


COVID-19 Alert Level 3 Health and Safety Guide



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Alert Level 3: Moving from “essential business” to “safe business”

The Government has announced that the nation will move to COVID-19 Alert Level 3 at 11.59pm on 27 April 2020. The move will present numerous challenges for those businesses that are able to operate under the new alert level.

We have prepared this guide to highlight key information for officers, Persons Conducting a Business or Undertaking (PCBUs) and individuals as they navigate keeping people safe during Alert Level 3 and ensuring compliance with the Health and Safety at Work Act.

Should you have any questions about your health and safety obligations and your response to Alert Level 3, our experienced team would be delighted to assist.



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New Zealand's health and safety landscape under Alert Level 3

If you are a director or an officer



As a director leading your organisation through COVID-19, managing its health and safety risk is just as important as managing financial and reputational risk

- "Officers" include individuals who hold positions that allow them to exercise significant influence over the management of the business or undertaking.
- Under legislation, directors and officers are required to exercise due diligence to ensure compliance. Officers' due diligence duties continue to apply in the current COVID-19 environment.
- Practical steps that directors and officers should take under Alert Level 3 include:
 - Understand and keep up to date with guidance from the Government and relevant industry bodies on work arrangements in Alert Level 3.
 - Ensure that the organisation allocates adequate resources to comply with Government and industry guidance.
 - Understand the risks associated with the organisation's operations in light of COVID-19 and the controls in place to manage those risks.
 - Receive and review updates on how the PCBU is managing the risks associated with COVID-19.
- Directors and officers will be personally liable for penalties if they fail to exercise due diligence under the Act.

If you are a Person Conducting a Business or Undertaking (PCBU)



(includes employers, principals, self-employed, partnerships, etc)

- The primary obligation on PCBUs to take "reasonably practicable" steps to ensure the health and safety of workers remains.
- Organisations putting in place measures to eliminate or minimise the risks associated with COVID-19 must ensure that they sit alongside, rather than contradict, controls directed at managing other risks in the business.
- PCBUs must follow the Government's guidance on the measures required to keep workers safe under Alert Level 3. To assist your understanding of how the Government's guidance applies to the PCBU's workplace, engage closely with guidance from relevant industry bodies.
- Regularly assess the PCBU's controls and be prepared to modify them if necessary.
- Review and follow the practical steps for PCBUs at Alert Level 3 detailed on page 3 of this guide.

If you are a worker or involved in the workplace in another role



- The Act imposes on workers and others, a legislative obligation to take reasonable care for their own health and safety and not to affect the health and safety of others.
- WorkSafe has made clear that it expects workers to follow and co-operate with any reasonable health and safety instructions, policies and procedures they are given while at work.
- The Government has recommended that during Alert Level 3 higher risk workers (or vulnerable people) stay at home where possible. These workers should speak with their employers about whether they can work from home or whether there are additional measures that can be put in place to keep them safe while at work and travelling to and from the workplace.
- It is generally open to a higher risk worker to decide to stay home. If so (and the worker cannot work from home), they will need to agree their leave and/or pay arrangements with their employer.



Directors and officers

Due diligence

PCBUs

Workers

Others in the workplace

Practical steps for PCBUs at Alert Level 3

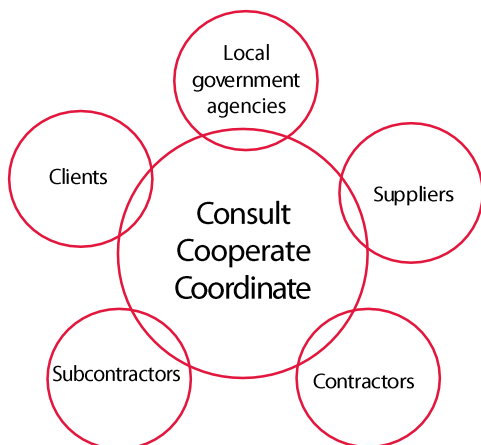
1. Undertake risk assessments to identify and manage any risks brought about by COVID-19 and prepare a written safety plan. Consider including risks related to restarting your business activity, mental health, any PPE supply shortage as well as the transmission of COVID-19. WorkSafe has developed a template that PCBUs may wish to use.
2. Communicate with workers the steps that the PCBU is taking to help ensure their health and safety at work and to protect the business during this time. Engage with them and their representatives about this. Consider their suggestions or concerns.
3. Consider a staged restart that gives time to assess the new way of working. The Government has made it clear that if workers can work from home, they must continue to do so during Alert Level 3 – so a staged restart may involve having only some operations resume onsite.
4. Have clear processes in place for ensuring that the identity of all workers onsite is recorded. This will facilitate contact tracing.
5. Consider understanding from workers whether there is a vulnerable or higher risk person in their bubble.
6. Consider the risks and controls associated with all elements of a worker's day from arrival, while people are at work, leaving and what to do in an emergency – or a suspected or confirmed case of COVID-19.
7. Staggered meal and rest breaks may be necessary, as well as limiting the number of workers who use bathrooms or shared access ways (such as lifts) at any one time.
8. Follow the Government's guidance on specific measures applying to onsite workers, including:
 - considering the size of your teams onsite;
 - keeping 1m between workers;
 - recording who is working together;
 - limiting interaction between groups of workers;
 - disinfecting surfaces;
 - ensuring there are appropriate washing facilities; and
 - maintaining high hygiene standards (hand washing with soap and water, sneeze and cough etiquette).
9. Continuously review the effectiveness of your safety plan.
10. Start a dialogue with 'at risk' workers around staying at home and/or putting in place additional measures to keep them safe while at work and travelling to and from their workplace.
11. Engage regularly with workers who are working from home to ensure they feel, and are, supported.
12. If there are issues with the supply of PPE ordinarily used by workers, consider whether there are alternative types of PPE or alternative control measures. If neither are appropriate, the PCBU may need to stop the activity until the risks can be properly controlled. WorkSafe is on record saying that it will not tolerate PCBUs using COVID-19 as an excuse to endanger workers or other people.

**Unite
against
COVID-19**

What if PCBUs work together?

When will PCBU duties overlap?

Health and safety duties can overlap when PCBUs share a health and safety duty in relation to the same matter. For example, where PCBUs share a workplace or work together. As New Zealand moves to Alert Level 3, PCBUs with overlapping duties must apply the Three Cs – consult, co-operate and co-ordinate.



Triple C duty

If there are overlapping duties, each PCBU has a duty to consult, co-operate and co-ordinate activities, as far as reasonably practicable, with each PCBU they share overlapping duties with.

The rationale for the 'triple C duty' is to avoid unnecessary duplication of effort, prevent PCBUs from shirking responsibility, help businesses reach a common understanding around the roles and responsibilities of each PCBU and facilitate the sharing of responsibility for health and safety.

A breach of this duty carries a fine of up to \$20,000 for individuals and \$100,000 for organisations that are PCBUs.

Could your organisation explain the steps it has taken to meet the triple C duty?

Has your organisation had the following discussions with PCBUs with overlapping duties, such as those in your contractor supply chain or those who have a common interest in your wider workplace (for example, your landlords and any other tenants at the property):

- How will the management of COVID-19 related risks be allocated between the PCBUs?
- How will the costs of managing those risks be allocated?
- How does each PCBU's work activities impact the health and safety risks of other PCBUs or workers or others in the workplace?
- What information does each PCBU need to provide to the other PCBUs for health and safety purposes?

Ongoing communication is required, and is essential, at all alert levels

1. Discuss what work activities are being carried out.
2. Consider the COVID-19 related risks arising from those work activities.
3. Agree on the degree of influence and control each PCBU has over those work activities.
4. Agree on who will manage each risk and how those risks will be managed.
5. Monitor and check on the management of risks on an ongoing basis.

Notifying WorkSafe

There is no need to report COVID-19 cases to WorkSafe even if there is a possibility it was contracted through work. The Ministry of Health is the lead agency responding to COVID-19 and will notify WorkSafe of cases as necessary.

WorkSafe does not anticipate taking direct action on any COVID-19-related notifications it receives.

Other notifiable events under health and safety legislation must still be notified to WorkSafe.

Need more help?

If you would like to discuss your health and safety plan for Alert Level 3, please contact the MinterEllisonRuddWatts Health and Safety team:

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