

WE KNOW

FINANCE

PAYING STAFF IN NATURAL DISASTERS

FAQ

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Paying your staff

Am I obliged to pay my employees if:

- *The building is closed and we can't get access?*
- *As owners we have some access but the building is yellow stickered so staff can't enter?*
- *The building has been demolished?*

This is a matter to be determined by the terms of the applicable employment agreement. Some employment agreements will contain provisions expressly dealing with situations following events such as earthquakes and may provide relief from the obligation to pay wages. The majority of employment agreements will not and it is here that the position is largely untested in recent times.

The current consensus is that, in general, employers have on-going obligations to pay wages where staff remain ready and willing to work. The present circumstances are clearly unusual in that some employers are unable to provide employees with work through circumstances that are beyond their control.

Where paying employees' wages is either impossible or would likely result in the complete failure of the business then you need to discuss these circumstances with your employees, ideally with a view to obtaining their agreement to taking leave without pay.

Can I require my employees to take annual leave entitlements?

In the absence of agreement, employees may be directed to take annual holidays to which they are entitled; however, an employer must provide at least 14 days' notice of this requirement.

Where a 14 day period would present difficulty, then try to work with your employees to come to a mutual agreement which is then put in writing.

If an employee refuses to take annual leave on less than 14 days' notice an employer cannot require them to. Employees who do not have an annual holiday entitlement cannot be required to take holidays in advance.

Where your employees do not have any leave entitlements, or if you are unable or unwilling to agree to staff taking leave in advance, you will have to decide whether or not you have the capacity to continue paying wages.

If they do not agree to take leave without pay, then you will need to commence consultation with the employees regarding possible redundancies. You should not proceed with this without obtaining detailed advice both in relation to the process to follow and in relation to selection of the staff to potentially be made redundant.

I have no work for my employees.

If you are unable to provide your employees with work but you can pay your employees' wages for a period of time without fundamentally jeopardising the future of your business, then you should try and do so, at least in the short-term. Seek assistance firstly, through your insurance company and/or any government assistance that may become available.

Employers and employees should endeavour to be pragmatic about the situation and work together to see if there are options available during the recovery e.g. consider whether working from home is viable.

Employees and employers may agree to temporary arrangements which should be finalised in writing, 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.

It may be that the employer's business is unable to keep operating and is threatened with permanent closure. In these circumstances, employers may need to consider making staff redundant. In that case it is important that employers comply with their good faith obligations – principally to consult with employees - together with any express obligations within the relevant employment agreement before decisions are made. 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.

For further information on Paying Staff in Natural Disasters please contact The Chamber advisers, email info@cecc.org.nz or phone 03 366 5096.