

MINIMISING THE RISK AND IMPACT OF AN INFLUENZA PANDEMIC ON YOUR BUSINESS

A practical guide for employers

This material is designed to help employers prepare and respond to the health and business risks created by an influenza pandemic. The material has been drafted to provide a series of quite practical suggestions and options for prompt planning by individual businesses.

There is no one, single pandemic scenario. Business planning needs, therefore, to be pragmatic and provide enough options for a business to respond to a range of scenarios. Successful planning will involve talking with staff working in the business and with suppliers and customers. This material has been prepared to support workplaces doing that planning and has not been drafted as prescriptive, legal advice.

Businesses will need to keep themselves informed of developments and update their plans accordingly. In addition to the existing business networks and organisations you belong to, the Department of Labour, Ministry of Economic Development and Ministry of Health will be ongoing sources of information on the implications for workplaces, businesses, and public health.

As a starting point, there are some simple but important pieces of information to keep in mind:

- A pandemic will affect your business, your staff and your customers – just how much will depend on the severity of the pandemic and how well prepared you are. Health experts (e.g. the World Health Organisation) tell us it's a matter of when, not if, a pandemic occurs.
- You need to plan for it now – covering steps your business can take pre-, during and after a pandemic. There is no one, single response you can plan for – you and your staff need to be able to respond flexibly, depending on the situation. Updating your business continuity planning will also have wider benefits – it will be worthwhile in the event of other crises occurring.
- It's important to look to the recovery phase as a basis for your planning – actions you take during the pandemic will impact on your ability to return to business as usual.
- Employment relations and health and safety law provide a minimum requirement, but on their own they don't give all the answers to a pandemic situation – organisations will need to take a practical and human approach.
- Good communication between employers, employees, unions and other workplace participants is a critical step in planning.
- Work with your employees on a plan that will enable you to keep your business open as long as possible, or if you are an essential service, to remain open right through the pandemic. Keep yourself informed. Talk to your staff and supply chain so you can update your plan as things change.
- Recognise the human dimension to a pandemic. People will have important and

legitimate personal, family and community responsibilities (for example, childcare if schools are closed) - so your planning will need to treat them as a reality to work with, not as an inconvenience to avoid or work against.

- Expect people to be concerned about contracting influenza during a pandemic – it is only natural. Good health and safety practices will provide the best framework for helping you respond to the risk of infection, and will assure people that all practicable steps have been taken.

In a pandemic situation, the biggest risk (and, therefore, the thing to try and eliminate, isolate or minimise as much as possible) is close contact between people. Think about your workplace and what is practical for you. Examples include:

Eliminate the risk of possible infection through person-to-person contact:

- Enable more people to work from home without the need for face to face meetings
- Offer internet shopping and other self-service options (and be prepared for more customers to use it)
- Work varied shift patterns, or extended or flexible hours to limit the number of people in the workplace at any one time
- “Don’t be a martyr” – don’t come into the workplace if you are feeling unwell.

Isolate the risk of possible infection:

- Install screens
- Use ‘Night Service’ windows to remove direct staff/customer contact

Minimise the risk of possible infection:

- Provide and use Personal Protective Equipment (PPE) where appropriate and practical for your workplace e.g. P2 masks, gloves etc. and provide the associated training, waste disposal and decontamination facilities
- Provide training and improve facilities to maximise personal hygiene e.g. hand washing techniques, foot-operated lined waste bins
- Provide training and facilities to enable people to maintain social distancing i.e. so they are able to work far enough away from others to prevent cross infection.

The Ministries of Health and Economic Development have a range of pandemic health and business continuity material available on their websites at www.moh.govt.nz and www.med.govt.nz. In addition, the Department of Labour has answers to frequently asked questions outlined as an attachment to this document and individually searchable from the ‘pandemic’ link on the front page of its website www.dol.govt.nz. The Department will update this material from time to time, and you can register interest in any particular item and receive an e-mail update whenever the Department updates its guidance in that area.

The Department’s website will soon contain a range of practical scenarios outlining health and safety options for businesses to consider planning for and implementing during a pandemic, and practical guidance on workplace health, hygiene and safety management options, including the use of personal protective equipment, before and during a pandemic.

If there is a pandemic what must I do to ensure the workplace is safe?

If there is a pandemic what Personal Protective Equipment (PPE) should I provide my staff with?

If there is a pandemic what happens if my staff are concerned that the work situation is unsafe?

If there is a pandemic what happens if my staff need to stay at home to care for family?

If there is a pandemic what can I do if the workplace is still operating and my staff are not reporting for work?

If there is a pandemic can I require my staff to work in different ways?

If there is a pandemic can I make changes to employment agreements to address it?

If there is a pandemic can I require my employees to stay at home?

If there is a pandemic can my employees take annual leave if they want to?

If there is a pandemic can my employees take sick leave if they want to?

If there is a pandemic do I have to continue to pay wages if the workplace is closed?

If there is a pandemic can I require my employees to take annual leave if the workplace is closed?

If there is a pandemic can I require my employees to take sick leave?

Can I require my employees to take sick leave if the workplace is closed?

If there is a pandemic who can close my workplace?

If there is a pandemic are my employees entitled to redundancy payments if my workplace closes permanently?

COMMONLY ASKED Q&A FOR EMPLOYERS:

1

If there is a pandemic what must I do to ensure the workplace is safe?

Expect people to be concerned about contracting influenza during a pandemic – it is only natural. Good health and safety practices will provide the best framework for helping you respond to the risk of infection, and will assure people that all practicable steps have been taken. Involve your staff in identifying and managing the risk of potential infection in your workplace. Participation from your staff will help maintain their trust and confidence.

Good health and safety practices involve elimination, isolation and minimisation. In a pandemic situation, the biggest risk (and, therefore, the thing to try and eliminate, isolate or minimise as much as possible) is close contact between people. There is no one, single response you can plan for – you and your staff need to be able to respond flexibly depending on the situation. Think about your workplace and what is practical for you. Examples include:

Eliminate the risk of possible infection through person-to-person contact:

- Enable more people to work from home without the need for face to face meetings
- Offer internet shopping and other self-service options (and be prepared for more customers to use it)
- Work varied shift patterns, or extended or flexible hours to limit the number of people in the workplace at any one time
- “Don’t be a martyr” – don’t come into the workplace if you are feeling unwell.

Isolate the risk of possible infection:

- Install screens
- Use ‘Night Service’ windows to remove direct staff/customer contact

Minimise the risk of possible infection:

- Provide and use Personal Protective Equipment (PPE) where appropriate and practical for your workplace e.g. P2 masks, gloves etc. and provide the associated training, waste disposal and decontamination facilities
- Provide training and improve facilities to maximise personal hygiene e.g. hand washing techniques, foot-operated lined waste bins
- Provide training and facilities to enable people to maintain social distancing i.e. so they are able to work far enough away from others to prevent cross infection.

2

If there is a pandemic what Personal Protective Equipment (PPE) should I provide my staff with?

There is **no** one, single type of PPE that will reduce the risk of influenza infection in every business circumstance. However, there are a range of other options (involving eliminating or isolating the risk) that can be considered alongside PPE equipment that will minimise the risk of infection. When considering whether PPE has a role, you need to look at whether it is appropriate or practical for your staff to use or wear. You will need to involve them in this discussion.

If you have identified a role for PPE in your workplace it will be important to provide training and facilities to maximise personal hygiene and enable people to maintain social distancing - reducing the risk of cross infection. Such training will include hand washing techniques and correct fitting of face masks. Ensure that stocks of the relevant PPE are available in advance. For example, appropriate PPE may include P2 masks and gloves.

For more detailed background on workplace health, hygiene and safety management options, including the use of personal protective equipment, before and during a pandemic, go to www.dol.govt.nz and look at our more detailed Workplace PPE guidance material in the health and safety section.

3

If there is a pandemic what happens if my staff are concerned that the work situation is unsafe?

Expect people to be concerned about contracting influenza during a pandemic – it is only natural. Good health and safety practices will provide the best framework for helping you respond to the risk of infection, and will assure people that all practicable steps have been taken.

As an employer you have a role to stay informed about the pandemic. You need to involve your staff in identifying and managing the risk of potential infection in your workplace. Discuss with your staff how you might eliminate, isolate or minimise the risk of potential infection in your workplace. Participation from your staff will help maintain their trust and confidence.

It is reasonable for staff to be expected to attend work where practicable measures have been taken to protect them and where they are physically able to attend.

If staff are still concerned they need to raise it with you (or their Health and Safety representative) and tell you (or them) the reasons for their concern. If, after discussion, they are still concerned that the measures taken are insufficient to respond to an elevated risk of infection, they can refuse to do a job they believe is likely to cause them serious harm. However, they are obliged to work with you to resolve the matter, and can only continue to refuse to do the job if they have reasonable grounds for considering it dangerous.

If staff choose to stop work without talking to you about their concerns or ways to protect themselves, they are putting their relationship, and ultimately their employment, at risk. Obviously, you will want to avoid making judgements or taking action about absences before you talk to the staff member and gather all the information.

4

If there is a pandemic what happens if my staff need to stay at home to care for family?

People will have important and legitimate personal, family and community responsibilities (for example, childcare if schools are closed), so your planning will need to take this into account. Treat these responsibilities as a reality you need to work with rather than work against.

In order for your business to stand a good chance of surviving and recovering after a pandemic - it is in your (and your staff's) interest to be able to respond flexibly to the different scenarios a pandemic may create.

Involve your staff when considering alternative ways of working that will enable you to keep your business open as long as possible. Or, if you are an essential service - to remain open right through the pandemic. This may include working from home or working different hours.

In addition to allowing staff time to care for family, these options also have another benefit. They may reduce the risk of cross-infection by having less people in your workplace at any one time.

If it is not appropriate or possible for your staff to continue working while caring for partners or dependents, other options such as sick leave, annual leave or other paid or unpaid leave will be available in accordance with their employment agreements and related workplace policies. However, note that there will be an eventual limit to the amount of leave available for a staff member - even including existing or extended policies allowing future leave to be anticipated.

Once all legal and negotiated leave, or any anticipated leave entitlements run out - staff and their employers will need to consider alternative options. A staff member's responsibility to look after family during a pandemic will not disappear simply because he or she no longer has any leave available. Employers will need to consider and respond to such scenarios in good faith and should consider the impact of different options on their business recovery post-pandemic.

There may come a point, however, where all options open to a reasonable employer will be exhausted and the employment relationship becomes frustrated, suspended or eventually terminated if the staff member continues to be unable to perform their job. However, this must be seen as a last resort only.

5

If there is a pandemic what can I do if the workplace is still operating and my staff are not reporting for work?

Clearly it is in your (and your staff's) interest that your business continues to operate as safely as possible during a pandemic, and survives. It is important that you develop a plan, with your employees' involvement, that allows you to respond to different scenarios.

You will need to maintain contact with your employees during the pandemic so it is important to have an up-to-date employee home contact list.

If your employees have not reported to work find out why - they may be sick, their family may be sick, they could be concerned about getting sick, or there may be no public transport. The planning you do before the pandemic will help you respond to these issues (e.g. you may have considered alternative ways of working and have allowed for a number of your employees to be on some form of leave.)

It is reasonable to expect staff to attend work where practicable measures have been taken to protect them and where they are physically able to attend. All practicable steps means everything a reasonable person would do, given the severity of the risks, what's known about them, and the availability and cost of safeguards.

If staff are still concerned, they need to raise it with you (or their Health and Safety representative) and tell you (or them) the reasons for their concern. If, after discussion, they are still concerned that the measures taken are insufficient to respond to an elevated risk of infection, they can refuse to do a job they believe is likely to cause them serious harm. However, they are obliged to work with you to resolve the matter, and can only continue to refuse to do the job if they have reasonable grounds for considering it dangerous.

If staff choose to stop working without talking to you about their concerns or ways to protect themselves, they are putting their relationship, and ultimately their employment, at risk. Obviously you will want to avoid making judgements or taking action about absences before you talk to the staff member and gather all information.

6

If there is a pandemic can I require my staff to work in different ways?

Clearly it is in your (and your staff's) interest that your business survives a pandemic. In a pandemic, life won't be normal. Both you and your staff need to be able to respond flexibly to the different scenarios a pandemic may create.

Before the pandemic you need to work on a plan with your staff that will enable you to keep your business open as long as possible or, if you are an essential service, to remain open right through the pandemic. You need to identify how you might **eliminate, isolate** or **minimise** the risk of potential infection in your workplace.

If you arrive at solutions not covered by your current employment agreement, you and your staff must consider and respond to the proposal in good faith.

If your employment agreement with your staff provides for them to work in alternative ways (e.g. working from home) you can require them to do so. However, if you agree that a staff member can work from home you will need to identify whether his or her home is a safe workplace as it will then become a 'place of work'.

This expectation also applies if you have people in the workplace doing work they don't normally do, or are working in ways they don't normally work – you need to make sure they can do that work safely.

The health risks posed by an influenza pandemic will be severe. While you need to involve your staff in discussions on how to work safely, ultimately – you as an employer and person responsible for the workplace need to ensure that all practicable steps are being taken to maintain a safe and healthy workplace. Maintaining health and safety is an implied provision of all employment agreements, impacting on both employers and staff. The contents of an employment agreement cannot undermine a staff member's health and safety.

7

If there is a pandemic can I make changes to employment agreements to address it?

Clearly it is in your (and your employees') interest that the business survives a pandemic. It is important that you develop a plan, with your employees' involvement, that allows you to flexibly respond to different scenarios.

Any proposals for change must be made in good faith and an employee must consider and respond to the proposals accordingly. An employee cannot be forced into any unilateral changes to his or her employment agreement to address a pandemic situation.

Employees must also have the opportunity to seek independent advice on any proposed changes and any changes to agreements must include the minimum conditions detailed in s65 of the Employment Relations Act.

The health risks posed by an influenza pandemic will be severe. While you need to involve your staff in discussions on how to work safely, ultimately - you as an employer and person responsible for the workplace need to ensure that all practicable steps are being taken to maintain a safe and healthy workplace. As a last resort, and in the most serious circumstances, you can direct people to work in a different way if it is an essential step to maintain health and safety. Maintaining health and safety is an implied provision of all employment agreements, impacting on both employers and employees. The contents of an employment agreement cannot undermine an employee's health and safety.

8

If there is a pandemic can I require my employees to stay at home?

Clearly it is in your (and your employees') interest that the business survives a pandemic.

It is important to have developed a plan with your employees' involvement that allows you to be able to respond flexibly. Discuss with your employees how you might **eliminate**, **isolate** or **minimise** the risk of potential infection in your workplace. Participation from your employees will help maintain their trust and confidence.

If you are unable to make the workplace safe for your employees, then you can require them to stay at home. You can also require employees to stay at home if they are sick and they represent a safety risk to the workplace. In any situation where an employer directs staff to stay home, they will need to be clear on what basis they are doing so, particularly if the employer expects the time at home to be taken as any form of paid or unpaid leave. For example, you can require an employee to take accrued annual leave if you give your employee 14 days notice. If your employee refuses to take annual leave on less than 14 days notice you cannot force them to. In any other case, wages are normally payable if the employee is ready and willing to perform work, even if the workplace is closed. In a serious pandemic scenario, there will eventually be limits for all organisations on how long they can continue to afford to pay staff if the business is closed for an extended period.

Good business planning, involving your employees, can serve to help determine these scenarios in advance, and allow a discussion that identifies options for dealing with them. If, as a result, you think you want to add provisions to your existing agreements with staff to cover these scenarios, any proposals for change must be made in good faith and employees must consider and respond to the proposals accordingly. Employees cannot be forced into any unilateral changes to their employment agreements to address a pandemic situation.

Employees must also have the opportunity to seek independent advice on any proposed changes and any changes to agreements must include the minimum conditions detailed in s65 of the Employment Relations Act.

9

If there is a pandemic can my employees take annual leave if they want to?

Yes, with your agreement. People will have important and legitimate personal, family and community responsibilities (for example, childcare if schools are closed), so your planning will need to take this into account. Treat these responsibilities as a reality you need to work with rather than work against.

In addition to allowing staff time to care for family, these options also have another benefit. They may reduce the risk of cross-infection by having less people in your workplace at any one time.

10

If there is a pandemic can my employees take sick leave if they want to?

People will have important and legitimate personal, family and community responsibilities (for example, childcare if schools are closed), so your planning will need to take this into account. Treat these responsibilities as a reality you need to work with rather than work against.

Your employees can take sick leave if they, their partner, or their dependents are sick and they have accrued sick leave. However, they must inform you of their intention to take sick leave. If the employment agreement does not already allow for it, you may also wish to consider an arrangement to allow staff to take anticipated sick leave. In addition to allowing staff time to care for family, these options also have another benefit. They may reduce the risk of cross-infection by having less people in your workplace at any one time.

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If there is a pandemic do I have to continue to pay wages if the workplace is closed?

Wages are normally payable if the employee is ready and willing to perform work. However, a pandemic scenario is likely to create some uncertainties as to how long businesses, as employers, can financially sustain wage payments if they are closed for an extended period.

It is, therefore, important to have developed a plan with your employees' involvement that allows you to be able to respond flexibly. Together you may be able to think of ways that some work can be done differently and still carried on safely. It is in both yours and your employees' interest that your business survives and recovers after a pandemic.

If you are unable to make the workplace safe for your employees, then you can require them to stay at home. You can also require employees to stay at home if they are sick and they represent a safety risk to the workplace. In any situation where you as an employer direct staff to stay home, you will need to be clear on what basis they are doing so, particularly if you expect the time at home to be taken as any form of paid or unpaid leave. For example, you can require an employee to take accrued annual leave if you give your employee 14 days notice. If your employee refuses to take annual leave on less than 14 days notice you cannot force them to. In any other case, wages are normally payable if the employee is ready and willing to perform work, even if the workplace is closed.

In a serious pandemic scenario, there will eventually be limits, for all organisations, on how long they can continue to afford to pay staff if the business is closed for an extended period.

Good business planning, involving your employees, can serve to help determine these scenarios in advance and allow a discussion that identifies options for dealing with them. If, as a result, you think you want to add provisions to your existing agreements with staff, to cover these scenarios - any proposals for change must be made in good faith and your employees must consider and respond to the proposals accordingly. Employees cannot be forced into any unilateral changes to their employment agreements to address a pandemic situation.

Employees must also have the opportunity to seek independent advice on any proposed changes and any changes to agreements must include the minimum conditions detailed in s65 of the Employment Relations Act.

12

If there is a pandemic can I require my employees to take annual leave if the workplace is closed?

Under the Holidays Act you can require workers to take accrued annual leave on at least 14 days notice (S.19 Holidays Act). However, in a pandemic there are likely to be short timeframes for making decisions about how to keep your business running or whether it needs to close.

You need to plan for a pandemic now with your employees' involvement - so you and your employees can respond flexibly. For example, you and your employees may come to an agreement that in a pandemic your employees take annual leave on less than 14 days notice. Involving your employees in planning is not only essential but will help to maintain their trust and confidence.

If your employee refuses to take annual leave on less than 14 days notice you cannot force them to.

It is, therefore, important to have developed a plan with your employees' involvement that allows you to be able to respond flexibly. Together you may be able to think of ways that some work can be done differently and still carried on safely. It is in both yours and your employees' interest that your business survives and recovers after a pandemic.

If you are unable to make the workplace safe for your employees, then you can require them to stay at home. You can also require employees to stay at home if they are sick and they represent a safety risk to the workplace. In any situation where an employer directs staff to stay home, he or she will need to be clear on what basis staff are doing so - particularly if the employer expects the time at home to be taken as any form of paid or unpaid leave. In any other case, wages are normally payable if the employee is ready and willing to perform work - even if the workplace is closed. Note that in a serious pandemic scenario, there will eventually be limits for all organisations on how long they can continue to afford to pay staff if the business is closed for an extended period.

Good business planning, involving your employees, can serve to help determine these scenarios in advance, and allow a discussion that identifies options for dealing with them. If, as a result, you think you want to add provisions to your existing agreements with staff, to cover these scenarios - any proposals for change must be made in good faith and employees must consider and respond to the proposals accordingly. Employees cannot be forced into any unilateral changes to their employment agreements to address a pandemic situation.

Employees must also have the opportunity to seek independent advice on any proposed changes and any changes to agreements must include the minimum conditions detailed in s65 of the Employment Relations Act.

13

If there is a pandemic can I require my employees to take sick leave?

You cannot force your employees to take sick leave. However, as an employer you have a duty to maintain a safe and healthy workplace. If the presence of an employee means that there is an unacceptable risk to the workplace and no reasonable steps can be put in place to minimise that risk to the workplace - you can force that employee to stay at home, or you can send them home.

If an employee is a health and safety risk at work but chooses not to take sick leave, or their sick leave has run out, they must arrange alternative leave arrangements with you e.g. annual or unpaid leave. If the employment agreement does not already allow for it, you may also wish to consider an arrangement to allow staff to take anticipated sick leave.

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Can I require my employees to take sick leave if the workplace is closed?

You cannot force your employees to take sick leave. However, as an employer you have a duty to maintain a safe and healthy workplace.

If you have to close your workplace you can force your employees to stay at home. You can also send home any employee who is sick and in a pandemic situation - you need to send home anyone who is showing flu symptoms.

You need to plan for a pandemic now with your employees' involvement so you and your employees can respond flexibly. For example, you may choose alternative leave arrangements if your workplace needs to close.

The planning you do with your employees before a pandemic will help reduce any uncertainty and help maintain their trust and confidence.

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If there is a pandemic who can close my workplace?

An employer can close the workplace (i.e. require employees not to turn up for work) if he or she determines that there is no other way to manage the safety risks of the workplace.

Employers can also be forced to close workplaces under the exercise of authority via the Health Act or the Civil Defence Emergency Management Act.

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If there is a pandemic are my employees entitled to redundancy payments if my workplace closes permanently?

If a workplace closes permanently during or after a pandemic and employment is terminated, your employees are entitled to what-ever redundancy payments are available in accordance with the terms of the employment agreement. If no redundancy provision exists in the agreement, one can be negotiated at the time. The situation is the same as if the business had ceased operating for any other reason and the same financial rules apply in respect to meeting outstanding financial obligations such as tax, wages, and secured or unsecured creditors.