

COVID 19

Essential Workers Leave Scheme

Frequently Asked Questions

7 April 2020

PLEASE NOTE: As the result of the rapid changes occurring during the Covid19 Pandemic the information provided in this document is accurate up to the date indicated above and is subject to change.

These guidelines are our interpretation of the information provided by the Government concerning the Essential Workers Leave Scheme that is being offered to essential businesses and their employees.

This scheme has been introduced from Monday afternoon (6th April), to support employers and employees in essential services who may have been disadvantaged when the COVID19 Leave scheme was rolled into the Wage Subsidy package.

Like the Wage Subsidy Scheme, this scheme is being operated on a high trust model with the intent of helping businesses and their team members. The Government has provided us with guidelines concerning claims and payments under this scheme and no doubt more questions will come over the next few days.

Essential Workers Leave Scheme

Key Information

The Essential Workers Leave Scheme is available whilst New Zealand is on Alert Level 4.

You can apply for Essential Workers Leave Scheme payments, as long as you meet the following eligibility criteria:

1. You are an essential business (as defined in the official Government guidelines)
2. Employer Conditions: Your business has either
 - Experienced a 30 per cent (or greater) decline in actual or predicted revenue over the period of a month when compared to the same month last year because of COVID-19; OR
 - Had its ability to support the employee in question negatively impacted by the COVID-19 public health restrictions

3. Employee Conditions: The employee in question is legally employed by your business, in NZ and they have advised you that they cannot work because they are in one (or more) of these categories:
 - Workers who are sick with COVID-19 who are required to remain in isolation until advised by a health professional that they can be released from isolation.
 - Workers who are in self-isolation due to close contact with an infected person. For example a worker identified as possibly infected through contact tracing.
 - Workers with dependents who are either sick with COVID-19, or whose dependents are self-isolating as a close contact.
 - Workers who have serious health conditions themselves, or in their household, that put them at higher risk of becoming severely ill from COVID-19, **and** who agree with their employer that they will not work for an agreed period.
4. You must have had a conversation with the employee about how you can best support them at this time, for example they may choose to use any sick leave they have rather than get the Essential Workers Leave Scheme payment
5. You must not be able to financially support the employee due to the COVID-19 public health restrictions. For example, the cost of paying for your employee's leave and paying for replacement staff is significant
6. You are not currently receiving the COVID-19 Wage Subsidy or any other government funding for this employee

The COVID-19 Essential Workers Leave Scheme will be paid at a flat rate of:

- \$585.80 for people who were working 20 hours or more per week (full-time rate)
- \$350.00 for people who were working less than 20 hours per week (part-time rate).

It will be paid as a lump sum and covers four weeks per employee. If your employee still meets the criteria at the end of four weeks you can apply for your employee again in the 4th week.

Your Questions Answered

1. The employee in question works variable hours, how do I know which rate to apply for?
Use the average hours worked each week:
 - over the last 12 months, or
 - over the period of time they have been employed (if it's less than 12 months).

If the average hours are:

- 20 or more, apply for the full-time rate
- less than 20, apply for the part-time rate.

2. Can an employer apply for both the Essential Workers Leave Scheme and the Wage Subsidy Scheme?
 - Employers should not apply for both schemes for the same employee at the same time. If an employer is eligible for both schemes, it is better for them to apply for a wage subsidy, as this is of longer duration and allows you to support your employees in more flexible ways (such as also paying wages if they are able to work from home or return to work)
3. Does the leave scheme cover workers caring for children or dependents?
 - If the dependent being cared for is either sick with COVID-19, is self-isolating because they were a close contact of someone with COVID-19, or is at higher risk of becoming severely ill from COVID-19, then they would meet the employee eligibility criteria. Otherwise, caring for children or dependents is not an eligible ground for the Essential Workers Leave Scheme.
 - In this situation, employers must allow their employees to use sick leave (if they have an entitlement of sick leave available) or can agree to provide other leave.
4. Does my employee have to have used all of their annual leave entitlement before I apply for the Essential Worker Leave Scheme on their behalf?
 - No, your employee isn't required to have used any or all of their annual leave entitlements before you apply for the Leave Scheme on their behalf.
6. What if my employee has outstanding sick leave? Do they have to use this before I can apply for the Essential Business Leave Scheme on their behalf?
 - No. The requirement to self-isolate is not covered by normal 'sick leave' and you cannot force an employee to take sick leave.
7. My business is only able to pass on to the employee the Essential Business Leave Scheme amount, but my employee wants to top this up to their normal wages (or 80%), can they do this with either annual leave or sick leave?
 - The government's intention is that the employer do all they can to take the employees pay up to at least 80% of their normal salary without using any leave entitlement
 - If this isn't possible then by agreement the employee can use either annual or sick leave entitlements to top up their leave payment. To ensure that you are acting in good faith, if your employee wants to use their leave to 'top up' you should make sure that this request comes from the employee in writing.

8. If my employee wants to use their annual or sick leave rather than get the Essential Workers Leave Scheme, but the business can't afford to pay the full amount of their leave, can I still apply?
 - Yes. If you can't pay the full amount of this leave to your employee, and you meet the criteria, you can apply for the Essential Workers Leave Scheme to top it up.

9. Does my employee need to prove to me that they meet one of the criteria to be eligible for Essential Workers Leave Scheme?
 - No, they do not need to prove that they meet one of the criteria and need to stay at home. They need to tell you, and you need to declare that they have told you that they meet one of the eligibility criteria.
 - When you apply for the leave you will declare that your employee has told you they qualify.

10. How much do I need to pay the employee while they are off on this leave?
 - If you are receiving the Essential Workers Leave Scheme, you must try your hardest to pay the employee at least 80% of their usual wages. If that isn't possible, you need to pay at least the Leave Scheme rate (ie, full-time or part-time).
 - If your employee's usual wages are less than the Leave Scheme rate, you must pay them their usual wages. Any difference should be used for the wages of other affected staff - the Leave Scheme is designed to keep your employees connected to you.

11. If I make my employee redundant during the 4-week period, do I need to pay the money back to MSD?
 - Yes. You will have to pay the money back to MSD where you make an employee redundant.

12. What support is available in cases where workers meet the criteria but their employer does not?
 - If an employer isn't eligible for the leave scheme (and is also not eligible for the Wage Subsidy Scheme), they still have an obligation to keep their employees safe and to meet contractual obligations.
 - For employees who are required to self-isolate or are at higher risk (or whose households are at higher risk from COVID-19) paid special leave should be considered.

13. What happens if an essential worker doesn't fit the criteria, but still has health and safety concerns?
 - For workers who are not eligible for the Essential Workers Leave Scheme, employers continue to have both a duty of good faith towards their employees and an obligation to do what is reasonably practicable to keep their workers safe.

- Health and safety legislation requires workplaces to engage with workers in developing safe ways of working. There are also health and safety processes that allow workers to raise their concerns and for them to be addressed by the employer. Workers should use these processes in the first instance.
14. Are non-essential workers covered?
- While at Alert Level 4, anyone who is not an essential worker needs to be staying at home. Workers can work from home if their role allows for it. Employers may be eligible for the Wage Subsidy Scheme.

Please remember

In any difficult situation the best thing to do is talk. Make sure your team members know your situation and what you are able to do in terms of continuing to pay people.

Every business is unique and will have different questions about the government schemes available to them and how to interpret them in their particular context. Please, after you have looked at these guidelines, feel free to contact one of our professionals for help in their application.