



# Succeeding Through COVID

*The Q&A Edition*

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**With rising infections all over New Zealand, we are still learning to survive and thrive through these unprecedented times. Staying open to operate has been a challenge for many businesses. In this guide, one of our Employment Relations Advisors answer some top questions coming through on the Employsure Advice line.**

### **Which leave do I use for my employee when they are waiting on results from a PCR test?**

If the employee is sick and unfit for work, the period of leave should be paid sick leave (if they have entitlements available).

If the employee is sick with COVID-19, they may be eligible for the Leave Support Scheme. You should confirm eligibility for the scheme directly with Work and Income.

If the employee is not sick, explore the option to work remotely if suitable. If remote working is not possible, you may agree that they take any accrued annual leave. Any agreement should be recorded in writing.

If none of the above apply, the period of leave will be unpaid

### **What if my employee has run out of annual leave after Christmas and refuses to use unpaid leave for isolation?**

It is best to speak with the employee about all of their available leave options if they need to self-isolate as there may be other forms of leave available.

If the employee is sick and unfit for work the employee can access sick leave entitlements if they have any. Alternatively, if the employee is sick with COVID-19, they may be eligible for the Leave Support Scheme through Work and Income.

A further option may be to consider agreeing for the employee to take annual leave in advance (i.e. before they become entitled to the holidays after their annual holiday anniversary.)

### **My employee says they have had COVID-19 but refuses to show me a test result. What can I reasonably do?**

Have a discussion with the employee and check if they are willing to get another test showing that they have had COVID-19.

If the employee does not agree to get tested again, you can request that they show some other form of evidence that would satisfy you that they are unfit to work due to illness.

Forms of evidence include a medical certificate or statutory declaration. Keep in mind that if the employee's absence is less than 3 consecutive days, an employer is required to pay for the costs associated with the employee obtaining such evidence. If the employee fails to provide any evidence that they are unfit to work due to illness, you may be able to take disciplinary action



**My staff ignore the infection prevention protocols, what can I do? I feel stuck as I really need to retain my staff whilst implementing infection safety such as wearing masks. I'm scared of losing my staff if I lay down the law.**

First have a private chat with employees individually to find out their reasons for not following the infection prevention protocols. This is an opportunity to discuss any concerns the employee has, to reinforce the need for them to follow the protocols and clarify your expectations of their behaviour. This may be all that is required to fix the problem without having risked the employee resigning.

If employees fail to follow reasonable management instructions and continue to ignore your protocols, then this may give you grounds to take disciplinary action against them. Keeping a fair and consistent approach for employees in these situations will help effectively enforce health and safety measures.



**What are my responsibilities once an employee tells me they have COVID?**

1. Notify your Health and Safety Manager or relevant health and safety officers. Notify your [Local Public Health Unit](#) if they have not been in contact with you already.
2. Isolate spaces the employee spent significant time in and clean the area thoroughly before re-opening. Clean the rest of the workplace, including high traffic areas such as door handles and common areas. Ensure you follow any specific guidance from public health officials.
3. Undertake a review of your workplace's ability to continue to operate safely, considering whether to close it or not and follow the advice of any public health official. Review your policies on managing the spread of COVID-19 in the workplace and create or amend any policies as required.
4. Assist the public health unit with contact tracing. Continue to keep a contact tracing log of all those who come into contact with your workplace or workers.
5. Inform workers of the situation and what procedures need to be followed. Inform visitors and customers of the situation what actions have been taken. Be careful to protect the privacy of the person affected by COVID-19.

The above is a general guide only. Make sure to follow the specific instructions from public health officials and see the [Ministry of Health's guidelines](#) for the most up to date information.

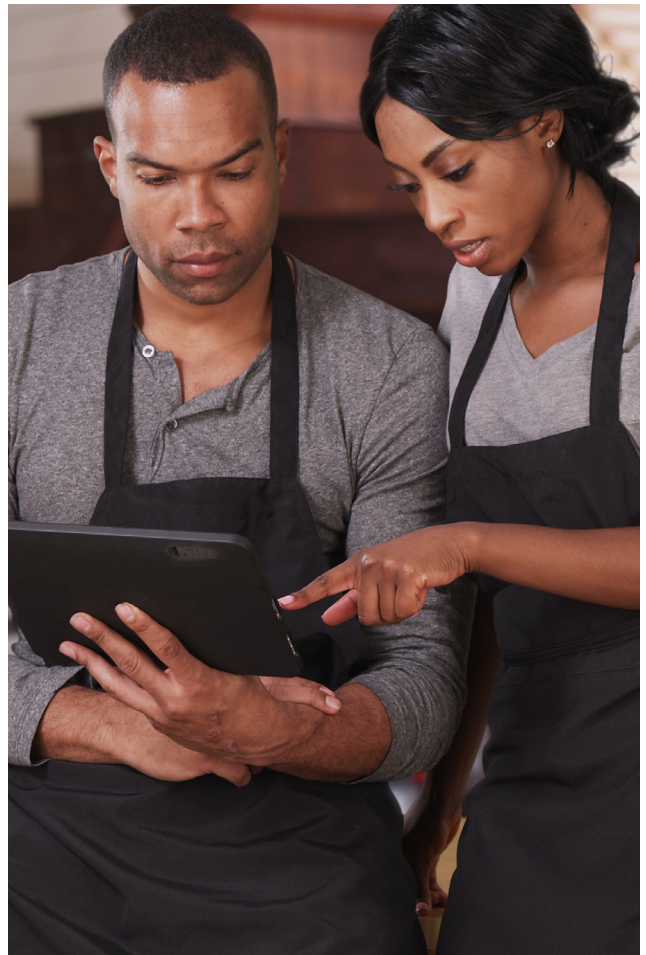


## Am I liable if my employee catches COVID-19?

Employers have a health and safety duty, as far as reasonably practicable, to reduce the risk of a hazard occurring in the workplace. Reasonably practicable includes:

- Complying with all COVID-19 legislation requirements that apply to your business or service as part of your primary duty of care under the Health and Safety at Work Act (HSWA). COVID-19 legislation sets out what you must do to manage the risk that COVID-19 spreads at work
- Following the most up to date public health guidance to help you control the risk of COVID-19 infection at work. The Ministry of Health has guidance about what you can do to reduce the risk that COVID-19 spreads at your business or service
- Staying informed about any developments that may have an impact on your business or service.

WorkSafe may take enforcement action under the COVID-19 legislation or the HSWA if noncompliance with the COVID-19 legislation requirements is identified and your business or service fails to take action to comply.



## I need to ask staff who are well, to work overtime to cover staff shortages. What legalities should I be considering?

Employers can ask employees to work overtime in addition to their normal hours of work to cover shortages however this must be mutually agreed with the employee, unless there is an availability provision in the employment agreement. It is unlawful for an employer to require an employee to be available for work over and above their guaranteed hours, unless a lawful availability provision is included in the employment agreement and compensation is provided.





**I have offered staff other duties whilst we are closed but they refuse to do these new duties as they aren't part of their original job description, what can I do?**

An employer should first consider whether the alternative duties are reasonable based on the employees' role and the duties set out in their position description.

If the alternative duties are significantly different to the employee's usual role, it may not be reasonable to enforce that the employee do these. In a situation where the business is unable to offer an employee suitable reasonable alternative duties they should continue to receive full pay.



**I need to hire temporary staff to help out (if I can find staff!) What are the considerations?**

The key consideration is to ensure you use the most appropriate employment agreement for the role to avoid any risk to your business.

Casual employment involves an employee who works for an employer intermittently or irregularly, for example, someone called in at short notice to cover for sickness. A casual employee does not have to accept an offer of work. They can accept or decline offers to work, and should have no expectation that they will be offered work on an ongoing basis.

Fixed term employment agreements operate for either a fixed period of time with a start date and end date, or in line with the completion of a task, project, event or covering a period of absence. There must be a genuine reason for the termination of the employment on the grounds specified in the agreement.

When engaging someone on a casual basis or for a fixed period of less than 12 months, it is best to pay their annual leave on a pay-as-you-go basis at a rate of 8% of the employee's gross earnings with and on top of their regular pay.



**What are my obligations if I need to temporarily close my workplace? With everyone sick or isolating, I haven't got enough staff to operate safely.**

If your employees cannot be usefully employed to do alternative duties or work at alternative sites, you may need to ask employees to remain at home. Generally, employees should continue to receive full pay in circumstances where they have been requested to stay home from work. However, depending on the circumstances you may be able to place employees on unpaid leave with their agreement or after following a consultation process. You should seek advice on your individual circumstances before proceeding.

Have all your questions been answered? For further information call our trusted advisors to support you during this time on **0800 568 012** or visit **[employsure.co.nz](https://www.employsure.co.nz)**



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**Employsure is one of the largest provider of employment relations and workplace health and safety services in New Zealand.**

## *Why Employsure?*

At Employsure, we believe all New Zealand employers, no matter the size, deserve access to comprehensive, quality, honest advice and support that is scalable to the needs of their business.

Unlike big corporations, small businesses don't always have in-house HR and legal departments to interpret the complex language of the Employment Relations Act. Changes to legislation and workplace compliance are becoming increasingly complex and difficult to manage, especially for overstretched small business owners. Employsure was established in response to these challenges. It is our aim to ensure New Zealand business owners have access to cost-effective, professional advice on all employment relations and work health and safety issues.

## *What we offer*

Employsure provides customised documentation, unlimited advice, policy and procedure review, legal representation for small business owners.

Being an Employsure client means no surprises – we keep our clients updated about legislation changes, wage updates and essential compliance issues. Our expert advisers are available 24 hours a day to guide employers through any difficulties they may face.

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If I could do one thing different, I definitely would have employed the services of Employsure a lot earlier. They've taken a lot off my plate.

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Our employees are important to us. They're the face of the business. They represent everything that we stand for.

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