

COVID-19

BUSINESS CONTINUITY PLANNING FOR COVID-19

Q and A

January 2022

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Business Continuity Planning

As workplaces gear up for a new year, and seek to draw a line under 2021, there is a sense of inevitability about the arrival of Omicron and what this will mean. Health officials are currently predicting that Omicron will overtake Delta as the predominant COVID-19 variant in New Zealand two to four weeks after an outbreak occurs.

We have seen the impact on workplaces in Australia and overseas countries where COVID-19 illnesses and the requirement to self isolate have resulted in severe staffing shortages paralysing businesses and industries.

Unfortunately it is a question of when, not if, Omicron will arrive. Therefore employers need to prepare now for what might occur.

I already have a vaccination policy in place, is that enough?

A vaccination policy is an important tool in managing the risk of infection and transmission of COVID-19. However, a vaccination policy, and your approach to COVID-19 more generally, must be fluid and regularly updated to account for changing circumstances.

Most vaccination policies will be based on a risk assessment undertaken at a particular time. As the COVID-19 landscape changes, the factors that informed that risk assessment may have changed and employers should review whether their risk assessment is still robust.

Do I need to consider mandating booster shots?

Current public health advice is that COVID-19 immunity from vaccination reduces over time, and that booster shots are necessary to maintain high vaccine efficacy. The Ministry of Health website also states that there is emerging evidence that a booster dose provides better protection against the Omicron variant than a two-dose course, stating:

“While two doses provide some degree of protection against severe disease from Omicron, a booster is likely to offer greater protection against transmitting COVID-19 to others and reduce the chance of more serious infections.”

Employers should consider consulting with staff now about requiring booster shots, as part of their COVID-19 vaccination policy.

What can I do to reduce the risk to employees and to business continuity, should an outbreak occur?

Most business will be well versed in preparing for COVID-19 flareups. We have had two years of lockdowns, working from home, and getting accustomed to the new norm of video meetings.

Many of these strategies will continue to be relevant, including:

- **Ensuring employees have the means to work from home safely and adequately, should they be required to isolate or stay home**
- **Providing employees paid time off to get vaccinated and/or time off to obtain a COVID-19 test, if necessary**
- **Ensuring social distancing can be maintained and spaces are cleaned regularly and as well ventilated as practicable**
- **Ensuring mask wearing as appropriate**
- **Consulting on alternative working arrangements, such as alternative rostering schedules so that should an outbreak occur, the potential exposure is limited.**

Importantly, you should have a plan in place for what you will do when an outbreak occurs. This should include:

- **How will I contact trace individuals who have been in and out of the workplace?**
- **How will I support an employee who gets COVID-19?**
- **What will I do if our workplace is exposed, and everyone is required to self-isolate?**

What to do if an employee becomes infected with COVID-19?

If an employee becomes infected with COVID-19, an employer needs to prioritise the employee's health whilst also containing any possible COVID-19 spread and protecting the health of others in the workplace. This will include:

- **Ensuring that the employee has accessed support**
- **Determining when the employee may have contracted COVID-19 and what the risk of exposure to your workforce is**
- **Identifying locations where spread may have occurred and whether any other people / clients / businesses need to be notified**
- **Contacting a health professional or the Ministry of Health to discuss who is required to self isolate.**

What are the rules around the requirement to self isolate?

The current Government requirements are that any person who tests positive for COVID-19 or falls within the definition of a “close contact”, must go into self-isolation or managed isolation/quarantine. The isolation period for positive cases who are fully vaccinated is at least 10 days, including 72 hours symptom free, and for partially vaccinated or unvaccinated people, it is at least 14 days, including 72 hours symptom free.

Household members are also required to remain in isolation for at least 10 days after the positive person has been released as a case. For close contacts the period is at least 7 days for fully vaccinated people and at least 10 days for partially or non-vaccinated people.

What entitlements do employees have if they cannot work?

Firstly, if an employee has COVID-19 and is unwell, they will be able to use any sick leave entitlement that they have. Given that the Holidays Act 2003 provides for only 10 days of sick leave per year and the ability to accrue a maximum of 20 days (if some is carried over from previous years), this may not be enough to cover the whole period. Any further absence due to sickness would then be unpaid unless the employee’s employment agreement provides otherwise or the employer agrees to continue payment.

If an employee is not able to attend work due to caring for someone else who is sick with COVID-19 – this too could be taken as sick leave.

It becomes more tricky where the employee is not actually unwell, but they are required to remain away from the workplace as a result of Government requirements. There is a general legal principle that an employer is required to pay an employee if they are “ready, willing and able” to work. In recent cases brought by employees who could not work from home during the lockdowns, the Employment Relations Authority found that the employers were obliged to continue paying employees in this context because they were available for work despite the fact that the employers could not provide it.

The same principle will likely apply where an employer requests that an employee stays away from work based on their own risk assessment, as opposed to a Government mandated requirement. In this instance the employer would need to continue payment unless otherwise agreed. Further, the employer could not direct the employee to take annual leave unless they had complied with the requirement to give 14 days’ notice.

The situation is different where the workplace remains open and the employer can provide work, but the employee is not able to attend due to self-isolation or quarantine requirements. Whilst this scenario has not yet been considered by the Courts, it is strongly arguable that the employer would not have to pay the employee as they are not “ready, willing and able” to work.

There are also Government support schemes available (see below). If the employer makes use of these schemes, it places obligations on them in relation to pay the employee. It is possible that an employer who opts not to access these schemes, and does not pay the employee, could be exposed to unjustified disadvantage claims by the employee.

What to do if an employee tries to come to work while they are COVID-19 positive or under an obligation to self-isolate?

Any individual who has COVID-19, or is required to self-isolate by reason of a Government mandate, must stay at home. Any employee who seeks to attend work in these circumstances should be instructed to leave the workplace and to go home.

What support is available?

The Government currently provides some relief for employees who cannot attend work due to testing positive for COVID-19 or being required to self-isolate.

Short-term absence payment

- <https://www.workandincome.govt.nz/covid-19/short-term-absence-payment/index.html>

This is widely available to employers outside the state sector where a worker is waiting for a test result for themselves or a dependent, or is a ‘secondary contact’ who is instructed to remain at home pending another person’s test result. It places an obligation on the employer to pay the employee for the absence.

Leave Support Scheme

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

The Leave Support Scheme allows employers to apply for payments of up to \$600 per week for employees working 20 hours or more or \$359 for employees working less than 20 hours, to help cover their wages. It applies where an employee has to self isolate for 4 or more consecutive days and cannot work from home. Again there are obligations requiring an employer to pay the employee which are similar to the wage subsidy scheme.

Want more advice?

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