave in advance) if the alternative is leave without pay (unpaid leave). Give employees the choice! If it looks likely that a lockdown will continue, then an employer should be quick to issue a 'notice' to employees instructing them to use annual leave and getting the 14 days' notice underway to future-proof them against a longer-term lockdown.

### Auckland Business Helpline!

If you are an Auckland business and require further information, then a free COVID-19 helpline service is available.



Auckland Unlimited offers you specific advice and access to government support, and what the change in alert levels means for your business. To find out more call [0800 500 362](tel:0800500362).



The Ministry of Health is now rolling out COVID-19 vaccinations to **everyone aged 40 and over** and to children between the ages of 12 and 15 years. To book your vaccination either log-on to [BookMyVaccine.nz](https://www.bookmyvaccine.nz) or call [0800 28 29 26](tel:0800282926).

### Resources

- ([www.health.govt.nz](http://www.health.govt.nz))
- ([www.msd.govt.nz](http://www.msd.govt.nz))
- ([www.workandincome.govt.nz](http://www.workandincome.govt.nz))
- ([www.ird.govt.nz](http://www.ird.govt.nz))
- ([www.covid19.govt.nz](http://www.covid19.govt.nz))
- ([www.employment.govt.nz](http://www.employment.govt.nz))



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