

Covid-19 Wage Subsidy – August 2021

The Government has this morning released details of the new Covid-19 Wage Subsidy. While it is similar to the wage subsidies from 2020, you should be aware that this time there are far more stringent requirements for eligibility for the subsidy, and the information required to support your application, including information about employees.

The link to the website and relevant forms is <https://www.workandincome.govt.nz/covid-19/wage-subsidy/index.html>

Like last year, application is made to the Ministry of Social Development by completing the application form. Note that there is a separate format and downloadable file for applications for large employers (80+ employees).

All details are contained in the information on the WINZ website. The purpose of this email is to draw to your attention key matters relating to eligibility for the subsidy; information that needs to be provided about employees and obtaining employees' consent; rules around application of the subsidy; and specific requirements for retention of information that evidences eligibility and compliance. We also note the accompanying declaration when you complete your application.

We have also provided some high level advice at the end of this email about when you can pay employees less than their usual wages or salary. We recommend that you seek advice before taking this step, as each business' circumstances will be different and there are numerous factors to consider.

Eligibility for Subsidy

1. You must have had, or be predicting, a decline in revenue that is attributable to the move to Alert Level 4 on 17 August, **and** this must be at least 40% over the period 17 – 30 August when compared to a typical 14-day period in the 6 weeks immediately prior to 17 August. This is the default comparator period.
2. If your business has highly seasonal revenue the comparator period is the same 14 consecutive days in 2020 or 2019. The onus is on you to demonstrate that the seasonal nature of your business makes it harder to use the default comparator period.
3. Before making the application you must have taken active steps to mitigate the impact on your business activities of moving to Alert Level 4. This includes but is not limited to engaging with your bank, drawing on cash reserves as appropriate, or making an insurance claim.
4. You must not be receiving any other Covid-19 relief in relation to any of the employees named in your application.

Information about Employees and Employee Consent

As part of your application you must not only provide information about individual employees, but also obtain the consent of each employee to provision of information about them. The information may be used by MSD and shared with other necessary agencies, and employees must be advised of this possibility. The information required about each employee is:

- Name
- Date of birth
- IRD number
- Whether the employee works fewer than 20 hours per week, or 20 hours or more.

There is an information sheet entitled “Privacy Information for Employees” which we think would be suitable to provide to employees to ensure you have complied with the requirements when obtaining their consent.

Many employers will not have to hand the dates of birth of employees so this information will need to be asked for, on the basis that it is used for the purposes of this application.

Rules about Application of Wage Subsidy

We strongly recommend that you carefully read the declaration that forms part of your application. Your receipt of the subsidy means that you have undertaken to comply with the following:

- You will retain the named employees for the period you receive the subsidy
- You will use the subsidy to support paying the ordinary wages and salary of the named employees in accordance with their employment agreements and statutory obligations
- You must repay any amount of the subsidy that is not used for these purposes (but you may use it to support paying and retaining other affected staff)
- You are responsible for paying the ordinary wages and salary of the named employees
- You must use your best endeavours to pay at least 80% of each named employee’s wages and salary
- You must pay at least the full amount of the subsidy to each employee (except if the employee’s ordinary wages or salary is less than the subsidy, in which case you may pay the lower amount)
- You may not make changes to an employee’s employment agreement or entitlements without the employee’s written agreement
- You may not unlawfully compel an employee to use their leave entitlements for the period of the subsidy.



Retention of Evidence of Eligibility and Use of Subsidy

You must prepare and retain evidence to support your application, such as records that demonstrate how the decline in revenue was attributable to the move to Alert Level 4; and how you have taken active steps to mitigate the impact of that move on your business. You must also have evidence to show you are not already receiving Covid-19 support payments in relation to any of the named employees in your application.

You do not need to submit your evidence when making your application, but you must prepare and retain this evidence both for the purposes of making the application, and in the event you are audited later.

We recommend that your records include demonstration of how the subsidy has been applied to individual employees.

Payment of Less Than Full Wages or Salary

Our advice on this remains as it was last year. If an employee is working in an essential service, or is able to work from home, then they should be paid as normal, and any reduction in salary or wages needs to be by written agreement.

If an employee is not able to work because of Alert Level 4 (and the government mandate that they are required to stay at home), then the normal position is that they are not legally entitled to wages or salary – hence the application of the wage subsidy and the use of best endeavours to pay 80% of their usual wages or salary. Employers may of course exercise their discretion to maintain wages and salaries despite employees being unable to work.

There are many grey areas and we recommend you seek our advice before taking steps to pay employees less than their usual entitlements.

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