

Coronavirus questions and answers

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What is an employer's duty of care in the event of a potential pandemic?

- If a natural disaster or other serious event happens, the health, safety and security of people should be the main concern of all employers and employees. This is integral before thinking about the interests of the business or organisation.
- Always follow the advice of the Ministry of Health, Ministry of Civil Defence and Emergency Management –they're the experts.
- Ensure that employees working from home, in self-isolation or mandatory quarantine are well. Keep in contact with them.
- Make sure that employees know how to prevent exposure to the virus and its symptoms.
- Ensure employees know what the impact on the business will be.
- Deal with employees in good faith about leave, payment and any other relevant issues.
- Discuss and agree with employees what the time away from work will be classed as.
- Be careful, exercise care and good judgement at all times.
- Communicate well with employees.

How should an employer communicate with employees during a pandemic?

Employee communication and support are very important. Following any disaster or emergency, an employer should contact employees as soon as possible to advise them of the workplace situation and the expectations of them. An employer should give employees regular updates even if they are not required to be at work so that they know what is going on. An employer could use texts and social media where possible to minimise overload of the telecommunications network. Employees may be under additional stress, and an employer could provide them with support and show their concern. This could include an employer providing access to an employee assistance programme for counselling, having a team debrief, daily blog or email.

An employer should make sure that they engage with their employees about their plan to manage an outbreak.

What should an employer do to keep their workplace safe in a pandemic situation?

The Ministry of Health has guidance on [infectious disease prevention in the workplace](#).

What should employees consider in case of a coronavirus pandemic?

Here is a checklist of things to think about:

- Take care of your own health and safety. This includes when you're in the workplace and also if you're at home (e.g. you may be suffering from stress or anxiety associated with the pandemic). For many people getting back to work and normal life as quickly as possible can help to reduce anxiety and stress.
- Take care of the health and safety of your dependants. If you have a dependant who is sick then you may use sick leave to care for them.
- Proactively consider the possibility of a pandemic and what your response might be, bearing in mind that the situation is likely to evolve over time.
- If you are not going to work, do your best to make sure that your employer knows this and that you apply for the correct leave type to suit your situation.
- If your workplace is safe and you plan to return to work, make sure that:

- Your transport is organised –check out public transport availability, but make sure that there is no risk of exposure to the virus, carpark building availability, alternative routes in case of road closures.
 - You continue to exercise care as you travel to work, even if your workplace is safe, you may be increasing the risk of exposure.
- Act in good faith and be honest with your employer about how you are feeling and any concerns you have. If you are finding your return to work difficult, get help and support – your workmates and employer are probably experiencing similar feelings to you.

What should employers take into consideration in the event of a pandemic?

Here is an employer checklist of things to think about:

- Unfortunately, coronavirus is not a one-off scenario, as we have seen before with matters such as swine flu and measles. As always, preparation and open communication are key. As such, it would be prudent for employers to develop flexible contingency and emergency plans and policies to deal with these sorts of issues.
- Take care of the health and safety of your team, yourself and your customers.
- If the workplace isn't safe, don't require your staff to work there. Make sure it's safe first.
- Staff communication and support are very important. Contact staff as soon as possible to advise them of the workplace situation and your expectations of them. Give them updates even if they are not required to be at work so that they know what is going on.
- Remember staff may be under additional stress – provide them with help and support. This could include access to an employee assistance programme for counselling, having a team debrief, daily blog or email.
- Discuss and agree a format for dealing with individual risks in a way that is suitable to both parties, whilst ensuring wider compliance with duties under the Health and Safety at Work Act 2015. We recommend such agreements are clear and in writing to avoid any doubt.
- If public transport is unavailable or reduced, consider any impact on staff getting to work on time and whether you can be flexible.
- Consider wider infrastructure issues (e.g. road closures, power outages or water restrictions) and the impact of these on staff getting to and from work and whether you can be flexible.
- Consider approaching things differently. This may include temporarily changing your leave policy, letting employees work flexibly or from home, or adopting a flexible approach to staff making personal phone calls to check on family during the workday.
- Think about any negative impact on staff pay (e.g. processing of payroll) and try to minimise this.
- Act in good faith and be honest with staff about the situation. You can provide them with an expert report showing the workplace is safe – this will reassure them. If an employee has a concern about the workplace being unsafe, ask them the specifics of their concern.

What plans should an employer have in place for a possible outbreak of coronavirus?

Planning for contingencies such as a pandemic, outbreaks of infectious diseases, earthquakes and other disasters and emergencies is important as it could potentially affect the health and safety of employees or customers and an employer's ability to run a business.

An employer should include the following in their plan:

- How will an employer be able to continue essential services even if a large number of employees are away from work due to sickness?
- How will an employer be able to maintain essential services or activities of the business with high numbers of employees absent over an extended period?
- What essential goods and services does the business rely on and how will it manage any disruptions to the supply of these?
- How can an employer implement alternative work practices in the workplace (for example, working from home)?
- What business services will need additional support to meet a surge in demand (for example, IT support services)?
- How can an employer protect employees and customers, and reduce the risk of spread of an infectious disease in the workplace?
- What would happen to pay or leave if there is a civil emergency?

An employer should consider wider infrastructure issues (e.g. road closures, power outages or water restrictions) and the impact of these on employees getting to and from work and whether there is any room for flexibility.

In an extraordinary event, an employer may need to approach things differently. This may include temporarily changing leave policy, letting employees work flexibly, or adopting a flexible approach to employees making personal phone calls to check on family during the workday.

What are some of the reasons why an employee may not be able to work?

There are different reasons why an employee may not be able to work in this situation. These can include:

- An employer may be unable to provide work for employees who are willing and able to carry out their agreed hours of work.
- An employer may be unable to provide a suitable and safe workplace for employees who are willing and able to carry out their agreed hours of work.
- Employees can't access the workplace because of restrictions not directly related to their own workplace and out of their employer's control (e.g. road closures, safety issues relating to adjoining buildings, evacuation due to flooding or tsunami risk).
- An employee (or their dependant) is sick or injured and unable to work.
- An employee has to care for a dependant because usual care is unavailable.
- An employee is willing and able to work but their usual mode of transport is unavailable.
- The employee's partner or dependent family member isn't injured or sick but they require care. For example, their child's school is closed.

What type of leave can an employee take if they are feeling sick and have symptoms similar to coronavirus, or if they have coronavirus?

Employers and employees can't assume that time away from work in these circumstances would be either paid or unpaid without looking at the employment agreement, workplace policies and the specific circumstances.

If an employee is sick, with fever, coughing, and having difficulty breathing, the employer should ask if the employee has been to China or any other country affected by coronavirus, or has been in contact with someone who had coronavirus in the last 14 days.

If this is the case, the employer should check for up-to-date guidance from the [Ministry of Health](#), make available to the employee any leave and pay entitlements they have under their employment agreement (as long as they meet the [minimum requirements](#)):

- The employee can take sick leave, [if they meet the conditions for sick leave](#), or advanced sick leave if the employer agrees.
- If the employee has no sick leave left but has [annual leave](#) accrued, they can take annual leave, or take advanced annual leave if the employer agrees.
- If the employee does not have either sick leave or annual leave available, or is not able to get sick leave or annual leave in advance, they can take [leave without pay](#), if the employer agrees.

In some circumstances, an employer can request the employee provide [proof of illness](#) by way of medical certificate. Who pays for the medical certificate will depend on when the employer asks for it.

An employee can also use sick leave if their spouse, partner, dependent child, or other person who depends on their care is sick.

Sick leave, advanced sick leave, annual leave and advanced annual leave should be paid as agreed in their employment agreement, as long as it meets the [requirements of the Holidays Act](#).

Other alternatives

- An employer can also give employees additional paid leave (special leave) above their entitlement. This might be a good idea, particularly in cases where it is not in the interests of the business, or of other employees, suppliers or customers, for an employee to return to work feeling ill because they have run out of leave.
- Many employment contracts already contain more than the statutory requirement for sick leave. This is a matter of negotiation between the employer and the employee; and should be written in the employment agreement.
- Additionally employees could ask for advance wages or to [cash-out annual leave](#), but the employer has to agree to this in writing.
- An employer may agree to an employee working from home (if suitable).

How much sick leave are employees entitled to?

All employees (including part-time and casual employees) are entitled to at least 5 days' sick leave each year if:

- they have six months' current continuous employment with the same employer, or
- they have worked for the employer for six months for:
 - an average of 10 hours per week, and
 - at least one hour in every week or 40 hours in every month.

For each 12-month period after meeting the above, each employee gets at least five days' sick leave and can accumulate up to 20 sick days a year.

Sick leave entitlements are not pro-rated in any way. For example, even if a part-time employee only works three days a week, they still get five days' sick leave a year and can also accumulate up to 20 sick days a year.

An employer can provide more sick leave to employees than the minimum legal entitlement – this must be written in their employment agreement. [Some employers offer employees sick leave with no defined limit.](#)

Can an employer order an employee to go to the doctor if an employee is sick?

Normally not, unless the employee agrees to medical testing. However, an employer would most likely be justified in telling the employee to stay home, and possibly in not paying that employee, if the employee refused to take a test to confirm infection and there was a reasonable chance of that having occurred.

Can an employer ask for a doctor's certificate when an employee takes sick leave?

An employer may ask an employee for a doctor's certificate in cases of sickness, injury, or when they cannot attend work because their partner or dependents are sick or injured.

- If an employee is on sick leave for less than three days and an employer asks for proof of sickness or injury, they must ask as soon as possible and pay the employee back for the cost of getting the proof, e.g. a visit to the doctor.
- If an employee is on sick leave for three or more days in a row, even if these three days are not all days the employee would be working and the employer asks for proof, then the employee needs to meet the cost.

What happens if an employee is not sick, but is self-isolating due to recent travel or exposure to coronavirus?

People returning from China, or anyone who has had exposure to confirmed cases of coronavirus, should check [up-to-date guidance from the Ministry of Health](#). Both employers and employees should comply with this guidance.

In relation to leave and pay, first check the employment agreement or any workplace policies to see if they contain any clauses about emergencies.

Technically the employee is not entitled to sick leave, as they are not sick. However, the employer could allow the employee to take annual leave or sick leave, advanced annual or sick leave, or take unpaid leave or work from home (if suitable).

If no other leave alternative is available, the employer does not have to pay the employee, but the employer should consider offering the employee additional leave (special paid leave). This would avoid the employee coming to work, and consequently the possibility of infecting other employees, customers or suppliers.

Can an employer require a worker to go home if they are sick but want to stay at work?

If an employee has an infectious disease that exposes others to the disease, the employer could ask the employee to take sick leave, if they have any, and go home. Alternatively, the employee could take sick leave, advanced sick leave, annual leave, advanced annual leave or leave without pay, if the employer agrees.

If an employer requires an employee to go home, they should check their obligations under the Health and Safety at Work Act 2015. For specific information about your obligations in relation to coronavirus, see [WorkSafe's website](#) or contact WorkSafe on 0800 030 040.

Can an employer require a worker to self-isolate if they are at risk of having contracted the coronavirus?

An employer cannot dictate what a worker does in their private time. However, at work it depends on how the risk of exposing others to the disease is assessed. Employers should assess the type of work the employee does, the closeness and interaction to other people.

Being at risk of infection with coronavirus does not mean the employee is sick. If an employee is not sick (even if they are at risk of being affected by the coronavirus) and able to work, regardless of the reason for sending an employee home, the employee does not have to apply for any leave and should be paid during the period they agree to be off work.

The employer could organise for the employee to work from home during the self-isolation period, or arrange for the employee to work away from others (e.g. in a meeting room).

If an employer requires an employee to go home, they should check their obligations under the Health and Safety at Work Act 2015. For specific information about your obligations in relation to coronavirus, see [WorkSafe's website](#) or contact WorkSafe on 0800 030 040.

What does happen if an employee is advised to self-isolate but they refuse to do so and still wants to work?

It depends on how the risk of contracting the disease is assessed. The employer needs to assess the type of work the employee does, the closeness and interaction to other people.

The employer could organise for the employee to work from home during the self-isolation period, or arrange for the employee to work away from others (e.g. in a meeting room).

If an employee decides to come to work, and are able to do so, employers should check their obligations under the Health and Safety at Work Act 2015. For specific information about your obligations in relation to coronavirus, see [WorkSafe's website](#) or contact WorkSafe on 0800 030 040.

Can other employees refuse to work if another worker is at risk of having been exposed to the coronavirus and the worker does not self-isolate and still goes to work?

Employers and employees should check their obligations under the Health and Safety at Work Act 2015. For specific information about your obligations in relation to coronavirus, see [WorkSafe's website](#), or contact them on 0800 030 040.

Can employers require employees to take sick leave or annual holidays if they have been exposed to the virus or been to China?

The fact that an employee has been exposed to the virus does not mean that they are sick. An employer cannot make an employee take sick leave if they are not sick.

The Holidays Act requires an employer and employee to try and agree on when annual holidays are to be taken. Failing agreement, an employer can direct an employee to take annual holidays, but must give at least 14 days' notice. However, this is likely not a suitable option for dealing with coronavirus, as the incubation period can be up to 14 days and the employee may expose the other employees, customers and suppliers to the virus during the notice period.

Can I send my employees to China for business?

Please refer to [travel guidance from the Ministry of Health](#).

The Ministry of Foreign Affairs and Trade (MFAT) has up-to-date travel advice in their [China Travel Advisory](#).

What happens if an employer suspects that an employee has coronavirus?

In general terms, if an employee is ready, willing and able to work, the employer must allow the employee to work.

An employer cannot force an employee to have a medical examination. However, if an employer has good reason to believe that an employee is unwell or sick for any reason, whether from exposure to the coronavirus or from travel to a country with an outbreak of the virus, and presents a risk to others, then an employer may suspend an employee, subject to the usual legal requirements.

An employer may request that an employee go to a doctor to get a clear proof of health, but the employer must pay for the doctor's fees.

Does an employer have to pay their employees if they have asked their employees to stay away from work because they have been to China or exposed to coronavirus?

Employers should check the employment agreement and workplace policies to see if they contain clauses that excuse payment where an employer requires the employee to stay away, for instance due to the risk of infection. Generally, if it is the employer that decides that the employee must stay away from work, the employee is entitled to be paid so long as they are ready, willing and able to work.

If the employment agreement contains a 'force majeure' type clause, this may discharge the employer and employee from its employment agreement obligation to pay an employee or provide them with work when an external event makes the employment agreement impossible to perform. This will depend on the severity and likelihood of the risk posed to the workplace.

If the employment agreement or workplace policy does not contain such a clause, the 'doctrine of frustration of contract' may help, but this is not easy to exercise. The 'doctrine of frustration' allows a contract to be discharged on the occurrence of certain events beyond the control of the employer and employee, which would make the performance of the contract impossible. In this case, strict legal tests must be met to be successful in applying the doctrine. It requires an event to occur that is unforeseen and it must significantly alter the relationship between the contracting parties.

What happens if an employee is compulsorily quarantined?

If an employee is compulsorily quarantined, then they are not ready, willing and able to work. The starting point, therefore, is that the employee is not entitled to be paid.

However, before an employer decides not to pay an employee, it will need to consider other options, such as working from home, working different hours or taking other measures to avoid personal contact. The employer and employee may also agree to the employee using other entitlements, such as sick leave or annual holidays.

Most employers will want to do the best by their employees and assist them where possible. Payment will not always be an available or acceptable option, particularly if the issue is widespread or may impact on a business's ability to operate.

Can an employer have a closedown period or close the business temporarily if there are cases of coronavirus in their business, employees cannot get to work, or the business is not allowed to open?

The Holidays Act 2003 allows for one [annual business closedown](#), if an employer regularly closes down for a holiday period or seasonal break and requires employees to take annual holidays (or take unpaid time off).

An employer may consider temporarily closing the business (i.e. not regular annual closedowns under the Holidays Act 2003) due to effects of coronavirus, but they will need to agree with their employees on how a business closure will be treated and what leave or holidays arrangements will apply.

The employer cannot make employees take annual holidays when closing the business, (except when it is an annual closedown under the Holidays Act 2003). However, they could require the employees to take annual holidays if they have been unable to reach agreement on when the employee can take annual holidays and they give them 14 days' notice.

The closure period needs to be made in good faith and the terms should be negotiated with employees. This should include how employees will use leave entitlements and the length of the closure.

Instead of having to close the business temporarily and requiring employees to take annual holidays, there are other options an employer could consider. For example, an employer may choose to continue to pay employees but not require them to attend work or allow employees to work from home if suitable.

If the business has to permanently close, other rules apply, such as liquidation or bankruptcy.

What happens if an employee is diagnosed with coronavirus?

If an employee is diagnosed with coronavirus, the employer should advise that the employee seek urgent treatment and follow [Ministry of Health coronavirus guidance](#). The employee should seek medical care immediately. The employee should also take care to avoid contact with anyone else.

The employer should advise anyone who the employee has had close contact with in the business, that they may have been infected with the virus and that they will need to follow Ministry of Health guidance. The employer should also advise the employee what they could do to [prevent spreading the virus](#). The Ministry of Health has [up-to-date information on coronavirus](#).

Can an employer tell employees that someone at work has coronavirus?

An employer can tell employees that someone is off work sick, but discretion is required in disclosing the nature of the absence or name of the person.

The employee who is sick may expect their information to be kept confidential; however, people who have had contact with a sick employee should know about it, so they can follow [guidance from the Ministry of Health](#) and take measures to [prevent spreading the virus](#).

The Office of the Privacy Commissioner advises taking a sensible common sense approach to how much information needs to be disclosed.

What information can an employer request from an employee to determine if they are a risk in the workplace?

An employer has the responsibility to provide and maintain a work environment that is so far as is reasonably practicable without risk to the health and safety of employees or others. If an employer suspects that someone has the virus, the employer can:

- Check the [advice from the Ministry of Health about symptoms and prevention of transmission of coronavirus](#)
- Ask the employee about their health and if they have been in contact with anyone who has been diagnosed with coronavirus, or travelled to a country that has had an outbreak of the virus. An employer can ask an employee questions about any contact with someone who had coronavirus as long as the questions comply with Privacy principles 1 to 4.

The Privacy Act allows employers to collect personal information about employees if necessary for a lawful purpose (principle 1) and in a manner that is not unfair to the employee in the circumstances or unreasonably intrusive on an employee's personal affairs (principle 4).

If the employer asks an employee if they have been overseas in the last 14 days, the employer is required to comply with principle 3 and let the employee know why the information is being collected, how the information will be used and the consequences if the employee doesn't provide the information.

- Ask the employee to go to the doctor (at the employer's expense) to get a clear bill of health – the employee can agree or disagree to do this.
- Ask the employer to take sick leave, if the employer thinks there is a possibility of infecting others.
- Tell employees to stay away from work until they have been cleared by a health professional.
- If it is reasonable in the circumstances, ask the employee to self-isolate and if during or after this period they show any symptom of coronavirus.

Can an employee refuse to travel for work to any country that has confirmed cases of coronavirus?

If an employer or employee is planning an overseas trip, they should check [Safetravel](#) for travel advisories as well as the [information provided by the Ministry of Health](#) on what to do if they are travelling overseas.

Some essential services employees will have different rules around their refusal to work.

Can an employer refuse to let an employee come to work if they have been on a holiday in a country that has had cases of coronavirus, has symptoms similar to coronavirus, or has been in close contact with someone who has the virus?

People returning from China, or anyone who has had exposure to confirmed cases of coronavirus, should check [up-to-date guidance from the Ministry of Health](#). Both employers and employees should comply with this guidance.

Employers should check their obligations under the Health and Safety at Work Act 2015. For specific information about your obligations in relation to coronavirus, see [WorkSafe's website](#), or contact WorkSafe on 0800 030 040.

Should a worker, including a contractor, tell their employer if they have symptoms of coronavirus, have been to China (or other country with a "Do not travel Advice" because of a communicable disease ban) or had contact with someone with the coronavirus?

People returning from China, or anyone who has had exposure to confirmed cases of coronavirus, should check [up-to-date guidance from the Ministry of Health](#).

Employees should check their obligations under the Health and Safety at Work Act 2015. For specific information about your obligations in relation to coronavirus, see [WorkSafe's website](#), or contact WorkSafe on 0800 030 040.

What happens if an employer has to close its business because of a coronavirus pandemic? Does the employer still need to pay employees?

If a pandemic happens or state of emergency is declared, the health, safety and security of people should be the main concern of all employers and staff. This comes before thinking about the interests of the business or organisation. Employers and employees should remember to keep in regular contact and deal with each other in good faith.

The employer should follow the advice of the Ministry of Health, Ministry of Civil Defence and Emergency Management.

Employers and employees cannot assume that time away from work in these circumstances would be either paid or unpaid without looking at the employment agreement, workplace policies and the specific circumstances. For example, are there road closures that stop employees to get to work? Are there curfews? Could the business still operate? The employer and employee should look at their employment agreement to see if this type of situation is covered. If it's not in the agreement, then it is up to both parties to talk about it in good faith and agree what the time away from work will be classed as.

An employer could ask employees to work from home (if suitable), take annual leave or sick leave, advanced sick leave or advanced annual leave, special leave, or leave without pay. An employer could also offer employees additional leave in the circumstances.

Can an employer ask an employee about any recent travel in case they have travelled to a country with coronavirus cases?

An employer can ask an employee questions about recent travel as long as the questions comply with [privacy principles 1 to 4](#).

The Privacy Act allows employers to collect personal information about employees if necessary for a lawful purpose (principle 1) and in a manner that is not unfair to the employee in the circumstances or unreasonably intrusive on the employee's personal affairs (principle 4).

If the employer asks an employee if they have had any recent travel, the employer is required to comply with principle 3 and let the employee know why the information is being collected, how the information will be used and the consequences if the employee doesn't provide the information.

Can an employer ask an employee about any symptoms of illness if they have a reason to suspect that they may have been exposed to coronavirus or travelled to a country with coronavirus cases?

An employer can ask an employee questions about symptoms of illness as long as the questions comply with [privacy principles 1 to 4](#).

The Privacy Act allows employers to collect personal information about employees if necessary for a lawful purpose (principle 1) and in a manner that is not unfair to the employee in the circumstances or unreasonably intrusive on the employee's personal affairs (principle 4).

If the employer asks an employee if they have any symptoms of illness, the employer is required to comply with principle 3 and let the employee know why the information is being collected, how the information will be used and the consequences if the employee doesn't provide the information.

Can an employer ask an employee about any contact they have had with someone who had coronavirus?

An employer can ask an employee questions about any contact with someone who had coronavirus as long as the questions comply with [privacy principles 1 to 4](#).

The Privacy Act allows employers to collect personal information about employees if necessary for a lawful purpose (principle 1) and in a manner that is not unfair to the employee in the circumstances or unreasonably intrusive on an employee's personal affairs (principle 4).

If the employer asks an employee if they have had any contact with someone who had coronavirus, the employer is required to comply with principle 3 and let the employee know why the information is being collected, how the information will be used and the consequences if the employee doesn't provide the information.

Further information

[Ministry of Health coronavirus up-to-date guidance](#)

[Ministry of Health workforce pandemic influenza guidance](#)

[Ministry of Health coronavirus questions and answers](#)

[Ministry of Health coronavirus self-isolation guidance](#)

[Ministry of Health coronavirus advice for travellers](#)

[Healthline](#)

[Safetravel](#)

[Employment during and after disasters](#)

[Business.govt.nz emergency planning](#)

[Worksafe workplace preparedness for novel coronavirus](#)

[Protect yourself against coronavirus poster](#)

[Protect yourself against coronavirus poster - simplified Chinese](#)

For any further questions about employment rights and responsibilities, contact [Employment New Zealand](#)