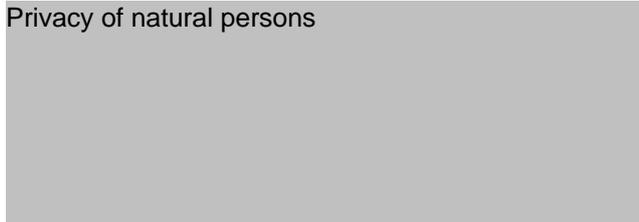




17 September 2021

DOIA 2122-0435

Privacy of natural persons



Thank you for writing to the Ministry of Business, Innovation and Employment (MBIE) to request information regarding COVID-19 infection in the workplace. MBIE has responded to each of your three questions below.

Are employers liable should workers contract covid in the workplace due to another?

During the COVID-19 emergency, businesses and services must meet requirements under the relevant COVID-19 public health orders and the Health and Safety at Work Act 2015 (HSWA).

In practice this means businesses and services must comply with the alert level requirements for their region that apply to the work they perform. They must address, so far as is reasonably practicable, any risk they've identified because of COVID-19. This includes the risk of transferring the virus at work and any other risks that arise from implementing control measures against COVID-19.

In some situations, it won't be possible for businesses and services to eliminate all the risks associated with COVID-19. Where the risks can't be eliminated, they must be minimised, so far as is reasonably practicable. This will usually involve reference to public health orders, but may require specific solutions for the workplace.

In all cases employers and other PCBUs, or "persons conducting a business or undertaking," must consult with workers about the management of risks. Workers must also follow public health orders and not do anything that will endanger themselves or others, follow instructions, and not come to work when they are showing symptoms.

WorkSafe has some enforcement responsibilities under the HSWA and the COVID-19 Public Health Response Act 2020 and its orders. You can read more about WorkSafe's enforcement approaches during the pandemic at: [Alert Levels 3 and 4 - what you need to know | WorkSafe](#).

If workers should contract covid and they use all their sick leave are they covered under acc if they contracted covid in the workplace?

The Accident Compensation Scheme provides compensation for personal injury in New Zealand. It is principally designed to cover injury, as opposed to illness. However, section 30 of the Accident Compensation Act 2001 provides an exception to this principle for a personal injury caused by a work-related gradual process, disease, or infection.

A person who claims to have contracted COVID-19 in their workplace must fulfil the requirements of the three-step test under section 30 to be eligible to receive ACC cover:

1. their work task or work environment must have a characteristic that caused or contributed to the cause of their COVID-19 infection
2. this characteristic must not be found to a greater extent in their non-work activities or environments; and
3. the risk of COVID-19 infection must be significantly greater for people who perform that work task or work in that environment than for people who do not.

Based on the three-step test, there are two groups of people who may be eligible to receive ACC cover for COVID-19 infection:

- People with increased exposure to confirmed or probable cases of COVID-19. This includes healthcare workers such as nurses and doctors, and auxiliary staff such as medical facility cleaners.
- People with increased exposure to people in general during Alert Levels 3 and 4, when social interaction is heavily restricted. This includes essential workers who work in settings that require interaction with people, such as police, supermarket workers, bus drivers, couriers, certain tradespeople and airline staff.

Cover decisions under section 30 are complex assessments of causation. The wider context at the time a person within one of these two groups contracts COVID-19 plays a key role in the assessment of their claim. For example, it is less likely that a person would meet the second or third steps of the test if community transmission of COVID-19 is widespread (particularly if community transmission involves the highly infectious Delta variant). This is because non-work factors make exposure to COVID-19 outside of their work task or work environment more likely.

If a person receives ACC cover for COVID-19 infection, they may be entitled to weekly compensation of up to 80% of their prior earnings for the period that they are unable to work, alongside other treatment and rehabilitation support. A person with ACC cover is not required to use all of their sick leave before they can receive support from ACC.

If a person is not eligible to receive ACC cover for COVID-19 infection, there are several COVID-19 support schemes in place to ensure that they receive financial support while they are unable to work. These support schemes are outlined in the response to your third question below.

Is there a relief fund for Employers and Employees should a group in the workplace contract covid?

There is no specific relief fund for employers and workers if a group contracts COVID-19 in the workplace, as opposed to if a group contracts COVID-19 outside of the workplace. There are, however, several COVID-19 support schemes in place to provide financial support to businesses and workers.

The **Wage Subsidy Scheme** is designed to support eligible businesses affected by Alert Levels 3 or 4 to pay their workers and protect jobs.

The **Resurgence Support Payment** can be accessed by eligible businesses or organisations facing a reduction in revenue due to an alert level increase to Alert Level 2 or higher. It must be used to help cover business expenses such as wages and fixed costs.

The **COVID-19 Short-Term Absence Payment** is a one-off payment per worker, which is available to support eligible employers to pay workers who have to isolate at home while they wait for a COVID-19 test result, and are unable to work from home. Similarly, the **COVID-19 Leave Support Scheme** is a lump sum payment available to support eligible employers to pay workers who have been asked by a health official to self-isolate, and are unable to work from home. These two support schemes are available at all alert levels.

You can read more about the financial support available to businesses and workers affected by the pandemic at: <https://www.business.govt.nz/covid-19/financial-support-for-businesses/>.

You have the right to seek an investigation and review by the Ombudsman of this response. Information about how to make a complaint is available at: www.ombudsman.parliament.nz or Freephone: 0800 802 602.

Ngā mihi,



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