

**COVID 19**

**Isolation payments Consultation Document**

**31st March 2020**

Isolation payments consultation document template 1st April 2020

Notes on all documents

The sections highlighted in Red are related to Legislation and should not be changed without reference to an appropriate professional

Sections highlighted in Yellow indicate where you should personalise these for your needs, i.e. people/company names etc.

Sections highlighted in Green indicate areas which you can personalise to suit your needs

Sections highlighted in Blue are explanatory commentary that should generally be deleted before use

**COVID 19 – Isolation Payments**

On Monday 30th March the Government published changes to the COVID 19 subsidy declaration. Technically, if you applied under the original scheme then the declaration in force at the time of application is the one that applies. However, the 1st declaration was open for interpretation and the 2nd declaration has answered many of those areas of confusion. As such, if making decisions about how to proceed we recommend that you look at your decisions in light of the 2nd declaration. If you are not able to meet the requirements of the 2nd declaration, then be prepared to justify why you have made the decisions you have made.

**What decisions should I make?**

The following is a link to the guidance we issued on the 1st April 2020 to help you make decisions. The advice is continually evolving and changing so we recommend that you do sign up for our newsletter and/or check latest updates to ensure that the decisions you are making are valid at the point you are enacting them.

**Employment law still applies**

At no time (to date) has employment law been changed, and this is clearly stated in the 2nd declaration “*your receipt of the subsidy does not override your existing obligations under the Employment Relations Act 200*0”

As such, technically, you can still be held accountable to abiding by the terms of your employment agreements. I.e. if an agreement states “You are paid a salary of $XX,XXX which will be paid in 52 equal instalments” then arguably you still have to pay that.

The declaration goes on to state that “*You will not make any changes to your obligations under any employment agreement, including to rates of pay, hours of work and leave entitlement,* ***without the written agreement of the relevant employee****;”*

Most companies will not have “the written agreement” of employees to pay less than normal pay during the period of isolation and this document is therefore designed to help you catch up with that written agreement for the period of isolation.

**Recommend that you don’t make further changes to employment agreements at this time**

When the isolation protocols are lifted will, for many companies, dictate what your company will look like when we re-open for business. However, the majority will not be operating at 100% on day 1, and therefore will need to build a degree of flexibility into employment agreements to cope with the reopening. We will be issuing more guidance and templates on this once we have a clearer picture about how long isolation will last.

At this point we recommend that you DO NOT make any further changes to employment agreements (except as to account for the isolation period) as decisions may change depending on how long isolation lasts.

**CONSULTATION OVERVIEW:**

**LEGALLY YOU ARE REQUIRED TO:**

1) present a proposal letter

2) allow the employee time to consider the proposal letter and provide feedback, and only after this

3) confirm what you are doing.

**STARTING YOUR PROCESS:**

* 1. **Read out the letter** and then e-mail a copy of the letter to the employee. Using the letter as a **word for word script.** This avoids arguments about what was or was not said. By necessity this will need to be done by phone, video conference and e-mail at this time.
	2. **Your letter should lay out the facts** in an honest and clear way. Everyone will know what is going on, they are likely to be most concerned about whether they will still have a job in the coming months, and how much income they can expect to receive during that time
	3. If you are open and honest with your employees’ they are less likely to make incorrect assumptions.
	4. For most employees the options will be accept the change or take redundancy. Given the current situation most will not opt for redundancy, however this will also be a hard situation for them accept and they are liable to be angry/upset/scared about that. To mitigate that we recommend:
		1. You are as open and honest with people about what you are doing to support them
		2. That you explain the sacrifices you are also having to make. Jacinda has asked everyone to “be kind”, employees should also “be kind” to their Boss
		3. Reassure them that you have their best interests at heart and you are committed to still having a job for them in 12 weeks time

**Balance your level of commitment**

The absolute commitment made under the subsidy Scheme is to keep everyone in employment for 12 weeks. The reality is that, every business has expenses over and above wages costs. Some can be cancelled, some can be deferred, but some need to carry on being paid. If the isolation protocols are lifted after 4 weeks then the majority of businesses will be able to cope with utilising 8 weeks of subsidy to cover wages whilst they rebuild. If the isolation protocols extend to 8 weeks then many businesses will start to struggle with mounting outgoings v’s a shorter recoup period. And if the isolation protocols extend to 12 weeks then many businesses will struggle severely with this. We all need to hope for the best, but plan for the worst, and don’t make any calls at this stage which you may not be able to honour in the future. You still need to be aiming for the 80% payments, and we would recommend that you commit to at least 80% for the current isolation period of 4 weeks, but give yourself scope to par that back if the isolation period is extended.

**Document Reference**

* HRtoolkit Reference – COVID 1 April 2020

DATE

NAME

COMPANY
ADDRESS

Dear NAME ,

Background

Outline the situation and how it is affecting your business. The more facts that you can provide, the better. It will help staff to understand what you are doing. Be honest about how you, as a business owner and a human being are also sharing the fiscal burden.

The Government wages subsidy scheme is designed to keep people in employment for the next 12 weeks. With isolation protocols now in place for at least the next 4 weeks it is likely that opportunities for working from home will be significantly diminished.

The last couple of weeks has been somewhat of a whirlwind, with the whole country (except essential workers) now required to self- isolate. I would at this time like to reinforce the government message of stay home, stay safe. If everyone abides by the rules then the quicker this virus will be under control and the quicker we can all get back to our new normal.

On Monday 30th March the government issued a new declaration in respect of the COVID 19 subsidy payment. This clarified many of the areas of confusion with the original subsidy declaration and we have therefore used this to benchmark our decisions moving forward. In principal, and we are fully committed to these principals at this time:

1. We will keep all employees named on the subsidy in employment for the duration of the subsidy (12 weeks)
2. We will make best endeavours to pay all staff 80% of their ordinary wages or salary (NB the declaration states that you need to be making best endeavours to pay AT LEAST 80%, therefore, if best endeavours mean you can pay more than 80% you do need to be doing that)
3. We will use the Wages subsidy to meet the wages bill

For the sake of clarity, we are totally committed to these principals. However, we also need to be realistic. Our approach may need to change if the isolation period extends, if we are to ultimately re-open as a business when the isolation protocols are lifted.

We are continually reviewing all of our expenses and are eliminating all unnecessary expenses immediately. However, there are some expenses which we will still need to pay during this time if we are able to reopen when the isolation protocols are lifted. For example:

1. Subscriptions to Xero/workflowmax/eftpos – some of these companies are supporting us by reducing their fees, but there is still out-goings that have to be met
2. Utilities such as power, water etc
3. Rent – we have negotiated a rent reduction with our landlord, but again this is still an accumulating bill over this period
4. We have put our IRD tax commitments onto payment plan which means that the payments are not due immediately. However, tax liabilities continue to accrue and though this helps with the immediate cash flow it is a liability that we will have to meet in the future. The liability will not disappear, we just don’t have to pay it right now.
5. As a business owner I am now drawing a 70% lower/significantly lower than normal salary / only enough money to cover the basic living expenses for myself and my family (It is important that you are honest with people, but also to highlight where you are personally sharing the cost burden here. Many employees perceive that the “boss” is earning lots of money, though the reality for most small businesses is that the boss is the one who gets paid last. It is also likely that you will be called on to prove that you were doing what you have stated, so be honest, don’t try to oversell)

We are also in discussions with our Accountant/Bank/Financial advisor about further efforts to keep costs under control so that we can re-open at the end of this.

As such, the following is a commitment to what we will be doing over the initial 4 week isolation period, but we may need to review this, and we will communicate with you further at that time.

**Payments during the first 4 weeks of isolation**

We want to give you as much certainty as possible at a very uncertain time for everyone. And we are therefore committing to all staff that:

SAMPLE PHRASES (NB Refer to full guidance document (LINK Here) when deciding what to base the 80% calculation on, and whether to pay those who normally get paid below the subsidy level 80% or 100%. Ordinary wages is defined in the declaration as “ordinary wages or salary *as specified in the employee’s employment agreement as at 26 March 2020”.* What is unclear is if this is inclusive or exclusive of regular overtime etc which are all payments which are included in the definition of the “ordinary weekly pay” in the Holidays act. We recommend we communicate what base line you are using for the 80% at this stage so that staff are 100% clear about what they will be receiving

1. Everyone will be paid 80% of their ordinary wages for the next 4 weeks. The exact definition of “ordinary wages” is unclear and, for the purposes of calculating the 80% we have used the “ordinary weekly pay” calculation as defined by the Holidays Act which is the amount you would normally receive if you were on annual leave.
2. Everyone will be paid 80% of their ordinary wages for the next 4 weeks. The exact definition of “ordinary wages” is unclear and, for the purposes of calculating the 80% we have used your normal hours as per your employment agreement.
3. (For subsidy applications made after 4pm on 27th March 2020) If your ordinary wages are below the level that we have received in respect of a subsidy payment ($350 per week for under 20 hours or $585.50 for over 20 hours) they you will receive 100% of your ordinary wages. I.e. if you normally work 10 hours per week at $20 per hour then you will receive $200 gross. This is in line with the COVID 19 declaration which states that “*pay at least the full amount of the subsidy to the employee; but where the ordinary wages or salary of an employee named in your application was lawfully below the amount of the subsidy before the impact of COVID-19, pay the employee that amount”* It appears on initial reading of declaration 2 that the 80% rule should NOT be applied to someone who earns below the subsidy level, but declaration 1 is 80% for everyone. However this is something that more guidance will come and you may therefore want to stick with a commitment in writing to pay 80% of everyone and then correct any anomalies separately in the future.

**Work requests**

Some work may be carried out from home and, as you are on paid time for the isolation period then we may require you to do work during this time and that is covered within the payments above.

**Annual leave**

Employees can make requests to top up their pay to 100% with annual leave so please let us know if you want to do this at this time OR In order to preserve cash flow to see everyone through the next 12 weeks we will not be approving requests for annual leave at this time

**What happens after 4 weeks?**

At this stage we cannot say for certain, and our goal is to continue with the commitments above. However, to be 100% clear with everyone it is our commitment to pay at least the value of the subsidy for those who earn above the subsidy payment level - $350 per week for under 20 hours or $585.50 for over 20 hours and ordinary pay for those who earn below the subsidy payment OR 80% of ordinary pay for those who earn below the subsidy payment level for the next 12 weeks (DELETE AS APPLICABLE FOR THE APPROACH THAT YOU ARE TAKING AND REFERENCE NOTES ABOVE ON THIS POINT)

### What happens from here?

There are some duties that can be completed from home (e.g. INSERT EXAMPLES SUCH AS reviewing documentation, phone customers etc) which we may ask you to do during this period and we would also ask that you proactively communicate with us regularly and seek out tasks that can be usefully completed for the company.

Ultimately, this is a time of great uncertainty for everyone, however, employment legislation continues to apply and we therefore seek your agreement in writing to accept this change in pay during the isolation period. If you are in agreement with this temporary adjustment to your pay and conditions, then please e-mail us to confirm your acceptance of this change.

If, however, you do not wish to accept this change then, unfortunately we are unable to see an alternative to redundancy. If you were to decide that you wish to take the redundancy option, then we will speak to your further about what that would mean for you (NB IT IS UNCLEAR EXACTLY HOW A REDUDNACY PAYMENT SITUATION BE CONSIDERED, HOWEVER IF AN EMPLOYEE DOES OPT FOR THIS THEN GIVE US A CALL AND WE CAN TALK THROUGH YOUR SPECIFIC SITUATION)

**Feedback and Timeframe**

We would like you to consider this proposal both at a team level and how it impacts you. If you do wish to discuss this further then we are happy to arrange a video or phone conference to facilitate that and you are entitled to bring a representative of your choice to that discussion. Please advise us by DATE 3 DAYS OUT if you wish to have this discussion.

If you are in agreement with this temporary change in payment terms then please e-mail us to confirm this in writing by DATE 3 DAYS OUT to confirm this.

**Please treat your co-workers with respect**

This is a stressful and trying time for everyone, and for each of us the implications will be different. As such please treat your co-workers with respect.

**EAP Support *EAP is an optional service, but the courts do look favourably on you if you have offered this additional support. HRtoolkit partners with EAP Works (0800 SELF HELP or*** [***www.eapworks.co.nz***](http://www.eapworks.co.nz)***) and HRtoolkit members are entitled to favourable service and price from EAP Works.***

We recognise that change is difficult, and we are keen to make this as painless as possible. To this end we have arranged for the Employee Assistance Programme (EAP) to be available to you. EAP is a confidential service where you can talk through any issues or concerns that you have with a trained counsellor. You will be entitled to up to 3 sessions for yourself and your family members. If you wish to access this service please contact your manager to arrange this. In the event that you require more than 3 sessions then please advise your counsellor and/or myself and we will be happy to review the situation.

Kind Regards,

**Name**

**Job Title**