

HERE WE GO AGAIN: NEW WAGE SUBSIDY / REDUCING PAY DURING LEVEL 4

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INTRODUCTION

This article covers:

- How to apply for the wage subsidy, and what the criteria are; and
- Whether or not employers can reduce pay during the Level 4 lockdown.

WAGE SUBSIDY AND OTHER GOVERNMENT LOCKDOWN SUPPORT FOR BUSINESSES

Applications for the initial two-week wage subsidy for August 2021 have now closed. However, the wage subsidy is available for another two-week payment from 9am Friday 3 September 2021. The second round of the wage subsidy will be available nationally. You can make your application here: <https://www.workandincome.govt.nz/covid-19/wage-subsidy/how-to-apply.html#null>

In order to be eligible for the wage subsidy, your business must meet the “revenue decline test.” In essence that means:

1. Your business has had or will have a decline in revenue that is attributable to the effects of the continuation of Alert Levels 3 or 4 from 17 August 2021; and
2. That decline in revenue must be 40% or greater, over the period between 31 August and 13 September 2021 inclusive (**the revenue test period**), as compared to a typical 14-day consecutive period of revenue in the six weeks immediately before the move to Alert Level 4 on 17 August 2021; or if your business has highly seasonal revenue, you must have at least a 40% decline over the period 31 August 2021 – 13 September 2021 inclusive compared to the same 14 consecutive days in 2020 or 2019.

Businesses that applied for the initial wage subsidy and who meet the eligibility criteria for the second wage subsidy, can apply for another wage subsidy payment two weeks after their previous application.

When you apply for the subsidy you will be required to fill in a declaration confirming, among other things, that:

- your business meets the eligibility criteria;
- you will use the subsidy to retain and pay the employees named in your application;
- you will use best endeavours to pay the named employees at least 80% of their ordinary wages or salary. If you can't do that then you must pass on the full amount of the subsidy (or pay employees their normal pay, if that is less than the subsidy amount);
- you will not make any changes to your obligations under any employment agreement, including to rates of pay or hours of work, without written agreement from your employees;
- you will not unlawfully compel employees to use their leave entitlements for the period you receive the subsidy;
- you have taken steps to mitigate the impact of the move to Alert Level 4 before applying for the wage subsidy;
- you will notify the Ministry of Social Development within 5 working days of any changes to your business' eligibility;
- you will discuss your application with your named employees and gain their consent to sharing their information;
- you will repay the subsidy or any part of it if required; and
- you have provided true and correct information.

You will need to prepare and retain evidence to support this declaration, particularly in regards to the decline in revenue experienced by your business.

Further information about the August 2021 wage subsidy is available here: <https://www.workandincome.govt.nz/covid-19/wage-subsidy/index.html>

OTHER SUPPORT

Details of other government support available can be found here:

<https://www.workandincome.govt.nz/about-work-and-income/news/2020/covid-19-financial-support-for-businesses.html>

<https://covid19.govt.nz/business-and-money/>

The Leave Support Scheme and Short-Term Absence payments are still available for affected people who can't work while they are waiting on COVID-tests, are a close contact or have been told to isolate.

<https://www.workandincome.govt.nz/covid-19/leave-support-scheme/index.html>

<https://www.workandincome.govt.nz/covid-19/short-term-absence-payment/who-can-get-it.html>

You cannot receive a payment under either of these schemes at the same time as receiving the wage subsidy in relation to the same employee.

Businesses can also access the COVID-19 Resurgence Support payment (which can be received at the same time as they receive the wage subsidy). This payment is designed to help with fixed costs, such as rent. In order to qualify for the payment, your business must have experienced at least a 30% drop in revenue or a 30% decline in capital-raising ability over a 7-day period, as a result of the increased COVID-19 alert level. Eligible businesses and organisations can apply to receive the lesser of:

- \$1,500 plus \$400 per full-time equivalent (FTE) employee, up to a maximum of 50 FTEs (i.e. a maximum payment of \$21,500); or
- four times (4x) the actual revenue decline experienced by the business or organisation.

<https://www.ird.govt.nz/covid-19/business-and-organisations/resurgence-support-payment>

REDUCING PAY DURING LEVEL 4

For the first few days of the Level 4 lockdown most businesses are continuing to pay staff. However, if Level 4 continues for some time then this won't be viable for many companies.

Importantly, receiving the government subsidy doesn't give employers legal permission to cut their employees' pay down to 80% (or to the level of the wage subsidy). That justification has to be found elsewhere – we know from the last lockdown that some employers who get this wrong will face expensive Employment Relations Authority claims when the dust settles (and those that don't face these claims will simply be lucky).

SO CAN I REDUCE PAY DURING LEVEL 4?

If you are an **essential** business then **you cannot reduce pay** without going through a proper process (or, if you are receiving the subsidy, without reaching a mutual agreement with your employees). Your employees can legally come to work during Level 4, so they are entitled to be paid in full, even if you don't have sufficient (or any) work for them. you are an essential business and you can't (1) pay your employees in full (even with the benefit of the wage subsidy) or (2) reach a mutual agreement with them to reduce pay during lockdown then seek advice – the answer may be that you shouldn't apply for the subsidy, because you can't comply with the promises you are making.

Whether **non-essential** businesses can reduce or cut pay at Level 4 is still legally unclear. We remain of the view that, after consultation and subject to any applicable terms in the relevant employment agreement, non-essential employers **can** reduce pay down to 80% (or, where it is not possible to continue paying employees 80% of their pay, to the lesser of the wage subsidy amount or the employee's usual pay if that is less than the wage subsidy amount) where their workers can't come to work due to the Level 4 restrictions, and they can't work from home. Workers aren't able to do any work, so they're not entitled to be paid.

However:

- Businesses should **consult** before reducing pay, and explore other options (such as using annual leave).
- It's safer (and much better) to reach **agreement** with staff, rather than imposing an outcome, if possible. In part this is because the legal position hasn't yet been firmly decided.

Remember, any ability to reduce pay during Level 4:

- Doesn't apply to essential businesses;
- Doesn't apply during Level 3, or at lower levels.

Things get a little murky where the employee can do *some* work from home. In that case the best option will be to consult and reach a sensible agreement. If agreement isn't possible then what you can and can't do will depend on your specific situation – we recommend getting advice.

MORE INFORMATION

The article we wrote during the Auckland Level 3 lockdown last year also covers a number of areas that employers may have questions about: <https://www.gallawaycookallan.co.nz/library/publications/covid-19-do-employers-have-to-keep-payin>

Please contact Gallaway Cook Allan's employment team if we can help you during this time.

Our thanks to Kari Schmidt for her assistance with this article

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