



COVID-19 NewsBrief – 29 April 2020

The country has now entered Alert Level 3, with the situation to be reviewed within the next two weeks. We can only hope that if the present trends in terms of management of the virus continue, we will see further relaxations, but the PM has cautioned that until there is a virus vaccine New Zealanders will have to remain cautious.

We have previously circulated our interpretation of the Alert Level 3 requirements (see NewsBrief of 22 April) but there is still some uncertainty as to how Level 3 will apply to your business and your people. As always, if you have any queries please do not hesitate to get in touch with us.

Human Resources

We have had some inquiries about staff and how they may be affected by the relaxation of the rules that now allow business to open on the proviso that they can trade safely and in a contactless manner.

Employment specialists themselves do not appear to have all the answers and each case needs to be judged on its own merits; no one-size-fits-all answers seemingly exist.

Most of the issues seem to revolve around employees of businesses that are re-opening who still feel that it is unsafe to return to work. Or, what obligations there are in respect of employees who are available and prepared to work but the business has chosen to remain closed and working remotely is not an option.

Our research into the situation where an employee feels that a return to work is unsafe and that position is justified supports the rather inconclusive argument that the employment agreement needs to be reviewed together with the Holidays Act 2003 for guidance on how to treat this scenario.

Our understanding is that if the wage subsidy has been paid by the government, that benefit needs to be passed on to the employee regardless and the employee's service must be maintained for the duration of the wage subsidy period.

If an employee is available to work but the decision is that the business should remain closed, it appears in that case that there is an ongoing obligation to meet the employee's wages, but the answer is far from clear cut.

If a business has any doubts around their obligations to employees, we urge that advice should be sought in the context of the particular circumstances; sadly, there is no one single correct

answer. HR issues are something of a minefield at the best of times and against the backdrop of COVID-19 safety measures, even more so.

What is even less helpful is that some businesses are seemingly being given advice by the Ministry of Social Development that is not entirely consistent with information from other departments around wage subsidies and we simply reiterate our view that if in doubt, get in touch with us to discuss the specific details. We will assist you to find the correct answers and to avoid falling foul of the laws.

Audit Processes

The government has started the review process to which they alluded at the time of the announcement around payment of the wage subsidy and it appears that the reviews have been prioritised where complaints have been laid. Anecdotal evidence points to abuses being centred on employers paying less than the subsidy to employees who have a wage entitlement equal to or greater than the subsidy and redundancies being made when the subsidy has been received.

Some businesses have evidently made the application in good faith only to discover that their revenues have, thus far, not been affected adversely by 30%. It is our understanding that the revenue drop can apply to any single month between March and May so they may yet experience the shrinkage in the coming month.

Again, if you have any doubts or want to discuss any aspects of the wage subsidy please get in touch with us.

Tax Matters

The IRD has advised that although it remains important to furnish the 2019 income tax returns as soon as possible, any late filing penalties will be waived if the return is filed late due to the impact of COVID-19. They have advised that they are likely to seek clarification around the circumstances of any delay in filing tax returns and their tolerances in this respect are confined only to the delays being directly attributable to the effects of COVID-19.

Any business that is going to seek relief from the IRD for interest or penalties and will be basing that relief on the effects of COVID-19 is well-advised to make contact with the IRD to discuss their specific circumstances sooner rather than later. The remission of penalties and interest is, we understand, not something that will happen automatically and will be subject to an application and approval process.

Commercial Rents

The obligation to pay rent while access to the leased premises remains something of a vexing issue and is complicated now by the relation to Level 3. Ongoing closures of business premises may be argued by landlords to be voluntary or at the option of the tenant, but the situation may not be that clear-cut. Businesses that do not have to open or are not essential have been requested to remain closed during Level 3 and we interpret this to mean that access remains restricted.

We believe that the situation, in light of May rent falling due, should still be governed by commercial pragmatism and for landlords and tenants to reach agreement, in good faith, that unless there has been a material change to circumstances, the same arrangements that applied for April should continue to apply for May.

Tenants may have to re-visit those arrangements if the safety measures are further relaxed during May. At the risk of repetition, these are uncertain times and we should all be flexible in trying to reach mutually acceptable and sensible arrangements with our business partners.

Government Guaranteed Business Finance Scheme

Anecdotally we have heard that there has been a very low uptake in this scheme mainly because the finer details are yet to be defined and banks are requesting that existing guarantees be applied to new loans as well as applying their normal credit criteria, but that very favourable interest rates are being offered.

We had hoped to have more to report in in this respect but unfortunately the small print on this scheme is yet to be released, so please continue to watch this space.

At Ecovis KGA we're privileged to have a team of experts with in-depth knowledge to assist with many of the challenges which businesses are facing right now. Please remember the firm is fully operational and we are here to help in any way we can - we are just a phone call or email away.

This publication is not designed to provide legal or other advice and you should not take, or refrain from taking, action based solely on its content without first discussing matters with us.