

EARTHQUAKE RECOVERY PLAN - EMPLOYMENT LAW CONSIDERATIONS

Duncan Cotterill's employment law specialist, Scott Wilson, looks at some of the key issues following the Christchurch earthquake.

Communication

Employers should be conscious that regular communication is even more important than usual. Some communication tools that employers are using to regularly stay in touch with staff are:

- Using and communicating that there is a single point of contact.
- Placing updates on a company website
- Setting up an 0800 free calling number which employees can call for daily updated news and employment information.
- Text message broadcasts to all employees.
- Using other office locations (where available) to communicate.
- Working with staff health and safety representatives as well as union representatives.
- Offering ongoing Employee Assistance Programme support.

EMPLOYER OBLIGATIONS

Payment of Wages

- Most employers (wherever possible) are continuing to pay staff their salary.
- Employers with business interruption insurance should have cover for payment of wages under this policy if they cannot operate due to damage. Many employers are relying on such insurance to

continue paying employees during the period.

- Employers who don't have business interruption insurance and cannot operate due to damage may meet the criteria for the earthquake support subsidy for employees. Refer to the qualifying criteria as set out in the attached subsidy summary provided by WINZ.
- Where it is clear that the business cannot be sustained, some employers have started making employees redundant. Those employees are then able to apply for Earthquake Job Loss Cover provided they meet the required qualifying conditions. Where employers are looking to make staff redundant, we would advise a consultation process (albeit relatively brief). Employers must ensure they meet with potentially affected employees and give them an opportunity to discuss and respond, raising questions/alternatives etc, before making a decision. Refer to attached 'Earthquake Job Loss Cover' provided by WINZ.
- Some employers are using sick leave if the employee is unwell or injured.

Working

Where there is no work available, there is no obligation on the employer to offer work. However, a general obligation exists for employers to pay employees who are 'ready, willing and able to work'. If employees are ready and willing to work but cannot work because their place of work is closed or damaged, then consider:



- Transferring them to other sites where possible or have employees work from home where possible;
- Negotiating use of annual leave until work can resume;
- Negotiate a reduction in wages;
- Offer unpaid leave (particularly in circumstances where redundancies are a real risk);
- Offer alternative work. However, if an employer is asking employees to do work they wouldn't normally be expected to do (such as clean-up work), both parties need to be comfortable with this approach and safety is paramount.

The first thing is to look at what is currently provided by the relevant employment agreement. For issues such as alternative duties and locations of work, it will depend on the circumstances and what is specifically agreed by the employer and employee in the terms and conditions of employment. A variation to duties and the employment agreement may be required to be negotiated and agreed.

If an employer has contacts with the union, it is worth considering whether they can provide any assistance/support and what type to help achieve an outcome. Unions may help employers to reach an agreement with employees to take general pay reductions for a certain time in order to preserve employment.

Health & Safety

It is an employer's responsibility to ensure the workplace is safe. An employee can refuse to perform work that they have reasonable grounds to consider that it may be dangerous. In such a situation, the employer should ensure that they have taken 'all practicable steps' to provide a safe workplace. If the workplace is safe and the employee can access the workplace, an employer can refuse to pay that person if they refuse to attend work. In some circumstances

this may even become a disciplinary matter due to unauthorised absence. But before reaching this step, try and discuss and agree a pragmatic approach to such issues.

Accommodation

While some employers are offering to help employees displaced by the earthquake with accommodation, there is no legal obligation to do so.

Displaced employees can receive financial assistance and temporary accommodation administered by the Ministry of Social Development and the Department of Building and Housing.

Refer to the qualifying criteria as set out in the subsidy summary provided by WINZ.

<http://www.workandincome.govt.nz/about-work-and-income/news/canterbury-earthquake/employees.html>



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