

Canterbury Earthquake – Some Advice for Businesses

We expect that your business like ours will have experienced some disruption due to the earthquake so we have prepared this fact sheet in anticipation of some of your questions.

Employment

You need to provide a safe workplace for staff – which may be in temporary premises. If staff can't come to work because the workplace is unsafe, they are still entitled to be paid.

If you have a safe workplace, staff have their usual rights to annual leave and sick leave. You need to have a good reason to refuse an application for annual leave.

If you are struggling to afford to pay staff or your business has closed indefinitely, then you need to consult with staff about the implications for their employment. Redundancy may be necessary but alternatives such as reduced hours or temporary suspension of wages by agreement should be considered.

Contract law

Many contracts contain what is called a force majeure clause. That will determine what the consequences are for the parties if you are unable to perform services for clients due to the earthquake, or if others are unable to perform services for you. If a force majeure clause applies it is likely to excuse non-performance of contractual obligations, at least for a short while, once appropriate notice has been given to the other party.

At some point you will also need to consider which contracts you want to keep on foot and whether you have grounds to legally bring the other contracts to an end. Even if the termination clause does not apply, the contract may end due to legal "frustration" if performance is impossible now or radically different to what both parties anticipated. For example a contract to hire a painter to paint your building next week could be frustrated if the building has been destroyed in the earthquake. Contracts can also be terminated or varied by agreement between the parties.

Insurance: Material Damage

Most businesses will be insured against accidental damage to assets. When making a claim, it is important to notify your insurer as soon as possible. Late notification may lead to your claim being declined.

It is important to provide evidence of the damage to your insurer : take lots of photos, and, where possible, avoid disposing of damaged property until your insurer has advised you may do so. As there will be thousands of claims during this time, the process may be sped up if you provide a comprehensive description of damaged property - the make, model, serial numbers, etc.

It is important to check your policy carefully - there may be a limit on the total sum claimable. The insurance industry is aware that many businesses, especially smaller ones, may have under-insured as a means to reduce costs during the recession. If you are in a situation where your loss is significantly greater than the sum insured under your policy, you should speak with your financial advisers about how to manage this.

Insurance: Business Interruption

Business Interruption Insurance is sold as an add-on to Material Damage policies. It will compensate you for:

- Loss of profit associated with damage to the business property and sometimes (depending on policy wording) associated with being prevented access to the business (eg because of the cordon in the Christchurch CBD) Note that some policies will only cover loss of profit resulting from damage to insured property, so that if your premises have not been damaged in the earthquake but you have been unable to enter your office due to the cordon in the Christchurch CBD, you may not be covered.
- Costs involved in keeping your business running (eg, leasing temporary premises, paying staff to work extended hours during clean-up operations)
- Costs associated with preparing your claim (eg, engaging accounting experts)

Each policy will vary, so it is important to check the wording of your policy carefully and discuss this with your broker.

Attempt to agree with your insurer as to how the claim is to be formulated. You may wish to take legal advice if you are concerned about the approach being taken. Such advice is better taken early in the process, as insurance disputes can become protracted and expensive. You may also need to engage your own financial experts to assist with formulating the claim, who will work alongside your insurer's loss adjusters.

Business Interruption is a very complex area of Insurance, and claims take a long time to formulate and process. You may be able to receive temporary payments while the claim is processed.

Disclaimer

This fact sheet contains general advice which is intended to be used only as a guide. Please contact us for legal advice specific to your situation.