

COVID-19 Alert Level 2 Health and Safety Guide

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MinterEllisonRuddWatts

Alert Level 2: Moving to the “New Normal”

The Government has announced that the nation will move to COVID-19 Alert Level 2 at 11.59pm on 13 May 2020. Businesses will be allowed to operate, but only if they do so safely.

We have prepared this guide to highlight key information and practical steps for officers, Persons Conducting a Business or Undertaking (PCBUs) and individuals as they navigate keeping themselves and people safe during Alert Level 2 and ensuring compliance with the Health and Safety at Work Act. Even though the legal framework from a health and safety perspective is the same as Alert Level 3, some of the practical steps to consider at Alert Level 2 are different. WorkSafe has stated that it will be actively checking that PCBUs are complying with their obligations.

Should you have any questions about your health and safety obligations and your response to Alert Level 2, our experienced team are able to assist.



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New Zealand's health and safety landscape under Alert Level 2

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 continue to take under Alert Level 2 include:
 - Review and understand business obligations under Government guidelines and the new legislation that is to be introduced to Parliament.
 - Understand and keep up to date with guidance from the Government and relevant industry bodies on work arrangements in Alert Level 2.
 - 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. Take account of the insights from your workforce.
 - Verify the plans and processes that your business has in place by ensuring an appropriate cascade of information. Set up a system to:
 - give key messages to your workforce which they can translate into "appropriate" work systems; and
 - receive information on how the organisation is managing the risks associated with COVID-19.
- Leadership is critical in the current environment. Consider innovative ways to continue engaging with workers such as through regular online meetings.
- 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 at Alert Level 2.
- 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 2. 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 2 detailed on page 3 of this guide.
- PCBUs should consider how to manage possible changes in workers' mental health during the transition to Alert Level 2 and returning to the workplace.

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 that are given while at work.
- As in Alert Level 3, it is generally open to a higher risk worker to decide to stay home at Alert Level 2. 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 2

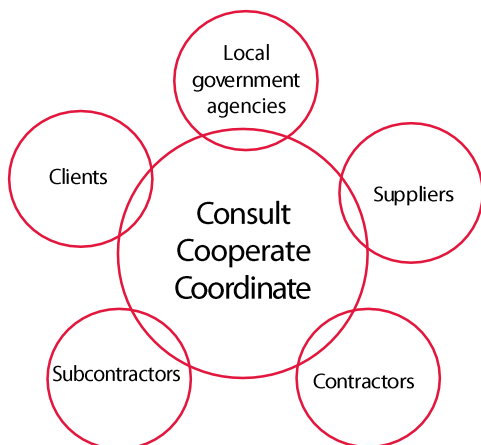
- Operate only if you can do so safely. The Government continues to encourage alternative ways of working. Remind workers that this is not business as usual yet.
- Undertake risk assessments to identify and manage any risks brought about by COVID-19 and prepare a written safety plan. If your workers have returned to work in Alert Level 3, revise and update your safety plan. WorkSafe has published a new template for Alert Level 2 that PCBUs may wish to use. Consider including risks and controls related to:
 - the transmission of COVID-19;
 - restarting or extending your business activity including in relation to those workers involved in physical activities who may have lost muscle memory;
 - workers' mental health;
 - shortage of PPE for your usual operations and health-related PPE (such as masks);
 - starting up machinery and tools that have not been used – consider pre-start checks;
 - training workers on new processes arising out of the need for protection from COVID-19 transmission.
- As with Alert Level 3, 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.
- Some workers will be uncertain about the return to work. Consider a staged restart that gives time to assess the new way of working and ensures workers do not overextend themselves.
- Follow the Government's 'golden rules' for business at Alert Level 2 and other guidance on specific measures applying to onsite workers, including:
 - keeping 1 metre between groups of customers and between workers and customers, or 2 metres if it is not possible to contact trace;
 - permitting closer physical proximity between workers and customers only where that is necessary (for example to serve food);
 - maintaining a 2-hour time limit for customers to be on your premises;
 - keeping workers 1 metre apart from each other;
 - recording who is working together;
 - considering the size of your teams onsite;
 - limiting interaction between groups of workers;
 - disinfecting surfaces and regular 'deep cleaning';
 - using disposable equipment and tools if possible;
 - ensuring there are appropriate washing facilities; and
 - maintaining high hygiene standards (hand washing with soap and water, sneeze and cough etiquette).
- Other safety measures that may be introduced include split-shifts, staggered meal and rest breaks, management of the number of workers using bathrooms or shared access ways such as lifts and foyers at one time, and management of shared equipment (usual tools and communal items such as kitchen equipment and stationery).
- As more operations commence, remind workers of their usual health and safety obligations and the workplace's normal health and safety practices, to help minimise any risk of slippage. Consider providing information sheets and putting up posters.
- 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.
- Ensure workers who feel unwell remain at home. Encourage workers to get a test for COVID-19 if they have any symptoms.
- Consider asking workers to share information about sick or higher risk individuals in their households.
- Have clear processes in place for ensuring that the identity of all workers, visitors and customers onsite is recorded. This will facilitate contact tracing. Engage with workers on why this information is sought.
- Schedule regular dates to review the effectiveness of your safety plan. Return to work is likely to be a fluid process.
- WorkSafe is increasing its in-person engagement with PCBUs. Remember that WorkSafe is on record saying that it will not tolerate PCBUs using COVID-19 as an excuse to endanger workers or other people.

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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. As New Zealand moves to Alert Level 2, PCBUs with overlapping duties must apply the Three Cs – consult, co-operate and co-ordinate. This will be particularly important for businesses that share premises.



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?

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

Has your organisation had the following discussions with PCBUs with overlapping duties, such as those in your contractor supply chain:

- 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?

1. Discuss what work activities are being carried out and when.
2. Consider the COVID-19 related risks arising from those work activities and from multiple workplaces returning to work around the same time.
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. Explain this to your workers.
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 2, please contact the MinterEllisonRuddWatts Health and Safety team.

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