

# COVID TODAY

Latest news and bulletin updates

## Payment options, easing of mandates, suspended Police staff to resume duties + testing in Hong Kong

### Pay options for workers who are self-isolating

By Emma Monsellier and Shazreen Hussain

As the number of daily Omicron cases remains high, more and more workers are self-isolating. So, what does an employer do in this situation, is it required to pay staff for the time that they are unable to work? **Read on** for information on the Government's financial assistance schemes available to businesses.



Under Phase 3 of the Government's Omicron response, only people who test positive for COVID-19 and their household contacts need to self-isolate. Those who test positive must self-isolate at home for 10 days and those living in the same household must self-isolate until the positive case completes their 10 days of self-isolation.

Yet, regardless of a person's inability to work during the period of self-isolation, employment law and an employer's contractual obligations still apply which includes the full payment of wages. The usual requirement to act in good faith still applies so if an employer is contemplating making any change to the terms of an employee's employment (which may include the payment of wages), then it must consult with the affected employment first.

To help employers, we have answered some frequently asked questions in relation to the COVID-19 financial assistance packages currently available from the Government.

### Can Sick Leave be used for periods of self-isolation?

The rules around sick leave during COVID-19 haven't changed. A worker can only take sick leave when they are sick, their partner or spouse is sick, or someone dependent on them for care is sick. When a worker is sick with COVID-19 they have the right to use their sick leave if they have sick leave entitlement available.

In situations where an employee is self-isolating because they are a close contact or household contact, and can't work from home, they should consult with their employer directly about their options. The household contact is not 'technically' sick so the use of sick leave would not automatically apply. However, an employer can (in its discretion) apply the use of sick leave if there is sufficient entitlement available.

### What if an employee has no Sick Leave and returns a positive COVID-19 test result?

In this instance, the Government provides financial relief to a business which enables an employer to continue to meet their obligation for the payment of wages. This is known as the Leave Support Scheme. If an employee tests positive for COVID-19 and has no sick leave available, they can mutually agree with their employer to apply for a LSS payment which can be used towards the payment of wages.

### What is the LSS and who does it cover?

The LSS is available through Work and Income to employers, including self-employed people. It is designed to help cover an employee's wages if they are required to self-isolate because of COVID-19 and can't work from home. If an employee can work from home, then the LSS does not apply. It only applies to those unable to work and includes people who have COVID-19, are a close contact, or are at risk of severe illness from COVID-19. The LSS is paid as a lump sum to the employer by Work and Income. The weekly benefit rates are \$600.00 a week for full-time workers who were working 20 hours or more a week and \$359 a week for part-time workers who were working less than 20 hours a week.

### Can an employer apply for the LSS if an employee is using Sick Leave?



Yes. If they meet the LSS eligibility criteria, the employer can decide if they want to apply for the subsidy to offset the costs of paying the employee. According to the Ministry of Business, Innovation, and Employment if an employee is using their sick leave the employer can still apply for the LSS which will help towards covering the costs of their wages.

### Is an employer obliged to top-up wages to 100%?

No, but employment law still applies during COVID-19, which means that employers are required by law to pay an employee's normal wages (e.g., to 100%). When applying for the LSS, employers acknowledge that the subsidy does not override or change their existing obligations to the employee under employment law. However, the Government accepts that a top-up is not always financially possible and could place another burden on a business. So, there is no legal obligation on an employer to top-up wages to 100%. However,



an employer must try their best to pay the employee at least 80% of their wages. If this is not possible, then an employer must at least pass over the full amount LSS payment. Word of caution though - you cannot make any reduction to wages without prior consultation with the affected employee and the reduction must be mutually agreed and recorded in writing.

### Other payment options available!

Employers and employees should have open discussions about covering wages during periods of isolation to see what other options are available; this could involve the use of annual leave, special paid leave, long-service leave, or any other payments (including partial payments) by the employer for a specific period or any arrangement of the above.

Both parties need to record any agreement in writing particularly if it differs from the terms and conditions of their employment agreement to avoid any future confusion. A one-off payment of \$359 known as the COVID-19 **Short Term Absence Payment** is available for employers to cover employees who are unable to work from home, or who are required to miss work while awaiting a COVID-19 test result.

### What is the STAP?

STAP is there to help businesses including self-employed individuals to keep paying eligible employees (i.e., who cannot work from home and need to miss work while waiting for a COVID-19 test). Employers can apply for STAP once for an eligible employee, in any 30-day period (unless the employee is directed to get another test by a health official or a doctor). You cannot get STAP when you or your employee take a rapid antigen test as the results are fast. If you or your employee test positive, you will be able to apply for the LSS.

### Vaccine mandates will wind-down after Omicron peak: what does this mean for employers?

Prime Minister Jacinda Ardern says once New Zealand is through its Omicron peak in March the vaccine pass and mandate system will begin to lift. She spoke as the anti-mandate protest in Parliament grounds came to an abrupt halt last week. Ardern said vaccine passes had always been "temporary" and the "least bad option" to ensure individuals who did the right thing had more freedom. She said COVID-19 cases were likely to peak in mid to late-March, followed by a rapid drop in case numbers. When that happens, the country will move down through



the traffic light system, meaning there will be fewer limits on gathering sizes. Ardern said this would let the Government begin to ease mandates and vaccine pass requirements, although she did not put any date on when this would happen.

### **But what will the easing of mandates mean for employers?**

The easing of mandates will be a relief to many employers as they might be able to hire more staff regardless of their vaccination status. However, this may also raise several questions for employers who have already dismissed employees in accordance with the mandates. It is now more important than ever for employers to ensure that they are abiding by their obligations. Even in times of a pandemic, the legal requirements, continue to operate as normal. If an employer is making decisions now, they must consider the newly inserted Schedule 3A of the Employment Relations Act 2000 (the “ERA”).

- Schedule 3A of the ERA requires employers to ensure that all other reasonable alternatives that would not lead to termination of employment have been exhausted before issuing a termination notice due to a mandate. Therefore, before dismissing, employers now must consider alternatives more seriously such as working from home, taking leave, redeployment opportunities with the business rather than termination.

- The employer must ensure that they give the employee reasonable written notice specifying the date by which the employee must be vaccinated to carry out the employee’s work pursuant to Schedule 3A.

- Under Schedule 3A, if the employee is not vaccinated by the specified date, their employer may terminate the employee’s employment agreement under the notice period specified in the employee’s employment agreement. If there is no notice period mentioned in the employment agreement, employment can be terminated by giving the employee 4 weeks paid written notice of the termination.

In addition to the above, employers will also have to ensure the business abides by its health and safety obligations under the Health and Safety at Work Act 2015. Risk assessments must still be carried out by the business to ensure its employees are not subjected to any health and safety risks at the workplace. Alongside this, any workplace policies and procedures should also be reviewed to ensure that they are up to date and fit for purpose.

### **New Zealand’s Police Association wants unvaccinated officers back at work**

You must have heard in the news about the High Court’s decision to quash a COVID-19 vaccine mandate. On 27 February 2022, the

High Court upheld claims that the vaccine mandate for NZ Police and Defence Force staff, breached their rights under the Bill of Rights Act. Justice Francis Cooke quashed the order on religious grounds and the right to refuse medical treatment. While delivering the decision, Justice Cooke made it clear that the vaccine mandate was set aside only for NZ Police and Defence Force staff “to ensure the continuity of the public services, and to promote public confidence in those services, rather than to stop the spread of COVID-19.”



Chris Cahill (NZ Police Association President) said officers which were stood down because of the mandate should be allowed back to work. “Across stand-downs, resignations and leave without pay it’s approximately 131 officers, so we’ll be really pleased if we can get all those back into policing and back on the street where they’re needed.” Cahill said a similar policy involving unvaccinated non-sworn staff should also be uplifted so they can go back to work as well.

“While understanding the environment that led to mandates for Police, circumstances, including the high vaccinations rates of all Police staff, the current response framework for Omicron, and now the court ruling, means it is appropriate all affected staff go back to work where they will be welcomed given the unprecedented demands on Police resources,” Cahill said.

Now that NZ Police staff are allowed to resume their duties, following the High Court’s decision, other vaccine mandates can also be challenged in the Courts. It is thus important for employers to ensure that they regularly review their approach to ensure it is effective and fair. With the new Omicron variant of COVID-19 spreading rapidly through the community, it will be much harder for employers to justify that an unvaccinated worker significantly increases the risk of Covid at work. Employers in such situations can use rapid antigen testing as an alternative to terminating an unvaccinated worker.

### **On another note...**

#### **Hong Kong orders compulsory COVID-19 tests for all residents**

It was reported in the media recently that the Government of Hong Kong has ordered the compulsory testing of all of its 7.5 million residents. Chief Executive of Hong Kong, Carrie Lam declared all residents would have to undergo three rounds of tests starting in mid-March. Hong Kong is trying to follow China’s “zero Covid” policy, but the highly infectious Omicron variant of COVID-19 has overwhelmed its hospitals, testing, and quarantine facilities.

China’s policy is to try to eliminate infection through early testing, detailed contact tracing, and strict quarantine and travel restrictions while the rest of the world is learning to live with COVID-19. All Hong Kong residents will be required to undergo three rounds of

PCR testing, at intervals of about a week. There is no set date for the testing to start yet however, Ms Lam announced that capacity would be increased to a million daily tests “Since we have a population of some seven million people, testing will take about seven days.” Residents will also be required to conduct daily rapid antigen testing in between compulsory tests.

Experts however have warned that huge numbers of the Hong Kong population could be in isolation within weeks. Cities in China have been locked down, but such a move was not being considered in Hong Kong since it was “not realistic”, Ms. Lam said.

The recent modelling done by the University of Hong Kong (HKU) on the fifth wave of COVID-19 reveals Hong Kong’s total deaths could top 3,200 by mid-May, with infections peaking at 180,000 a day, far greater than the previous forecasts.

At present, there is rising fatigue among the Hong Kong population who have had to endure tight restrictions that include the closure of most public venues like pubs, gyms, and churches. The government has also struggled to convince people to get vaccinated, with a relatively low uptake among senior citizens.



**On this note,** the New Zealand Government is stepping up the country’s COVID-19 testing system for those who work at the border, including those who work at ports and airports and Managed Isolation and Quarantine Facilities.

Most travellers are now also required to provide a have a negative COVID-19 test to enter New Zealand. This is part of the Governments strategy to detect any cases and contain them, and to protect workers, their families, and our communities.

### **Resources**

- Ministry of Health ([www.health.govt.nz](http://www.health.govt.nz))
- New Zealand Police Association ([www.policeassn.org.nz](http://www.policeassn.org.nz))
- Work and Income ([www.workandincome.govt.nz](http://www.workandincome.govt.nz))
- Covid-19 Official Site ([www.covid19.govt.nz](http://www.covid19.govt.nz))
- BBC Official Site ([www.bbc.com](http://www.bbc.com))
- Stuff Official Site ([www.stuff.co.nz](http://www.stuff.co.nz))
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