
COVID-19: Lockdown FAQ



Do I have to pay my employees during the lockdown?

This is an issue that is somewhat ambiguous, and many employers are having to grapple with this question.

Our view is that if an employee's role is not part of an essential service, and they cannot perform their role from home, they are not entitled to payment during the lockdown. This is because the employee is not 'ready, willing and able to work'.

However, if the employee can perform their role from home and is willing to do so, and it is simply a matter of the employer being able to provide them with sufficient work, then we consider that the employee is still entitled to their full pay during the lockdown unless the employment agreement includes a 'business interruption' clause (which would allow the employer to place the employee on unpaid leave when the business cannot operate). If an employer wishes to pay the employee less than this, it will require the employee's agreement.

Even if an employee is not necessarily entitled to payment during the lockdown, the employer should still explore alternative options which will enable the employee to receive some payment, including applying for the COVID-19 wage subsidy (if eligible) or allowing the employee the option of using their annual leave entitlements.

My business is receiving the wage subsidy. Am I obligated to top up employee pay to 80% during the lockdown.

The wage subsidy requires employers to use their best endeavours to top up the subsidy so that an employee receives 80% of their normal pay. In short this means that if the business can afford to top up employee pay to 80%, it should. If the employer genuinely cannot afford this the Government has made clear that a smaller top up, or paying just the wage subsidy will be acceptable.

Some of my employees can work from home but their work will run out in two weeks. What should I do?

The starting point is that these employees are entitled to full pay as they can continue to work during the lockdown. This remains the case, even after their work runs out, unless the employer and employee agree otherwise.

Possible options employers should consider if they have employees who may run out of work include:

- Seeking to negotiate a reduction in hours (and remuneration) which may keep the employee busy for longer;
- Negotiating a reduction in the employee's remuneration when the work runs out;
- Trying to reach agreement that the employee will use their leave entitlements or go on unpaid leave when the work runs out;
- If agreement cannot be reached around if or when an employee will use their leave entitlements, directing the employee to use their annual leave on 14 days' notice.

Can I apply for the wage subsidy for employees who are still able to work during the lockdown period?

Yes. Provided the business satisfies the eligibility criteria to apply for the wage subsidy, it can apply for all of its employees regardless of whether they can or cannot work during the lockdown. Where employees are working, the subsidy will form part of the employee's normal pay.

Disclaimer: The content of this article is general in nature and not intended as a substitute for specific professional advice on any matter and should not be relied upon for that purpose. While we make every effort to ensure the accuracy of the information contained in this article, this is a rapidly changing environment and the information will be subject to change.

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