

FAQs for Employees

What happens if an employer is required to close their business?

The first thing to look at is whether they need to close it short term. If an employer needs to close a business short term, we need to look at the employment agreement. There are some clauses that allow for business to close short term in cases like this.

But if it's the employer wanting to close their business, we recommend getting legal advice.

If there's no clause, then if the business is required to close short term, it will be required to continue to keep paying its employees their minimum hours and if an employee is not able to make this demand, it will need to seriously consider whether it needs to conduct a restructure to reduce its staff.

If the business needs to close permanently, it will need to run a fair and proper restructure process.

If an employer instead wanted to cut back someone's hours from what's in their contract, can they do that?

No. Changing hours that can only be done by agreement, or through a fair and thorough restructure process. Both employees and employers should start considering their solutions now.

An employer and an employee may come to an agreement about part time hours.

What obligations is an employee under to continue to work in an environment where they may come into contact with sick people? What must the company do to ensure compliance with the Health and Safety and Employment Relations Acts?

If the business is open, there is an obligation to keep working. The employee could talk to their employer about taking annual or unpaid leave.

A business needs to ensure it is taking the necessary precautions to provide staff with a safe working environment which minimises the risk of infection. This includes safety gear like face masks, screens, gloves, handwash and regular cleaning.

If an essential worker is worried about catching Covid-19 off work colleagues, can they quit and go straight on the dole?

Work and Income says if you've left your job without a good reason or have been fired for misconduct, you may still need to wait up to 13 weeks before your payments start.

If you are eligible for a benefit between 23 March 2020 and 23 November, the government has removed the 1-2 week stand-down period.

Being concerned about the health and safety impact of Covid-19 would likely be reason enough to ensure someone was not waiting the 13 weeks. However, it might be worth an employee getting a lawyer's letter to support their Work and Income application.

Can an employer force an employee to take annual leave?

No. Annual leave must be taken by agreement. Some contracts may contain clauses which say employees can be asked to go on leave if they have large balances, but this also must be done with reasonable warning and some discussion.

An employer could not unilaterally direct or force an employee to take annual holidays, but the parties must first attempt in good faith to agree on when the holidays were taken.

If the parties cannot agree, the employer does then have the right to direct the employee to take annual holidays on at least 14 days' notice.

If I want to work from home, does my employer have to let me?

No. In normal circumstances, a change of working location can only be done by mutual agreement. But in these circumstances, an employer would be required to seriously consider any application for someone to work from home.

There are a few factors that an employer would need to consider: Is it reasonably practicable for the employee to work from home? What are the costs associated? What is the quality of internet? Are there cloud-based services?

Most importantly, they would need to consider the employee themselves. If an employee is immune compromised, if they're pregnant, or if they're elderly, there may be a stronger argument for allowing an employee to work from home.

If an employee is concerned, there's nothing stopping them from self-isolating themselves, or requesting a period of leave to stay at home.

What happens to businesses that break lockdown rules?

The Ministry of Business, Innovation and Employment has said anyone who violates the rules will be shut down immediately, while police have said serious offenders will be prosecuted.

Is there anything else that both employers and employees should be thinking about at this time?

Employers need to consider their ability to provide additional protections against the disease. This will be industry specific, and it may require some creativity. Some examples include increase hygiene standards, setting a no handshake rule and teaching staff about their hygiene practices.

Some other options available including stopping all business travel, whether that be national or international. Implementing social distancing, so is it possible for employees to work further apart in the workplace? Again, can the employee work from home?

Some businesses have self-isolation rooms so if an employee starts to become sick in the day, they've got somewhere they can isolate.

An extreme measure being discussed at the moment is whether employers want to temperature screen their staff. If this is something that an employer wants to consider, it will be needed done in accordance with the employment agreement and the Privacy Act, and the employer should get legal advice before pursuing this.

Are workers protected from employers asking questions or doing temperature checks? If they implement it, would I need to comply?

No, it's similar to drug testing and you'd need to look at the employment agreement and what is in the Privacy Act.

With drug testing, in general, privacy does prevail, but in some industries, there's a very high health and safety risk, and so it is allowed. This is a one-off situation where temperature screening hasn't needed to be considered yet, so it's something that would need to be done very carefully and under legal advice.

What if I have a complaint about how my employer has paid me?

If you have a complaint because you think your employer is breaching any of their minimum employment obligations to you, you can contact the Employment line by calling on 0800 20 90 20 or by email at info@employment.govt.nz.

Please note that this is general advice only and will vary for each specific situation. In addition, this continues to be an evolving situation. For specific and current advice relating to your unique situation, please get in touch with an expert from our employment team.