

COVID-19 and Labour Law: New Zealand

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Abstract

The New Zealand Government closed the borders and introduced a strict national lockdown relatively early in the spread of the disease. While so far successful in preventing a large-scale outbreak, there are significant economic consequences. A range of measures have been introduced to support businesses and workers during the lockdown and stimulate the economy following, including wage subsidies, interest-free small business loans and local infrastructure job-creation projects.

Keywords: Covid-19; Labour Law; Lock-down; Four-level alert system; Wage subsidy; Business loans.

1. General Framework

In response to the Covid-19 pandemic, the New Zealand Government pursued what it describes as a “go hard, go early” strategy¹. Starting in early February, increasing entry restrictions and quarantine requirements were imposed on travellers, with borders closed on 18 March². The New Zealand economy is heavily reliant on tourism (16.2% of export earnings, employing 8% of total workforce) with border closures having an immediate economic impact³. On 21 March the Prime Minister announced a four-level alert system, with the country moving in to level three the following day, and then level four, 48 hours later⁴. A National State of Emergency was declared on 31 March, with further declarations on 2, 8 and 15 April⁵.

The level four lockdown operated from 24 March to 27 April, with people required to stay in their homes, and avoid contact with anyone not from their household “bubble”. Non-essential businesses were required to close their premises, but could continue to have people working from home. The list of essential services included hospitals and medical

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¹ New Zealand Government media releases available here: <https://www.beehive.govt.nz/release/covid-economic-scenarios-back>

² New Zealand citizens and residents were permitted to return home on a limited number of charter flights and required to enter strict quarantine.

³ New Zealand-Aotearoa Government Tourism Strategy (May 2019), available at: <https://www.mbie.govt.nz/immigration-and-tourism/tourism/new-zealand-aotearoa-government-tourism-strategy/>

⁴ Orders were made under the Health Act 1956, and Epidemic Preparedness Act 2006 amended by the COVID-19 Response (Urgent Management Measures) Legislation Bill allowing a wider range of directions to be given.

⁵ Under the Civil Defence Emergency Management Act 2002 a state of emergency can only last for 7 days.

services, life-line utilities, supermarkets and petrol stations. The lockdown was strictly enforced, with wide-spread economic consequences, but received high levels of public support⁶.

On 28 April, New Zealand moved to alert level three having declared “transmission of the virus eliminated”⁷. As at 3 May, total confirmed and probable cases stood at 1,487, with 20 deaths⁸. In alert level three people are still required to stay at home, but enjoy greater personal freedom to move around their local area. Many businesses are permitted to re-open their premises, but not interact with customers, conforming to strict contact-less trading and social-distancing rules. Public venues remain closed, and workers able to work from home are required to continue to do so. The level three lockdown will be reviewed on 11 May.

2. Regulatory interventions

There was a high degree of political cooperation in the pandemic response. The Leader of the Opposition was appointed to chair the special Epidemic Response Committee and meetings were livestreamed to enhance transparency and democratic scrutiny⁹. There was also ongoing consultation with scientific experts, unions and business groups, resulting in a high-level of consensus over the measures introduced.

a) National wage subsidy scheme

On 17 March, a national wage subsidy scheme was established. The subsidy was available for 12 weeks and comprised a flat rate payment of \$585.50 for employees working over 20 hours per week, and \$350 for those working less than 20 hours¹⁰. By mid-April, over 40% of New Zealand’s workforce was being supported by the scheme, costing 9.9b NZD (more than 10% of total core Crown revenue for the previous year)¹¹. To receive the subsidy, employers were required to declare they would keep employees at a minimum of

⁶ Reporting on independent polling can be found here: <https://www.rnz.co.nz/news/national/414069/most-new-zealanders-willing-to-extend-covid-19-lockdown-pain-survey>

⁷ Media reporting of the Prime Minister’s announcement: https://www.nzherald.co.nz/nz/news/article.cfm?c_id=1&objectid=12327811

⁸ New Zealand Ministry of Health Covid-19 data available here: <https://www.health.govt.nz/our-work/diseases-and-conditions/covid-19-novel-coronavirus/covid-19-current-situation/covid-19-current-cases>

⁹ Information about, and recordings of, the Committee can be accessed here: <https://www.parliament.nz/en/pb/sc/scl/epidemic-response/tab/business>

¹⁰ Information on the wage subsidy scheme can be found here: <https://www.employment.govt.nz/leave-and-holidays/other-types-of-leave/coronavirus-workplace/wage-subsidy/>

¹¹ Minister on Finance speaking on Radio New Zealand available here: <https://www.rnz.co.nz/national/programmes/checkpoint/audio/2018743103/covid-19-wage-subsidy-bill-nears-10b-govt-starts-auditing>

80% of their incomes¹². Stories of opportunistic employer behaviours in claiming the subsidy resulted in the New Zealand Council of Trade Unions, and later, government agencies setting up online and freephone complaint lines. A publicly searchable database of employers claiming the subsidy was also set up¹³. Employer actions in unjustifiably making staff redundant or wrongly claiming subsidies will likely result in considerable legal action when the courts reopen.

b) Leave entitlements and subsidies

A leave subsidy, paid at the rates above, was also available for essential workers forced to take leave “due to public health guidance” (e.g. the worker is quarantined)¹⁴. Many essential workers, such as those in aged care and supermarkets, have only the minimum 5 days’ paid sick leave per year, which would be insufficient to cover the quarantine period¹⁵. There are also reports of employers illegally trying to force employees unable to work during lockdown to use accrued sick leave or annual leave, which will likely result in union and regulator action when the courts reopen. The Holidays Act 2003 was already under review and these issues may hasten the pace of reform.

c) Temporary workers

Changes to the Immigration Act 2009 were made to extend the expiry dates of a range of temporary class work visas¹⁶. People on these visas and unable to work during lockdown, however, cannot access social welfare benefits, with unions and migrant worker advocates highlighting the hardships and risks of exploitation faced by this group.

d) Childcare

Fully-funded in-home childcare was made available for essential workers where there was no one in their bubble to provide care¹⁷. People working from home were required to find a way to balance work and childcare themselves. In level three, schools reopened on a

¹² Parliamentary Media Statement, accessible here: <https://www.beehive.govt.nz/sites/default/files/2020-03/Wage%20subsidy%20scheme%20factsheet.pdf>

¹³ The wage subsidy database and complaint facilities can be accessed here: < <https://www.msd.govt.nz/about-msd-and-our-work/newsroom/2020/covid-19/covid-19-wage-subsidy-employer-search.html>>

¹⁴ Information on the leave subsidy can be accessed here: < <https://workandincome.govt.nz/covid-19/leave-support-scheme/index.html>>

¹⁵ Holidays Act 2003, s 65.

¹⁶ Information on immigration changes can be accessed here: <https://www.immigration.govt.nz/about-us/covid-19/visa-conditions-epidemic-status>

¹⁷ Information on the childcare subsidy can be accessed here: <http://education.govt.nz/covid-19/home-based-care-options-for-children-aged-0-14-of-essential-workers/>

limited basis for children unable to be cared for at home¹⁸. Distance learning, technology grants and a national educational television channel operates to support those teaching children at home.

e) Health and safety workers' compensation

Distribution of PPE for essential workers, especially those in the aged care sector, was a significant issue. Workers' compensation is currently not available to workers that contract Covid-19 at work, with changes likely to be sought by unions.

f) Social welfare and housing

On 1 April, welfare benefits in New Zealand were increased, with the winter energy payment doubling (paid from May to October to help with winter heating costs)¹⁹. The normal "stand-down" period was removed for people accessing an unemployment benefit, with new regional job agencies created. A temporary programme for housing the homeless, utilizing empty hotel rooms, was implemented, with reforms to tenancy laws making rent increases unlawful and introducing new restrictions on terminating tenancies²⁰. Many pre-existing problems in the welfare system are currently being highlighted with calls for substantial reform being made by unions and other advocates.

g) Financial support for businesses

At the beginning of lockdown, the Government introduced changes to allow businesses to put debts "in to hibernation" until they could start trading again to avoid insolvency²¹. A significant package of tax relief and financial support is also available, including the Business Finance Guarantee Scheme, making it easier for businesses to borrow from banks. The Small Business Cashflow (loan) Scheme will also be available from 12 May providing one-off interest-free loans to small and medium sized businesses (50 employees or less). Each business will receive a base \$10,000, plus \$1,800 for each employee, up to \$100,000 NZD. Some industry-specific measures have also been introduced, such as "income equalisation assistance" for "farmers, fishers and growers"²².

¹⁸ Schools reopened for years' 1-10 (aged about 5 to 13), as children are not legally allowed to be left at home alone. Schools did not reopen for older children.

¹⁹ The rates were increased to \$40.91 per week for single people and \$63.64 per week for couples and those with children. More information can be accessed here: < <https://www.workandincome.govt.nz/products/a-z-benefits/winter-energy-payment.html>>

²⁰ A new Schedule 5 to the Residential Tenancies Act 1986 was added to do this.

²¹ Where there was the agreement of 50% of creditors.

²² Information on these programmes can be accessed here: < <https://www.ird.govt.nz/covid-19/business-and-organisations/income-equalisation-assistance-for-farmers-fishers-and-growers>>

h) Job creation through infrastructure development

On 1 April, local authorities were asked to nominate “shovel ready” local infrastructure projects that could be used to create jobs, with future “job rich” infrastructure, housing and environmental restoration projects forming a core component of the signalled economic recovery package.

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