START HERE

to make sense of your employment situation during the COVID-19 pandemic

Are you employed at an **essential business**?

- YES → Is your role part of your employer's **essential function**?
- NO → Are you able to perform your role **from home**?

Is your role part of your employer's **essential function**?

- NO → Are you able to perform your role **from home**?
- YES → Are you being asked to work your **normal hours, at normal pay**?

Are you able to perform your role **from home**?

- YES → Are you being asked to work your **normal hours, at normal pay**?
- NO → You are not required to work.

You are not required to work.

→ Are you receiving your **normal pay, at your full hours**?

- YES → Good. Keep an eye on government announcements to see when you will be able to return to work.
- NO → Your pay, hours of work, and other employment conditions cannot be altered without your consent, unless your employer undertakes a restructure of your position with appropriate consultation. You are able to challenge any changes to your employment conditions that do not follow these steps.

Are you being asked to work your **normal hours, at normal pay**?

- YES → Continue to work from home.
- NO → Your pay, hours of work, and other employment conditions cannot be altered without your consent, unless your employer undertakes a restructure of your position with appropriate consultation. You are able to challenge any changes to your employment conditions that do not follow these steps.

Are you being asked to work your **normal hours, at normal pay**?

- YES → Work as normal. Your employer is required to provide appropriate **personal protective equipment** (PPE) and adhere to physical distancing requirements.

What happens if you get **sick**, or have to **self-isolate** in line with Ministry of Health guidelines?

→ You will have to use your **sick leave**, or **annual leave** (by agreement) or else negotiate **special leave** with your employer.

The government is working on a solution for workers in this situation and is due to make an announcement soon.

Has there been, or is there expected to be, a **30% drop** in revenue for your employer as a result of COVID-19?

- YES → Has your employer applied for the **government wage subsidy**? Your employer is required to notify you of this, and seek your consent to release certain information to MSD.
- NO → Your employer will not be eligible to apply for the government wage subsidy.

However, if your employer has not been seriously impacted by COVID-19, they are less likely to be able justify making changes to your employment conditions. If your employer does attempt to restructure your role, they will have to provide reasons for doing so, and undertake consultation with you in good faith. Your employer is required to genuinely consider any alternative proposals that you put forward.

You may wish to seek legal advice if you are going through this process. If proper consultation has not taken place, and/or the proposed restructure is not justified, you may be able to challenge any changes to your employment conditions through a personal grievance.

Has your employer applied for the **government wage subsidy**? Your employer is required to notify you of this, and seek your consent to release certain information to MSD.

- YES → Have you **consented** to any changes to your pay, hours, or other employment conditions? Your employer is required to seek your consent, both at law and as a condition of receiving the wage subsidy.
- NO → You can ask your employer to do this.

You may have grounds to challenge any redundancy or restructure that affects you if your employer is eligible for the subsidy but has not applied.

Have you **consented** to any changes to your pay, hours, or other employment conditions? Your employer is required to seek your consent, both at law and as a condition of receiving the wage subsidy.

- YES → Are you being paid **at least 80%** of your normal wages?

Note: It likely does not make any difference if you are being paid 80% of your wages on normal hours, or 80% of your hours on normal pay.

- NO → You do not have to agree, but think carefully about this as the alternative may be that your position is made redundant.

You can seek legal advice before making a decision about this.

Are you being paid **at least 80%** of your normal wages?

Note: It likely does not make any difference if you are being paid 80% of your wages on normal hours, or 80% of your hours on normal pay.

- YES → Good. However, if your employer is in a position to pay you your full wages, they should do so.
- NO → Your employer is required to try their hardest to do this. If you think that they are not, you should raise this with your employer. If an employer cannot afford to pay 80% of your wages – if, for example, there is no money coming in, they are required to pay you the full amount of the government subsidy unless this is more than your usual wages. For workers employed for more than 20 hours per week, this is $585.80 per week. For workers employed for less than 20 hours per week, this is $350 per week.

MORE **WAGE SUBSIDY** QUESTIONS

What if I am on a casual employment agreement?

Casual workers are not entitled to ongoing work, so there is no guarantee that you will continue to be employed. Your employer, however, is still able to apply for the wage subsidy and to pay you accordingly if they choose to do so.

Can I be required to use my annual leave in order to receive government subsidised wages?

No. The timing of annual leave must be agreed between an employer and an employee.

An employer can only force a worker to take annual leave if, after a negotiation in good faith, there is no agreement between the parties. In this situation the employer must give the employee 14 days' notice before requiring them to take annual leave. One of the conditions of the government wage subsidy is that employers will not unlawfully compel or require employers to take annual leave during the 12 week subsidy period.

Am I entitled to take annual leave while my wages are being subsidised?

Yes. How much pay you will receive may reduce, however, during the 12-week subsidy period.

You should be paid whichever the following is greater:

- Your **normal pay**, on the day you take leave; or
- your **average pay** over the last 12 months.

If your pay has been reduced as a result of COVID-19, then your 12-month average will likely be higher, although this will reduce the longer you stay on the lower rate.

What if my hours vary from week to week?

If you work variable hours, you are entitled to be paid on the basis of your average hours over the last 12 months, or over the period of time you have been employed (if less than 12 months).

This legal information is current as of 2 April 2020

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