

COVID-19 Information for businesses and homeowners

Introduction

The economy and life for many New Zealanders has been disrupted by the COVID-19 virus and the Government response to the crisis. The Government has provided some assistance schemes to assist businesses and homeowners to manage the disruption. Summarised below are some of the Government Schemes available, which may assist you during this disruption.

Most businesses lease commercial premises, which are subject to the terms of a lease. We also provide some advice below on the rights and obligations of landlords and tenants under the standard form Deed of Lease currently used for commercial premises. If you have any questions relating to any of these Government Schemes or your rights under a Commercial Lease, please contact us.

Government Wage Subsidy Scheme

The wage subsidy is designed to support employers so that they can continue to pay employees and to support workers to ensure they can continue to receive income, even if they are unable to work. This covers workers who are self-employed, contractors and sole traders. The subsidy rates are \$585.50 for full time employees and \$350 a week for part time employees.

Employers are eligible for the wage subsidy where they have a 30% decline in actual revenue or predicted revenue that is attributable to COVID-19. Before an employer is eligible for the subsidy, the employer must take measures to mitigate the impact of COVID-19.

Employers must try their best to pay employees 80% of their wages but if this is not possible, the least that can be paid is the subsidy rate. If an employee earns less than the subsidy in normal circumstances, their usual wages must be paid. Any difference should be used for the wages of other affected staff.

The subsidy will be paid as a lump sum and covers 12 weeks per employee. Employers can pass on the subsidy and additional wages through usual pay cycles.

Essential businesses that are required to remain open during Alert Level 4 are also eligible for the subsidy if they have had a revenue drop of 30%.

If the subsidy was applied for prior to 3PM Friday 27 March 2020, the application will be assessed against the original criteria of the wage subsidy scheme. The original scheme was capped at \$150,000.00 per business. Applications for the subsidy can be made via the Work and Income website.

Business Finance Guarantee Scheme

The Business Finance Guarantee Scheme is for businesses with annual revenue between \$250,000 and \$80 million. Under the Scheme, businesses can apply to their banks for loans up to \$500,000 for up to three years.

Businesses that were on a bank's credit watch list at the outset of the COVID-19 crisis will not be eligible for a loan

To apply, you must talk to your bank and follow the normal credit assessment process. This process will be modified to allow the bank to look through the economic cycle to take into account the uncertainty of the current economic conditions caused by COVID-19.

The loan is for businesses that have urgent liquidity and bridging finance requirements caused by business disruptions as a result of COVID-19. Loans are supported for a maximum of three years. If a business is unable to repay the loan the usual default process will apply.

The loan is intended to provide for business' current and upcoming operating cash flow needs, including rent and staff expenses.

Loans will be available under the scheme until 30 September 2020.

Mortgage Holiday Scheme

From 24 March 2020 the government, retail banks and the Reserve Bank are offering financial support packages for homeowners and businesses affected by COVID-19.

The package includes a six-month principal and interest payment holiday for mortgage holders and SME customers whose incomes have been affected by the COVID-19 crisis.

The specific details of the initiative are being finalized and will be made public in the coming days.

Commercial Leases

With New Zealand in lockdown, the No Access in Emergency clauses 27.5 and 27.6, are relevant to both landlord and tenants. The clauses are included in all ADLS Sixth edition 2012, Deeds of Lease.

Clause 27.5 is triggered when there is an emergency and the tenant is unable to gain access to the premises to fully conduct its business. An emergency is defined as the result of any event, whether natural or otherwise, including plague or epidemic, that causes or may cause loss of life, illness or in any way seriously endangers the safety of the public, and there are restrictions on occupation of premises such as the current COVID-19 crisis.

Clause 27.5 provides for a 'fair proportion' of the rent and outgoings to cease until the tenant can operate from the premises. It does not specify how the proportion is to be calculated. It has been suggested that the proportion should be calculated with reference to the extent that the tenant is unable to conduct its business from the premises. It is unlikely any tenant could claim a rent abatement of 100%. The fair proportion will be whatever the tenant and landlord are able to agree to. If an agreement is unable to be reached, the matter should be referred to a mediator or arbitrator under clause 43 of the lease.

Clause 27.6 gives either party the right to terminate the lease on notice in the event the tenant is unable to gain access to the premises for the No Access Period. This No Access Period is recorded in the First Schedule of the Lease.