



Updated 14.04.2020

Please note any information or advice provided in respect of COVID-19 issues does not constitute formal legal advice and should be relied on for guidance purposes only. If you require further assistance or formal legal advice please contact OSEA at 0508 656 757.

During this uncertain time, we have put together a list of FAQs for businesses impacted by COVID-19. These FAQs are around employment and business, for any health –related questions please refer to the Ministry of Health.

Information on government support, including the Wage Subsidy and how to pay your staff is [here](#). Application for the government Wage Subsidy is [here](#).

Some other useful information:

- The OSEA has a COVID-19 website with up-to-date information [here](#).
- The BusinessNZ network has an active business-focused discussion group on Facebook called 'NZ Coronavirus Discussion Group' that you can refer businesses to for peer-to-peer support, link [here](#).
- The BusinessNZ network has a manufacturers-specific LinkedIn page (not just for Coronavirus discussion), link [here](#).
- The EMA are running webinars with experts on how to manage your business during COVID-19. For recordings and more information, please see the [EMA website](#).

Essential Services

I don't have 30% reduction in revenue, am an essential service, and have staff who cannot work. Can I apply for the Essential Workers Leave Support payment?

If your business is an essential business even when there aren't a decline of 30% in revenue you may be able to still apply for the COVID-19 Essential workers leave support if you have employees who:

- 1) Cannot come to work because Ministry of Health guidelines recommend they stay at home
- 2) Cannot work from home.

We are an essential business. If an essential worker opts out of work when work is available, would we still need to pass on the wage subsidy?

The subsidy is aimed at keeping the employment relationship going, however you need to discuss with the employee their reasons for not working as this can still be regarded as a performance issue.

Essential Workers Leave Support payment- how does it work?

Information about the essential skills leave payment, eligibility and how to apply are [here](#) on Work and Income's website.

Will I be able to operate at Alert Level 3, if I'm not allowed under Alert Level 4?

As at 8th of April, details on what Level 3 looks like for businesses has not yet been released. The EMA are working hard to get this clarity, and working with government to do so.



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I am an essential service business and have received the wage subsidy. Do I have the right to decline an employee's request for leave during this time?

The Holiday Act still applies: any annual leave is by agreement, however the Act does say an employer must not unreasonably decline leave.

What are considered essential services?

The list and information is [here](#). If a business require further clarification, they can email essential@mbie.govt.nz or ring 0800 22 66 57. We can't make any calls about if someone is an essential service or not - this is a question for the government.

Do I need to shut my business if it isn't on the list of essential services?

At Alert Level 4, you must close your premises, but you may operate your business remotely (eg with workers working from home) if you are able to do so.

How do I continue running my business as an essential service?

Information on how to do that is on the COVID-19 website, but for more questions on this it is best to ring 0800 22 66 57 (the essential skills line).

What about childcare for essential services?

Where possible, essential workers need to make their own arrangements for childcare from Thursday, 26 March, due to limited capacity. We know this will not be possible for everyone. Alternative arrangements have been made so essential workers can access government-funded, in home childcare and continue to work. There are options for childcare for essential workers - information about this is on the COVID-19 website. Initial options include: [Barnados covid19enquiries@barnardos.org.nz](mailto:Barnados_covid19enquiries@barnardos.org.nz) 0800 BARNARDOS (0800 227 627), [Edubase/Home Grown Kids](mailto:info@hgk.co.nz) 0508 44 54 37 info@hgk.co.nz, [PORSE 0800 023 456](tel:0800023456).

Wage Subsidy

I applied for the wage subsidy a long time ago, and need to know if I'm going to be approved and when payment will be made. I can't get through on the MSD 0800 number, what can I do?

MSD tend to be responding quicker to emails at the moment. They have also just increased their resource. You can email any of the following: or aucklandcovid@msd.govt.nz.

As an employer, if one of my employees who I have made an application for, voluntarily leaves during the twelve week period for another job opportunity or because of caring responsibilities, do I need to pay the money back to MSD?

No. When your employee voluntarily leaves their employment you must advise MSD, and you cannot claim any more subsidy for that person. However, you do not have to return the subsidy already paid.

What if the 80% is below minimum wage? Is it legal to be paying this?

The Scheme is to retain worker and it is not based on an hourly rate. So, yes.



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How do I pay my staff who are essential skills workers who are high risk and therefore are not working or do not want to come into work because of the risk work (they feel unsafe leaving their home)? We do not have 30% reduction in revenue.

You will need to see whether they can work from home or discuss with them about taking their leave.

How does the upcoming minimum wage increase work when I am only passing on the subsidy now?

You are still passing on the subsidy. Increase in minimum wage doesn't affect the payment of wage subsidy.

What are the legal obligations for staff working on public holidays and their payment?

Normal employment law and the Holidays Act still apply. If your staff are working a public holiday, then you must pay them 1.5x the amount they have been receiving. The income amount that is used to calculate holiday pay is the income people are receiving at the time the calculation is done. If they are receiving 80%, use 80%. If it just the subsidy amount, use the subsidy amount.

For the public holiday coming up, I am only passing on wage subsidy, can I do that legally?

Wage subsidy is a flat rate that you pay your employee weekly and a public holiday is not going to change anything.

Is there an amount of time I need to employ someone for after using the COVID 12 week employee contribution fund?

There are no specific conditions in place about this, however the point of the subsidy is to retain employment. So you must at least keep your employee till the end of the 12th week.

Should staff who cannot work from home during this time, but are continuing to get paid, still be accruing leave normally?

Your obligations under employment law haven't changed.

I applied for the Leave Payment before changes were made on 3pm March 27. Will it still be processed?

Yes.

I submitted an application for the wage subsidy before changes were announced by the government on Friday the 27th - do I need to reapply?

No, MSD are aware of the changes and the changes' timeframes. You do not need to reapply.

If I have received the wage subsidy, but it is more than the amount that an employee normally receives, can I use those funds to go towards other employees' wages?

Yes. Please see information on this on [Work and Income's website](#).



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What happens if someone works at essential business, but has a high risk family member at home – are they eligible for the subsidy?

Yes. Under the COVID-19 Consolidated Wage Subsidy, an essential employer can access the wage subsidy for employees who are choosing not to work because COVID-19 consequences to a family member at home.

What about public holidays and the wage subsidy?

Good Friday and Easter Monday are normal paid public holidays. If you are receiving the wage subsidy because your business revenue has gone down by 30%, you will still have to pay them 80% of their normal wages. If you cannot afford that, you need to pass on at least the whole amount of the subsidy.

I'm a large employer, do I need to fill in an application form manually with all my employee's details?

No. Large Employers no longer need to complete the online application, instead they can complete this form [here](#) and email it to COVID19_Employer_Support@msd.govt.nz.

Can I receive a wage subsidy for casual workers?

Yes. The subsidy is available for employees 'legally working in New Zealand', including casual workers.

As an employer, can I apply for the wage subsidy on behalf of my casual employee(s)?

Yes. You can apply for the Wage subsidy for any casual employee(s) that are employed by you at the time you apply and who would have been expected to work during the time you will receive the wage subsidy.

How do I assess whether my casual employee(s) qualifies for the full-time or part-time wage subsidy rate?

Casual employees may have variable hours, so to assess their subsidy rate, the employer should average their hours over the last year. If this average is 20 hours or more, they can apply for the full-time rate, and if it's under 20 hours they can apply for the part-time rate. If they have worked for less than a year, the employer should average the hours worked during their total employment period. Please see more detail on this on the Work & Income website.

Can employers use sick leave to top up the subsidy, or do we have to have staff permission first?

You have to ask first. You and your employee can agree to use any form of paid leave (eg annual leave) to cover their period of self-isolation. However, employees aren't required to have used any or all their paid leave entitlements before they can receive this payment.

Can an employer apply for wage subsidy as a business classed as an essential service but for whatever reason they've decided they can't operate right now (or that staff member can't work)?

As long as there is a decline of 30% in revenue as per wage subsidy criteria then they can apply for wage subsidy.



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"Pay a minimum of 80% of normal income" - does normal income include shift allowances, overtime, commissions, Employer KiwiSaver Contributions?

Yes. The wage subsidy is to help employers pay wages, it does not change anything else. You can endeavour as best you can to get to the 80%, but payments still have normal deductions.

If my business cannot afford to pay up to 80%, can I pay the subsidy rate only?

Yes, but you need to be able to prove that you are doing your best to reach 80%. The point of the subsidy is to maintain employment.

Should I receive email confirmation when applying for the government subsidy?

No, you will receive an email about the outcome/details of your application once it has been processed however.

Is the Wage Subsidy subject to tax?

Advice from IRD regarding tax:

a. The COVID-19 Wage Subsidy is not subject to GST and is not taxable. However, the payment of a person's normal wages through the use of the Subsidy is subject to the usual PAYE, Student Loan, Kiwisaver deductions, etc.

Can you do multiple applications for the same employee as the situation changes for the Wage Subsidy?

No. Each business can only apply once for the Wage Subsidy per employee.

If an employee has sufficient annual or sick leave entitlements to cover the time off, can they also receive the subsidy on top of receiving that entitlement?

You and your employee can agree to use any form of leave (eg annual leave) to cover the period. However, employees aren't required to have used any or all their paid leave entitlements before using the wage subsidy.

I don't meet the criteria, what can I do?

If you clearly don't meet the criteria, apply anyway, as MSD want to help.

How does the Wage Subsidy work with contractors?

Contractors can apply as self-employed and are required to meet the criteria. Businesses should not be seeking the wage subsidy for contractors.

We have been told that the subsidies incur PAYE tax, would all wage implications apply? eg: KiwiSaver, student loan repayments, child support, whether it would be included in gross earnings when employers go to calculate annual holidays.

Yes. This is a subsidy scheme to help employers pay wages – it doesn't change any other wage implications. In short, it is not taxable to the business (GST doesn't apply), but all normal pay deductions do apply (like PAYE etc).



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Receiving the government subsidy on top of employee leave entitlements?

The subsidy is for business to use towards paying their staff. Employee leave accrues or is used as normal.

We are a small high growth company, how does the revenue reduction based on last year impact our year's growth and ability to apply now?

If you can demonstrate some change in income due COVID-19, you can apply. When in doubt, apply and MSD will assess your situation.

Can Non-profits/incorporated societies can apply for the way subsidy?

Charities and not for profits can apply for the scheme if they are an employer, are registered in New Zealand (business IRD number, GST registered, NZBN, or Companies office).

What does a 30% decline in revenue mean?

This means a business has experienced a 30% decline in: actual revenue, or predicted revenue (e.g. for businesses who have seen a reduction in bookings such as accommodation providers), and that decline is related to COVID-19. The business must experience this decline between January 2020 and 9 June 2020.

Definition of revenue: Revenue means the total amount of money a business has earned from its normal business activities, before expenses are deducted.

Determining a decline in revenue: To determine a decline in revenue, the business must compare one month's revenue against the same month the previous year (eg February 2020 compared with February 2019). The revenue of the month in the affected period must be at least 30% less than it was in the month it was compared against.

Businesses operating for less than a year: Where a business has been operating for less than a year, they must compare their revenue against a previous month that gives the best estimation of the revenue decline related to COVID-19.

Immigration

What about my staff who are on Work Visas or Holiday Visas?

Visas of this kind have been automatically extended to September. Information on this is on the [Immigration website](#).



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Other

Good Friday and Easter Monday are normal paid public holidays. If I pay to 80% with the wage subsidy does it matter if there's a public holiday included? I still pay 80% regardless?

Yes.

What do we pay a staff member who is not equipped to work from home? We won't suffer a 30% loss in income so will not qualify for the wage subsidy.

You need to have a discussion with your staff to see if they approve of using their leave. Alternatively you can ask them whether they would like to stay on your payroll at agreed salary and go to [work and income](#) to see whether they are entitled to any sort of benefit or accommodation supplement. Please direct employees to <https://workandincome.govt.nz/eligibility/index.html> to see if they are entitled to any kind of help.

Should I have to consider redundancy and restructure, or fairly reducing work hours for staff, what advice is available?

The OSEA have legal and consultancy services that can help with this process - this gets funneled through Adviceline on (NZ) 0508 656 757 or email info@osea.co.nz. Adviceline is very busy so wait time may be longer than usual. For EMA members, we have a document called 'Restructuring & Redundancy' on the [EMA website](#).

Can a business place staff on leave without pay rather than making them redundant?

If the employer and employee agree, then yes. If you qualify for the wage subsidy, then you must pay the staff member at least the amount of subsidy to them.

Is there any support available for those on working holiday visas?

The Wage subsidy is available for employees 'legally working in New Zealand'. This includes people who have a New Zealand work visa or a condition on their New Zealand temporary visa that allows them to work in New Zealand.

How do I manage my staff working from home?

The EMA has a helpful policy on working from home, when it's possible. Please find it on the EMA webpage [here](#).

If a business is looking at possibly restructuring to reduce staff levels because of a downturn in business, what obligation does the business have to ask staff to use up annual leave first before going down the possible restructure/redundancy pathway?

An employer can't force an employee to take leave, however a discussion with employees - particularly if they know that redundancies are likely or being considered, is recommended.



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Can I ask my employees to take leave?

You can ask them, but you cannot force them to. You will need to have a conversation with your employees about this.

Can Force Majeure be used in this situation if there is not a Force Majeure clause in a contract (either contractor's contract, or employment agreement)?

For question on this, it is best to seek legal advice.

After shutting down our business am I able to go in (alone) to complete maintenance and cleaning, along with payroll etc? I won't be seeing anyone or interacting with anyone but understand the intention is to stay at home?

If it is a non-essential service, COVID-19 Alert Level 4 means you must stay at home.