

# COVID-19: supporting and paying your employees at Phase 3 of Red Traffic Light settings.

New Zealand is currently in Phase 3 of the “Red Traffic Light” setting of the COVID-19 Protection Framework. Community COVID-19 cases are on the rapid rise, which means that most businesses are likely to be impacted one way or another; whether that’s because an employee has COVID-19 symptoms, contracts COVID-19, or is a Household Contact of a COVID-19 case. Below are some common scenarios which you might face with your employees, and our Humankind guidance on how to manage these. Please note this advice is not relevant for Critical Workers.

## This is a new phase for many people...

We encourage employers to keep in mind that Phase 3 means their employees will need to safely manage COVID-19 at home, which is a significant change for many of us who have been living and working in New Zealand for the last two years. This could be a stressful and uneasy time for some of your people – remember to check in with them to ensure they have the information they need from you to provide clarity about their pay, work/duties, and leave, during these periods of self-isolation.

## How do I pay my employee if...?

### SCENARIO 1

**My employee, or someone who depends on them has COVID-19, and my employee has to self-isolate for 10 days:**

1. My employee is well enough to, and able to work from home – pay their wages as per usual.
2. My employee is “not able to be at work and is unable to work from home”<sup>1</sup> – you may be eligible for the [COVID-19 Leave Support Scheme](#) (“LSS”). If you apply and are paid the LSS, you must comply with the obligations set out in the

<sup>1</sup> It is currently unclear (and untested) whether an employer with an employee who could usually work from home (e.g. a remote worker with a work from home set up), but cannot in the circumstances work from home because they are too sick with COVID-19, would be eligible for the LSS. If you are considering applying for the LSS for a remote type worker, we encourage you to seek advice before doing so.

LSS Declaration, including but not limited to using “your best endeavours to pay at least 80 per cent of each named employee’s ordinary wages or salary; and pay at least the full amount of the subsidy to the each named employee; but where the ordinary wages or salary of a named employee is lawfully below the amount of the subsidy as at the date you apply for this subsidy, pay the employee that amount.” If your employee is sick, and:

- a. they have sick leave entitlement, they can take sick leave. Our view is the LSS can be used towards paying an employee’s sick leave; or
  - b. they do not have any sick leave entitlement, then if both you and your employee agree, they can take sick leave in advance (and again, our view is that LSS can be applied to sick leave in advance.
3. Our business does not qualify for the LSS (or we have decided not to apply) – it is arguable you may not be required to pay your employee given they are not “willing, ready and able” to work. However, that view is untested. From a Humankind perspective, we suggest communicating with your employee about what may work for both of you. For example, do you pay them their usual pay through a form of special leave, do they agree to being paid a reduced amount, or is taking annual leave or leave without pay an option for them?

## SCENARIO 2

**My employee lives with someone who has tested positive for COVID-19 (“Household Contact”) and they have to self-isolate for 10 days:**

1. My employee is able to work from home and is well enough to do so – pay their wages as per usual.
2. My employee is unable to work from home – you may be eligible for the LSS:
  - a. If you apply for the LSS, then you must comply with the obligations set out in the Declaration.
  - b. If you don’t apply for the LSS, it is arguable you may not be required to pay your employee given they are not “willing, ready and able” to work. However, this view is untested. From a Humankind perspective, we suggest communicating with your employee about what may work for both of you. For example, do you pay them their usual pay through a form of special leave, do they agree to being paid a reduced amount, or is taking annual leave or leave without pay an option for them?

## SCENARIO 3

**My employee, or someone who depends on them for care, is awaiting COVID-19 test results and is staying at home until the results are received in accordance with the Ministry of Health’s guidance (e.g. they have symptoms, but not because they are undertaking routine workplace testing):**

1. My employee is able to work from home and is well enough to do so – pay their wages as usual.
2. My employee is unable to work from home – you may be eligible for the COVID-19 Short Term Absence Payment (“the Payment”):
  - a. If you apply for the Payment, then you must comply with the obligations set out in the Declaration, including but not limited to, “... to pay the employee their ordinary wages or salary while they are waiting for the relevant COVID-19 test result...”
  - b. If you don’t apply for the Payment, then it is arguable you may not be required to pay your employee given they are not “willing, ready and able” to work. However, that view is untested. From a Humankind perspective, we suggest communicating with your employee about what may work for both of you. For example, do you pay them their usual pay through a form of special leave, do they agree to being paid a reduced amount, or is taking annual leave or leave without pay an option for them?

## SCENARIO 4

**My employee was required to self-isolate as a Close Contact under Phase 2 and is only part way through that isolation. Can they come back to work?**

Yes they can return to work and you should return to paying them as per usual. This is because under Phase 3, Phase 2 Close Contacts are no longer required to self-isolate. They do not need to produce proof of a negative COVID-19 test to return to work.

## SCENARIO 5

**My employee was in self-isolation under Phase 2, and / or has recently been in contact with someone who has COVID-19. Even though they are not required to self-isolate under Phase 3, I don’t want my employee to come into work until I know that they do not have COVID-19. Can I do this, and if yes, do I have to pay the employee even if they cannot work from home?**

Yes, you are likely to be able to do this if there is a health and safety basis for doing so. However, before requiring an employee to stay away from work, you should enter into a discussion with them about the issues, and from a Humankind perspective, you should seek their agreement to stay away from the workplace before shutting them out.

And yes, if they cannot work from home, the employee should be paid their wages as per usual because it is you requiring them to stay away from the workplace (not the Ministry of Health). You are also unlikely to qualify for either the LSS or the Payment in this situation. That being said, the employee should monitor their symptoms for 10 days, and get a test if COVID-19 symptoms develop.

## SCENARIO 6

**My employee is not sick or symptomatic with COVID-19, nor are they a Household Contact, but they have chosen to get a COVID-19 test. Do I have to pay them?**

1. My employee is able to work from home – pay their wages as per usual, but you should also discuss with your employee why they have chosen to get a COVID-19 test, and consider whether or not their absence has implications for the operation of the business.
2. My employee is unable to work from home – you are unlikely to be eligible for either the LSS or the Payment. You need to assess the health and safety risks associated with this employee coming into the workplace (see Scenanrio 5), and:
  - a. If you require them to remain at home over this time, yes, they should be paid their wages as per usual; but
  - b. If you do not require the employee to remain at home over this time, then you should ask them to come back into work. If they choose to remain at home, despite being informed it is safe for them to return to work, you need to discuss the employee’s pay with them as two options exist: 1) unpaid leave, or 2) the employee using their annual holiday. Also consider whether any formal steps should be taken with the employee.

## SCENARIO 7

**My employee does not want to come to work because they are nervous about contracting COVID-19. Do I have to pay them?**

It is likely that you will not be required to pay your employee given they are not “willing, ready and able” to work. However, from a Humankind perspective, we suggest talking through the employee’s concerns, to try find a solution and a way to get them back into the workplace. For example, talking through other health and safety control measures which are already or can be put in place to protect people. It may be that these concerns are shared by other employees.

If you consider the employee’s concerns are unreasonable and / or have no legitimate basis, it may be worth considering whether any formal steps should be taken with the employee.

## SCENARIO 8

**My employee had COVID-19 or was a Household Contact and has completed the required self-isolation period. Can I request to see the proof of the negative COVID-19 test before I allow the employee back onto our worksite?**

Yes, provided you have a lawful purpose supporting the request. If the request causes a delay in the employee’s return to work, they should be paid their wages as per usual.

## SCENARIO 9

**My employee wants time off work to get the COVID-19 vaccine (dose or booster). Do I have to pay them?**

Yes, an employee is entitled to reasonable paid time off to get the vaccine, so long as that time off will not unreasonably disrupt your business, or the performance of their duties. If you think this may disrupt your business or the performance of their duties, we suggest working with the employee to find a suitable time when they can go to get the vaccine and you support them to do so.