

After the earthquake – Department of Labour Advice to employers and employees

The advice here is designed to help businesses and their employees make good, safe, sensible and practical decisions in this difficult time.

The Department of Labour contact centre (0800 20 90 20) is open from 8.30am to 5pm Monday to Friday to answer health and safety and employment relations enquiries.

For Immigration related enquiries please call the Immigration New Zealand Call Centre on 0508 55 88 55 which is currently open from 7am to 7pm Monday to Friday.

Over-arching advice - health and safety

- **Don't rush in.** Stand back and make a sensible, safe plan for re-opening your workplace. Here's a basic checklist of things you should consider before you open your workplace door:
- **If you don't have the expertise to check these things in-house, get an expert in to assist you**
 - Check for basic building structural stability
 - Check for basic sanitation, eg running contamination free water
 - Check that toilets are working
 - Check that emergency egress and support equipment hasn't been compromised
 - Check for live electrical cables, or gas leaks
 - Check the integrity of the water and sewage lines
 - Check for unstable stock, equipment or machinery inside the building
 - Check for chemical spills
 - Check security issues – refer to the NZ Police or your security firm if you have concerns.

- A full hazard identification should be made and plans to eliminate, isolate and minimise where practicable.
- Remember it is quite likely there are new and unusual hazards in your place of work that didn't previously exist.
- **Recognise that the RIGHT DECISION is the SAFE DECISION**
- **Make yourself aware of any requirements of the authorities (Police, Civil Defence, regional and local authorities etc) and act in accordance with those requirements**
- **As a business owner or manager, the Health and Safety in Employment Act requires you to provide a safe workplace for your employees, contractors you might engage and others who might be entering your premises, eg shoppers**
- **Employees also have a responsibility to ensure their own safety**

Over-arching advice - employment relations matters

- **The key is communication.** This is an unusual situation, and much of it is probably not covered by employment agreements. It is very important that employers and employees are talking to each other.
- **Be flexible.** This is a time for employers and employees to be understanding and to take a commonsense approach to getting business up and running again.
 - If employees are concerned about their safety in going back to work, they should raise their concerns with their employers
 - If employers are asking employees to do work they don't normally do (for example, clean-up work), both sides need to ensure they're comfortable with this, and safety must be top priority
 - People may want to focus on family rather than work
 - Working with staff health and safety representatives and union representatives will be of assistance in some work places
- **Work together to find practical solutions**
- **Recognise that this has been a significant event**

- People will react differently in the aftermath- some may need extra support
 - Many will want to focus on caring for their family/whānau
 - Others will be best supported by assisting to get things up and running
- **An individual employee has the right to refuse to do work they consider unsafe.** Discuss the work and the concerns before it gets to this point. If you have decided it is safe share your knowledge and reasoning with staff alongside the decision

Additional Information

Who decides if workers have to go to work if it is open?

Employers and employees should talk to each other about what is happening with the workplace. Discuss and reach an appropriate agreement.

If a staff member needs to stay home to look after their family – how does that work?

Both parties should take a practical approach to this situation. Employers should discuss the employee's needs in these circumstances, recognising the unique nature of the event, the disruption it has caused and the need for flexibility.

Whose responsibility is it to ensure the workplace is safe?

This is the responsibility of the employer under the Health and Safety in Employment Act. The employer may need to obtain expert information to ensure safety and /or reassure employees of workplace safety.

What if it is my work day, and work is closed. Do I get paid?

I can't get into work today for good reason. Do I get paid? Work was closed yesterday. Do I get paid for that day?

The earthquake caused a range of damage to businesses in the Canterbury region and it may take time for workplaces to be able to reopen. Employers and employees should be talking to each other about pragmatic solutions to help recovery. While generally wages are payable if the employee is able and willing to perform work and work is available, what this means in each individual circumstance is likely to differ.

An employer and employee should look to their employment agreement to see if there are options available during the

recovery. It may be that alternatives such as working from home are available. Employees and employers may also agree to temporary arrangements that are additional to or different from their current employment agreement if they think this will be of benefit.

The Holidays Act provisions may be applicable also. An employee can take sick leave if they, their partner, or their dependents are injured or sick and the employee has sick leave available. An employer can also require an employee to take annual leave if the both of you cannot reach agreement as to when the leave will be taken and the employer gives the employee at least 14 days' notice. This only applies to annual leave that the employee is entitled to on each anniversary of the date they commenced employment. If an employee refuses to take annual leave on less than 14 days' notice an employer cannot require them to.

It may be that the employer's business is unable to keep operating, closes permanently, and employment is terminated. In these circumstances, employers may need to consider making staff redundant. In that case, the procedures on consultation, good faith and other relevant matters in the Employment Relations Act apply along with other employment agreement obligations. It is important to get advice at this point including on any financial assistance that may be provided in the context of the earthquake damage.

In all situations, whether the business is likely to recover, or has to shut permanently, any changes to the employment agreement covering wage payments or redundancy need to be agreed to by both the employer and the employee before implementation.

There may be financial assistance that Work and Income

(<http://www.workandincome.govt.nz/about-work-and-income/news/canterbury-earthquake/index.html>) can offer in

hardship circumstances, including recently announced support for businesses and their employees. Work and Income can be contacted on 0800 779 997.

This advice is given as a guide. Employees and employers are advised to seek their own advice depending upon the circumstances they face.

If an employee has concerns they feel are not being resolved, what should they do?

Employees should talk to the Health and Safety representative in the business, or consult a union delegate.

If an employer has concerns that are not being resolved,

what should they do?

Employers who are members of local business associations should contact their association with their queries. Otherwise you may contact the Department of Labour on 0800 20 90 20 and you will be connected to appropriate services to assist.

What if no agreement can be reached?

The Department is available to assist in any issues that arise. The first approach would be to call the Department on 0800 20 90 20 and you will be connected to appropriate services to assist.

Does an employer have the right to require workers to go to work and help with clean up?

This is an area for discussion on practical solutions. Employers want their businesses up and running to provide service to customers, and to be able to pay their employees. If employees are concerned about doing this work, they should discuss it with the employer and if they are being asked to do work they don't normally do, there should be a discussion about the employee's capability to do the work, and about supervision, and, especially, what protective gear employees will be provided with. The primary concern at all times should be individual safety.

What safety gear should be used in clean up?

The primary concern at all times should be individual safety. This means that appropriate protective clothing and equipment should be used when required. At a minimum, this would generally include heavy shoes/boots, a helmet and safety glasses and a protective jacket and trousers if required

How should concern about gas or chemicals in the workplace be dealt with?

Evacuate immediately and ensure the relevant authorities are informed. The primary concern at all times should be individual safety.