



Pandemic Planning Guidelines for the Public Service

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Important: These guidelines will be updated as more information becomes available, or to reflect government policy or law changes. To ensure you have the most recent guidance, please refer to the State Services Commission's website at www.ssc.govt.nz/pandemic-planning-guidelines.

While this guidance is specifically intended for departments in the core Public Service, agencies in the wider State sector may wish to have regard to it when planning for pandemic issues.

New Zealand Government

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Introduction

Departments in the Public Service have been asked to ensure that their business continuity planning includes the approach they will take in the event of a pandemic. This has led to a number of departments requesting State Services Commission (SSC) guidance on a number of pandemic-related issues. While this guidance is specifically intended for departments in the core Public Service, agencies in the wider State sector may wish to have regard to it when planning for pandemic issues.

This guidance is intended to address these queries, by providing information on:

- overall principles
- leave
- alternative duties during a pandemic
- workplace closure

Guidance

This guidance is a work in progress. It will be updated as more information becomes available or to reflect government policy or law changes. This document sets out SSC's suggested best practice guidance to the Public Service on pandemic planning issues. The guidance applies to the New Zealand employment situation – different issues may apply in the case of off-shore employees. Individual agencies will need to determine for themselves how best to address the issues in their workplace, in light of their own employment arrangements.

Also attached are:

- additional background notes for each issue
- a summary of the main legislative issues.

Individual agencies will need to determine for themselves what specific issues a pandemic could present for them and how they might address these – there is no “one size fits all” approach to all of these issues. As part of their business continuity planning, agencies will need to consider:

- **what** business functions they will maintain through a pandemic emergency, and then decide
- **how** best to deliver those functions in a manner that takes account of staff workplace health and safety.

Ultimately, it will be the Chief Executive's decision (based on advice, as appropriate, from the Ministry of Health) as to if and when to close the workplace and send staff home.

Overall principles

The overall goal should be to implement a business continuity plan that keeps each workplace open as close to normal as possible at each stage of the pandemic, utilising staff and customer protection measures as recommended by the Ministry of Health and Department of Labour throughout the pandemic. In particular:

- Service delivery should continue to the fullest possible extent during any emergency, including a pandemic, to meet legislative requirements and likely public expectations.
- Chief Executives should lead with a strong message that the Public Service has always had a duty in times of national emergency to maintain government services, and that their planning has encompassed all stages of a pandemic, including the maintenance of essential services and the possibility of workplace closure in the event of a nationwide pandemic event.
- Unless employees are on leave of some description (ie sick, domestic, annual or other), they should be expected to remain working during a pandemic influenza outbreak. Employment arrangements would be the usual ones specified in employment agreements.
- Employees should continue to attend the workplace as usual, except where working from home (or elsewhere) is part of a business continuity and workforce management plan aimed at ensuring ongoing service delivery by providing staffing levels for priority tasks. These employees could be on call if others engaged in workplace duties in their own or another agency, become unable to work.
- Procedures recommended by the Ministry of Health and the Department of Labour at each stage of a pandemic should be implemented as part of the requirement to provide a safe workplace and to minimise risk to staff and contractors in the workplace.
- Where recommended measures for providing a safe workplace are in place, employees should still undertake their normal duties, unless they are on approved leave. Any employee who then chooses not to work should (after the appropriate process has been followed) be placed on leave without pay.
- Employees should note that they could only keep refusing to do a job if they have reasonable grounds to do so, and stopping work without discussing their concerns or appropriate safety measures with their employer could put their employment at risk.

Return to work

- Employers should ensure that employees are fully recovered/not ill with swine flu before they return. Employers have the right to make proper inquiries to ensure that their employees are fit to work. In such a case Public Service employers subject to the State Sector Act may be able to use section 82 of the Act to require the employee to undergo a medical examination before allowing them to return to work. Employers should also check their policies and employment agreements in case these modify the State Sector Act provisions or where they allow the employer to require a medical examination to be undertaken although the Act does not apply.

Leave

Where staff are not able to be at work because they are sick, have been in contact with someone who has possibly been infected, or are looking after dependants, agencies should bear good employer practices in mind. Agencies should adopt a flexible policy to leave during a pandemic, with the usual use of sick and domestic leave entitlements being the first option. SSC would generally expect that the overall principles should be as follows:

If an employee is sick or caring for a sick spouse/partner or dependant

Sick leave should be used. If sick leave runs out, employers can offer the employee the option of using any annual leave. If the employee does not wish to take annual leave then leave without pay should be given.

Where an employee is not sick but is ordered from work as a precautionary measure

- Employees should work from home if practicable
- Where it is not possible to work from home special paid leave should be given.
- If the employee becomes ill then sick leave should be used (or if no sick leave the options available to a sick employee whose leave has run out should apply)

If the workplace is closed (see “workplace closure” below)

The period for which the workplace closes should be based on advice from the Ministry of Health at the time. During any closure, it is the responsibility of Chief Executives to keep functions and service delivery operating at the highest level possible.

- An employee who is sick should use sick leave (or see options above)
- If not sick the employee should work from home wherever possible. Department’s functions and services must continue to be provided.
- If the employee is not sick and is unable to work from home then special paid leave should be given.* (See *additional ‘note’ below*)

It is not anticipated that special paid leave would exceed 10 working days. Any special paid leave must be paid for within baselines.

Different considerations may well apply in the case of emergency or essential front-line services – employers will need to take advice at the relevant time from the Ministry of Health and Department of Labour and ensure that their planning is flexible enough to deal with any contingency.

Note that employees are entitled to emergency financial assistance on the same terms as all other employees whose employer can no longer provide paid leave.

Also note:

- Employees who are ill and have no entitlement to paid sick leave remaining cannot be required to use annual leave to cover their period of illness. If they choose to use their annual leave then the employer can agree to that.
- * Employees who are not ill, who are required by their employer to stay at home, and cannot work from home, may, subject to the requirements of the Holidays Act, their employment agreements and any relevant policies in the workplace, be directed to take annual leave. However the Holidays Act requires that in the absence of agreement between the employer and employee about the time to take annual leave the employer must give at least 14 days’ notice to the employee (see sections 18 and 19 of the Holidays Act). This only applies to annual leave that the employee is entitled to on each anniversary of the date they commenced employment.

Alternative duties during a pandemic

It is likely that most duties needing coverage by other staff (other than perhaps at the early stage of a pandemic) would not be within the allowable scope of variation by an employer without the employee's agreement. As part of the planning process:

- Agencies should adopt and promote an approach to staff agreeing to undertake different work functions and commence this as early as possible.
- Agencies with low priority functions should consider exploring where their employees may be able to assist priority service delivery by other agencies.
- SSC and the Intersectoral Pandemic Group will centrally coordinate employees who would be prepared to undertake alternative duties in other agencies during a pandemic.

Workplace closure

During a pandemic, a Medical Officer of Health may close premises either as a preventative measure or because those premises have been isolated or quarantined. As mentioned above, during any closure it is the responsibility of Chief Executives to keep functions and service delivery operating at the highest level possible. Departments should note:

- Where premises have been closed to the public or schoolchildren as part of preventative measures, as with other workplaces during a pandemic, appropriate workplace safety measures as recommended by the Ministry of Health and Department of Labour should still be implemented and employees in those workplaces should still attend work, unless the premises themselves have been closed.
- Where an employer directs staff to stay home, the employee should undertake work that can be completed at home for the duration of the closure.
- If working at home until the workplace can open again is not possible, employers should consider the leave options given above.
- In the event of a workplace closure, employees could be offered the option of agreeing to undertake alternative duties to assist other agencies or social services groups within their community, if they are willing to do so and their employer agrees. In such cases, the employer would continue normal salary payments for the period of this alternative work.

Background Material

Introduction and context

- 1 On 24 April 2009 an outbreak of Influenza A(H1N1) was reported by the United States of America (USA) and Mexico. In the following days the number of cases has grown and spread to countries outside of the USA and Mexico, and is now being reported by countries in Central and South America, Europe, the Middle East, Asia and Australasia, including New Zealand. Mexico, USA, Canada, Australia, Japan, UK, and Spain have the largest numbers of confirmed cases, and the main areas of concern continue to be Mexico and USA.
- 2 The World Health Organization (WHO) is monitoring the outbreak and has classified the risk as Phase 6, the highest level of warning.
- 3 This outbreak is continuing to spread globally and the situation is evolving rapidly. Although the virus is tending to act more like a typical influenza virus, this could mean larger impacts for countries in the Southern hemisphere entering into the flu-prone winter season.
- 4 “Non seasonal influenza (capable of being transmitted between humans)” was made a notifiable and quarantinable disease under the Health Act 1956 on Wednesday 29 April 2009.
- 5 It is only a matter of time before transmission within the community becomes established. Therefore agencies are being encouraged to plan for this eventuality right now. The Ministry of Health, as lead agency, expects other agencies to utilise the New Zealand Influenza Pandemic Plan scenarios, focusing on scenarios 6.2-6.4, and the Assumptions for H1N1 planning attached (to be attached).
- 6 This will be updated periodically if the situation changes, or additional issues arise.
- 7 The general public are likely to expect Public Service consistency during any pandemic and hence a guideline document, as opposed to issuing a policy, is considered to be the appropriate approach to adopt at the moment.
- 8 All employers, both public and private sector, will need to balance their service delivery requirements with their legislative obligations in any emergency situation, including a pandemic. A pandemic is a variation on a natural disaster, differing from other natural disaster scenarios (such as an earthquake) in three main ways:
 - the major impact is on people (and staffing levels), not property
 - because of this, the public are likely to expect services to continue in some form and most workplaces are likely to return to normal in a comparatively short time
 - not all of the workforce will be affected at once, but large proportions are likely to require an extended time away from work because of illness to themselves or a need to care for their dependants.
- 9 The approach developed by the Ministry of Health to describe Pandemic Stages and Alert Codes provides a standard framework that departments can use when planning their approach to specific issues. This has defined stages, which move sequentially from:
 - Stage 1: “Plan for it” (pandemic risk is present but no human cases in NZ).
 - Stage 2: “Keep it out” (border management; prevent arrival in NZ).

- Stage 3: “Stamp it out” (cluster control; control and/or eliminate the few initial occurrences within NZ and stop wider spread; local civil defence emergency declarations are likely).
- Stage 4: “Manage it” (pandemic management; wide-spread transmission within New Zealand; national civil defence emergency declaration likely).
- Stage 5: “Recover from it” (recovery; vaccine is available and/or pandemic has abated; returning to normal).

Pandemic planning and the issues that arise from it

- 10 From a Public Service perspective, the key human resources-related objectives are to:
- include staff considerations (particularly employment relations and workplace health and safety) in any business continuity planning process concerning a future pandemic, and
 - maintain the employment relationship with staff to the maximum extent possible during a pandemic.

By meeting these two objectives, Public Service employers will minimise any long-term disruption to service provision and provide the best prospect of a rapid post-pandemic recovery.

Considerations when planning

- 11 The Business Continuity Planning Guide on the Ministry of Economic Development’s website currently advises that businesses should plan for up to 50% staff absences for periods of about two weeks at the height of a severe pandemic wave, and lower levels of staff absence for a few weeks either side of the peak. Overall, a pandemic wave may last about 8 weeks, and there may be a number of waves of varying severity over time. This prediction was based on the H5N1 virus.
- 12 At present it is not possible to accurately predict the degree of workforce absenteeism for the current H1N1 virus. 50% would represent a worst-case scenario. It is thought an H1N1 pandemic may take a longer time to build. This may mean that workforce disruption at a peak of a wave will be lower. Further information will be provided as it becomes available.
- 13 The overall goal for all employers is likely to be to keep their workplace open as close to normal as possible, utilising staff and customer protection measures as recommended by the Ministry of Health throughout the pandemic to achieve this.
- 14 Public sector agencies will develop their pandemic preparations on an ongoing basis, but on many issues there is no practical one size fits all approach. Each agency’s circumstances are different and they will need to determine the arrangements that best suit their own individual circumstances.
- 15 The appropriate approach to take on a particular issue is likely to vary as any pandemic escalates. Initial stages, such as that which exists now, present a low risk to New Zealand and obviously mean business as usual in all respects, other than exercising caution should there be a need to visit some countries. At the other end of the scale, the widespread occurrence of an easily transmittable human to human influenza strain in New Zealand would significantly impact employers and employees.

- 16 One way of providing a common framework would be for planning initiatives to link to already developed strategies available from the Ministry of Economic Development (MED), Ministry of Health and Department of Labour. Key documents for all employers are:
- The Business Continuity Planning Guide on the MED website at www.med.govt.nz/templates/MultipageDocumentTOC___14455.aspx
 - The New Zealand Influenza Pandemic Action Plan 2006 on the Ministry of Health website at www.moh.govt.nz/pandemicinfluenza
 - Workplace Guidance on Pandemic Planning and Risk Management on the Department of Labour website at: www.dol.govt.nz/initiatives/workplace/pandemic/index.asp
 - **New advice posted on these websites from time to time, as the situation changes.**
- 17 Table two in the MED planning guide outlines the evolving stages of a pandemic and the table is attached in Appendix A.

Overall principles

- 18 The main principles under which this guidance has been developed are:
- All employers and employees have a vested interest in their organisation getting through any pandemic with the minimum possible ongoing effect. Working together is the best way to manage the impact.
 - The Public Service has an obligation to continue to provide its services during any natural disaster event in a manner that complies with all of its legislative obligations.
 - The overall goal (in line with obligations under the CDEM Act to function to the fullest possible extent) should be to keep each workplace open as close to normal as possible during each of the different stages of a pandemic, utilising staff and customer protection measures as recommended by the Ministry of Health and Department of Labour.
 - For many issues there is no one size fits all and each agency still needs to develop a plan that addresses its own specific requirements. Employers should be developing their plans now, in consultation with employees, unions and other workplace participants as appropriate.
 - The appropriate approach to take to any issue is likely to change as a pandemic evolves. All employers will need to follow guidance from the Ministry of Health at the time and review their plans in the light of that advice.
 - New Zealand as a whole will get the best return on its pandemic investment if it can successfully keep the virus out of the country or, failing that, restrict it to one or two isolated clusters within New Zealand.
 - It is important not to forget about “afterwards”. Business continuity planning is likely to be most effective when it is focused on achieving the best possible post-pandemic recovery, both for the agency and its staff. Any pandemic will subside and most, if not all, employees should return to work provided their employer can weather the consequences of the pandemic.

Attendance at work

- 19 A pandemic will create a conflict between responsibilities to provide government services and obligations to ensure agencies' employees are safe. Agencies will need to balance their operational statutory responsibilities within the constraints of the Health and Safety in Employment Act and general employment law obligations.
- 20 Chief Executives will continue to be responsible for conditions of employment and for maintaining safe work places. Under the Health and Safety in Employment Act, arrangements must be made in workplaces to eliminate or isolate any hazard and if impracticable to do so, to minimise the likelihood of harm. The State Sector Act, section 56(2), also requires the provision of "good and safe working conditions".
- 21 Chief Executives' statutory obligations will remain and they will need to be sure that they give effect to these obligations.
- 22 For departments this means functioning to the fullest extent possible, having regard to the need to take all practicable steps to ensure the safety of employees at work, the good employer requirement to have good and safe working conditions, and the standards prescribed in the *Standards of Integrity and Conduct*, a Code of Conduct for the State Services. The overall expectation should be that all employees attend work in accordance with their employer's plan to provide ongoing services during a pandemic.
- 23 Each Chief Executive will need to determine which services are able to continue at each stage of a pandemic. As staffing levels reduce (mostly during Stages 3 and 4), many agencies will focus on maintaining only the services that they have determined are their most essential ones (and also determining when workplace closure may apply).
- 24 The overall goal should be to keep each workplace open as close to normal as possible utilising staff and customer protection measures as recommended by the Ministry of Health throughout the pandemic. The Department of Labour has suggested there are four scenarios involving workplaces:
 - Open in the usual work place – with managed risks.
 - Open for business with remote working (likely to be working from home).
 - Open to provide essential services – with managed risks.
 - Closed because of public health controls.
- 25 Advice from the Ministry of Health will be key before, during and after any pandemic. Procedures recommended by the Ministry of Health at each stage of a pandemic will need to be implemented to minimise risk in the workplace to an acceptable level so that public servants can continue to provide a service to the community. In the early stages, workplaces should be able to stay open with managed risks, and would move through to perhaps providing only essential services or even possible closure at the height of Stage 4 of the pandemic.
- 26 Normally, taking all practicable measures to make the specific workplace safe means an employer will be adopting a prudent risk management approach and will likely be legally compliant. All employers and employees should be looking to the Ministry of Health and the Department of Labour for procedures and guidelines on what they need to do to provide a safe workplace as a pandemic evolves. Applying these procedures and guidelines in each workplace will provide the best possible approach of mitigating the workplace risks that will arise from a pandemic. This should also be a suitable defence to any challenge that the workplace is unsafe and/or the employer is not meeting their health and safety obligations. Having said this, employers should be flexible enough in their planning and management approaches to take account of any reported changes in a pandemic influenza virus.

- 27 Agencies will still need to seek their own legal advice relating to specific issues they have. Note that safeguards put in place to protect employees would need to include protection in relation to visitors/customers and possibly steps to take to protect family members when employees return home. The sample business continuity planning guide on the MED website currently includes suggested steps to take in relation to visitors/customers coming into the workplace.
- 28 Providing isolation, social distancing, screening, reducing personal contacts, and anti-contagion procedures are generally recommended by the Ministry of Health for meeting statutory requirements to have “facilities for their safety and health” which employees would require in a pandemic. Employers should be considering the current advice in their planning, but be aware of the ongoing need for their plans to be reviewed and set regular review dates. Reviews of the planned response for the next stage(s) of a pandemic are also likely to be necessary as the pandemic evolves and new information is provided.
- 29 Some State servants, because of the essential nature of their roles in a pandemic, will be required to work in conditions that others may consider to be too great a risk to expose themselves. Without a degree of consistency of approach, equity issues may arise. When their employer has taken all practicable steps to make the respective workplaces safe, it would not be easy to explain why it is acceptable for hospital employees, police, prison and customs officers, social workers etc to be required to work with infected people, but others who share office space do not need to continue coming to work.
- 30 However, when developing their plans, employers will also need to be realistic about the priority of some of their services. Prison officers’ services, for example, will be essential throughout a pandemic but the normal work of Corrections policy advisers may not. Again, a consistent approach whereby employers adopt the required recommendations to make the workplace safe and all employees should attend work as usual unless told otherwise, is likely to be expected. Employers will most likely be planning to use remote working or rosters as part of their business continuity planning for areas where the influenza virus is present and staffing levels are affected.

Leave arrangements

- 31 The Public Service, along with the wider State Services, will play an important role in minimising the impact of a pandemic on the long-term health, social and economic well-being of New Zealand. While needing to continue to use public funds prudently and consider public versus private sector consistency, employers should seek to adopt a flexible policy to leave during a pandemic. The use of sick and domestic leave entitlements should remain the first option where staff are sick.
- 32 Total numbers of staff needing additional paid leave in the early stages of a pandemic (on top of their sick leave entitlement, plus any sick leave advance) is likely to be small and the cost of additional paid leave should be manageable within existing budgets. Stage 2 is likely to involve only a few employees returning from overseas per employer. While the number of staff needing additional paid leave in Stage 3 is likely to vary depending upon the geographic area being isolated, the overall cost should still be manageable.
- 33 Once a pandemic is widespread (Stage 4), all employers in affected areas will have limits on their ability to provide paid time away from work. When planning to function to the fullest extent possible during a pandemic, the Public Service needs to be mindful that negative community feedback is likely if employees unaffected by illness remain at home on pay beyond the point where the general business community is able to provide the same support to its staff.
- 34 Some organisations have expressed a desire for a common “rule” covering the provision of additional paid leave before staff should be placed on leave without pay. However, given

the number of unknown parameters relating to a pandemic, the most effective option at the moment would be to retain a flexible business as usual approach. SSC would generally expect that the overall principles should be as follows:

- If an employee is sick
 - Sick leave should be used. If sick leave runs out, employers can offer the employee the option of using any annual leave. If the employee does not wish to take annual leave then leave without pay should be given.
 - Where an employee is not sick but is ordered from work as a precautionary measure
 - Employees should work from home if practicable
 - Where it is not possible to work from home special paid leave should be given.
 - If the employee becomes ill then sick leave should be used (or if no sick leave the options available to a sick employee whose leave has run out should apply).
 - If the workplace is closed
 - The period for which the workplace closes should be based on advice from the Ministry of Health at the time.
 - An employee who is sick should use sick leave (or see options above)
 - If not sick the employee should work from home wherever possible. During any closure, it is the responsibility of Chief Executives to keep functions and service delivery operating at the highest level possible.
 - If the employee is not sick and is unable to work from home then special paid leave should be given.
- 35 It is not anticipated that special paid leave will exceed 10 working days. Any special paid leave must be paid for within baselines.
- 36 Different considerations may well apply in the case of emergency or essential front-line services – employers will need to take advice at the relevant time from the Ministry of Health and Department of Labour and ensure that their planning is flexible enough to deal with any contingency.
- 37 Public Service employees on leave without pay would be entitled to emergency financial assistance on the same terms as all other employees whose employer can no longer provide paid leave.
- 38 Employees who are ill and have no entitlement to paid sick leave remaining cannot be required to use annual leave to cover their period of illness. If they choose to use their annual leave then the employer can agree to that.
- 39 Employees who are not ill, who are required by their employer to stay at home, and cannot work from home, may, subject to the requirements of the Holidays Act, their employment agreements and any relevant policies in the workplace, be directed to take annual leave. However the Holidays Act requires that in the absence of agreement between the employer and employee about the time to take annual leave the employer must give at least 14 days' notice to the employee (see sections 18 and 19 of the Holidays Act). This only applies to annual leave that the employee is entitled to on each anniversary of the date they commenced employment.

Staff refusal to attend work

- 40 This may be a difficult issue should Stage 3 or 4 of a pandemic arise. Employers have an obligation to provide a safe workplace and to take all practicable steps to do so. Employees have an obligation to comply with lawful directions given by their employer, including being at work as required in their employment agreement. In the normal course of events, if the employer provides a safe workplace, the employee is required to come to work when instructed to do so.
- 41 As outlined in s28A of the Health and Safety in Employment Act, an employee may refuse to do work if the work that the employee is required to perform is likely to cause serious harm to him or her. However, an employee may not refuse to perform their work where that role, because of its nature, inherently or usually carries an understood risk of serious harm, unless the risk has materially increased. Employees may also feel that s19 of the Health and Safety in Employment Act, which requires an employee to take all practicable steps to ensure their own safety while at work, justifies them staying away from their work.
- 42 Any belief that the workplace is unsafe would need to be based on reasonable grounds. All employers and employees will be looking to the Ministry of Health and the Department of Labour for guidelines on what taking “all practicable steps” will entail for the provision of a safe workplace, particularly in Stages 3 and 4 of a pandemic.
- 43 Once procedures and risk management measures recommended by the Ministry of Health and the Department of Labour have been put in place, it is likely that an employer could require employees to undertake their normal duties. Any employee who then chooses not to work should (after the appropriate process has been followed, which is likely to be the usual requirement to engage with the employee and try to reach an agreement on their attending work before undertaking any further action) be placed on unpaid leave - although an employee who still has untaken annual leave may of course choose to request annual leave.
- 44 The current Department of Labour advice to employees related to preparing for a pandemic notes that employees who continue to refuse to come to work when they do not have reasonable grounds to do so, or who stop work without discussing their concerns or appropriate safety measures with their employer, could be putting their employment relationship and ultimately their employment at risk.
- 45 Some public servants are subject to specific statutory obligations to perform tasks associated with their employment, and those agencies may need to seek their own legal advice relating to specific issues around refusal to attend work that they would have.
- 46 The Department of Labour has recommended that as part of the influenza pandemic planning process, and to allow them to remain open to the fullest extent possible during the phases of a pandemic, government agencies should establish:
- the essential work that they will be expected to deliver during the pandemic
 - the identified risks in delivering those services; and
 - in those cases where the influenza pandemic has increased the risks to staff in delivering core services, a process for engaging staff and unions as appropriate in order to gain advance agreement on appropriate terms for delivering those services.
- 47 The Department of Labour recommended that to achieve voluntary compliance in an environment where the risks to their personal safety may be increased, and at a time when first instincts will be to provide for family and friends, the best way forward is to seek some form of genuine advance agreement from certain staff to continue to perform their duties.

Alternative duties

- 48 An employer's right to vary a job unilaterally is often expressed in terms of an unwritten 80/20 principle, meaning that an employer (after following a correct consultation process) is normally able to make up to a 20% change in what they can require the employee to do, but after that the employee's express agreement is required.
- 49 It is likely that many duties needing coverage by other staff during a pandemic (other than perhaps at the early stages) will require some specialist expertise that few of the potential coverage pool will have. The best way for an employer to have staff perform additional or different duties during any stage of a pandemic would be for the parties (employers, employees and unions, as appropriate) to discuss and agree as early as possible beforehand on any alternative duties that employees would be prepared to undertake.
- 50 The degree of flexibility required during any natural disaster is likely to mean that, despite all of the best pre-planning by both parties, employee agreement at the time would still be necessary to some degree to respond to events as they occur.
- 51 Providers of key State services (such as Health) may require some additional support at the high point of a pandemic. Preparation for this could be achieved by each provider listing the type of roles that they may seek staff from other agencies to assist with and other agencies exploring whether their staff could assist in those areas and if they may be willing to do so (subject to agreement at the time). An example of this could be the provision of Employment Relations (ER) information to employers by the Department of Labour's call centre. ER professionals in the rest of the Public Service could potentially assist the Department of Labour to continue this service if its own staffing levels drop below the required level. SSC will explore the feasibility of a centralised database of roles and essential work as part of the overall pandemic planning process. SSC will also explore the co-ordination of employees who would be prepared to undertake alternative duties in other agencies during a pandemic via the Intersectoral Pandemic Group as part of the overall pandemic planning process.

Workplace closure

- 52 At Stage 3 or 4 of a pandemic (i.e. localised or widespread transmission), Medical Officers of Health may exercise their powers under s70 of the Health Act to minimise the spread of infection if required by the local and/or national situation. Although they may direct the closure of places to the public (such as cinemas, bars, churches etc), and prohibit the attendance of children at schools, this will not exclude employees continuing to work in that place unless the directive is that a building be "isolated/quarantined".
- 53 Employees working in schools, courts, offices, museums and libraries etc that have been closed to the public or to school children as a preventative measure should not anticipate their workplace being closed to them. As with other workplaces, the Ministry of Health recommendations for providing a safe workplace should be followed and the employees can continue with non public-contact duties. Where public contact is necessary, agencies should make any necessary additional protective arrangements if advised in Department of Labour and Ministry of Health guidelines.
- 54 In any situation where an employer directs staff to stay home, they will need to be clear on what basis they are doing so. Wages are normally payable if an employee is ready and willing to work, even if the workplace is closed due to isolation/quarantine. In this situation, the employee should undertake work that can be completed at home for the duration of the closure.

- 55 If working at home until the workplace can open again is not possible, employers could explore the option of requiring an employee to take annual leave (this only applies to annual leave that the employee is entitled to on each anniversary of the date they commenced employment), However, an employee cannot be forced to take annual leave on less than the current 14 days' notice (as required by the Holidays Act), and the notice period would probably need to be bridged with paid special leave. It is also noted that where employees have no annual leave entitlement, then paid leave would be required to be provided to those staff.
- 56 Alternatively, an employee could offer to assist other agencies or approved other groups within their community on a paid basis if they are willing to do so and their employer agrees. It is difficult to define what organisations should make up an approved list for this purpose, although they would range from support for other government agencies to assistance to social services groups which are relied on by the community but who may have staffing difficulties (one example could be Meals on Wheels). To promote and encourage this, employers should continue to provide normal salary for any such alternative work that has been pre-approved by that employer.
- 57 An employer should also require employees to stay at home if they are sick and they represent a safety risk to other people in the workplace. Where an employee who is required to go home because they are sick (or who asks for time away to care for sick dependants) chooses not to take sick leave (or if their sick leave has run out), the employer must make alternative arrangements with that employee, such as offering the employee the option of using any annual leave. If the employee does not wish to take annual leave then leave without pay should be given.

Upcoming collective bargaining

- 58 With the focus on pandemic planning, it is likely to be an issue discussed in collective bargaining. There may be demands for improved conditions to reflect pandemic considerations, e.g. those obliged to work with infected people seeking benefits, particularly relating to sick leave, superior to occupations where there will be minimal contact with illness.
- 59 As noted earlier, a pandemic is a variation of a natural disaster and of itself should not require further alteration of current terms and conditions of employment.
- 60 It should be noted that a wide variety of contractual entitlements already exist in the Public Service based on differences between organisations and differences within an organisation, often due to grand-parenting of historical (and usually more generous) employment provisions. This is not inappropriate and reflects the parties' different bargaining priorities in different sets of negotiations (whether with unions or with individual employees). Any further changes that may arise out of upcoming bargaining should be related to normal business reasons and not solely to a possible pandemic.

Staff working from home

- 61 The principles that normally apply to working from home will be the same during any pandemic, although there may well be greater numbers of staff working remotely at the height of any pandemic and there may be a need to prioritise access to fit within infrastructure capacity limits. Where staff work from home the employer needs to identify whether the home is a safe workplace, as it becomes a "place of work". If an organisation does not already have a policy and approach in place which covers staff working from home, then they should be developing one now.
- 62 Where possible, employers should prepare for staff to work remotely (usually from home) to cover situations such as:

- there is a recommendation from the Ministry of Health to increase social distancing in the workplace, and remote working allows this to be implemented
- public transport is closed and some staff cannot reasonably get in to work or the risk of staff being infected through the use of public transport cannot be reasonably managed
- the workplace itself has been isolated/quarantined by a Medical Officer of Health
- the staff member has sick family members requiring care but no leave available to take.

Appendix A: MED Business Continuity Planning Guide (October 2005), adapted for H1N1

Note these are health codes only: different agencies will be affected

STAGE	NZ STRATEGY	MoH / DHB ALERT CODE	OBJECTIVE AND ACTION
1	Plan for it (Planning)	WHITE (Information / advisory)	<ul style="list-style-type: none"> • <u>Objective:</u> devise a plan to reduce the health, social and economic impact of a pandemic on New Zealand • Full engagement of whole of government • Consultation with and input from many agencies
		YELLOW (Standby)	<ul style="list-style-type: none"> • Prepare to implement pandemic response action plans
2	Keep it out (Border Management)	YELLOW	<ul style="list-style-type: none"> • <u>Objective:</u> keep pandemic out of New Zealand • Border management oriented around provision of information to passengers, identification and isolation of cases, home-based quarantine of their contacts • Enhance internal disease surveillance and notification • Actively prepare for escalation to phases 3 & 4
3	Stamp it out (Cluster Control)	YELLOW/RED	<ul style="list-style-type: none"> • <u>Objective:</u> control and/or eliminate any clusters that might be found in New Zealand • Maintain border management • Isolate and treat patients • Contact trace, treat and place contacts in home quarantine • Consider and implement selective closure of education institutions if required • In exceptional circumstances: <ul style="list-style-type: none"> ○ Restrict movement into/out of affected area(s) ○ Close other places where people congregate, and prohibit mass gatherings
4	Manage it (Pandemic Management)	RED	<ul style="list-style-type: none"> • <u>Objective:</u> to reduce the impact of pandemic influenza on New Zealand's population • Health service reconfiguration to support community response in affected areas • Social distancing measures • Support for people cared for at home, and their families • Prepare for additional waves

5	Recover from it (Recovery)	GREEN (Stand down)	<ul style="list-style-type: none"> • <u>Objective</u>: expedite the recovery of population health where impacted by pandemic, pandemic management measures, or disruption to normal services • Phase starts when the population is protected by vaccination, or the pandemic abates in New Zealand
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Moves from Code White to Yellow, and Yellow to Red, and subsequently from Red to Green, will originate with the Ministry of Health. The Ministry of Health will put the notification on their website and notify their media contacts. Note that the transition from Code White to Red could be quite quick (i.e. the Code Yellow phase could be short). Note that the codes are to guide health sector action only: other organisations and agencies will need to adapt their measures to the requirements of their sector

Appendix B: Some key legislative issues during a pandemic

General Employment Law

- 1 While it is generally acknowledged that there are no clear or universal answers to some of the employment questions arising from a pandemic, widespread illness does not, in itself, affect employment legislation or agreements. Arrangements that chief executives have with their employees will continue to be determined by current employment agreements, and these along with good employer obligations under the Employment Relations Act and State Sector Act will still determine the outcome of any employment relationship issues that may arise.

State Sector Act

- 2 Before, during and after any pandemic situation, there is an ongoing requirement for Public Service departments to provide services. Outside of a pandemic, section 32 (a) of the State Sector Act makes chief executives responsible to the appropriate Minister for “carrying out the functions and duties of the Department (including those imposed by Act or by the policies of the Government”. (As outlined below, during a pandemic the Civil Defence and Emergency Management Act requires Departments to continue functioning to the fullest possible extent).
- 3 Section 6 of the State Sector Act empowers the development of personnel policies and negotiation of conditions of employment for the Public Service, but these cannot override agreements that chief executives have negotiated for their departments. The Commissioner does not have the ability to develop and promote policies relating to a pandemic for application across the State Services. The mandate for the wider jurisdiction relates only to providing advice regarding integrity and conduct matters, and management systems. There is a possibility that a direction under section 107 of the Crown Entities Act could be developed to promote a whole of government approach to resourcing the State Services in a pandemic situation.
- 4 The State Sector Act, section 56(2), requires the provision of “good and safe working conditions”.

Civil Defence and Emergency Management (CDEM) Act

- 5 The national response to a pandemic outlined in the Ministry of Health’s Pandemic Action Plan involves progressive controls based on preventing arrival of the influenza in the country, and failing that, containment of it to as few areas as possible. It is possible that a local or national emergency will be declared at some point during a containment stage, although this is probably unlikely for the current H1N1 pandemic at this point Public Service departments are required under the CDEM Act to plan to continue their responsibilities.
- 6 Section 58 of the CDEM Act states that: “Every department must:

(a) Ensure that it is able to function to the fullest possible extent, even though this may be at a reduced level, during and after an emergency....”
- 7 Section 67 of the CDEM Act requires Parliament to meet if a national emergency has been declared. This means that political and ministerial direction will be available.

- 8 Section 59 of the CDEM Act requires “every department ... and any other person required by this Act or any regulations made under this Act, or any civil defence emergency management plan, to undertake civil defence emergency management or to perform any functions or duties” to take all necessary steps to undertake civil defence emergency management or to perform those functions and duties.
- 9 The requirements are for departments “to function to the fullest possible extent” and to “take all necessary steps... to perform those functions and duties”. These requirements are open to interpretation and there will be a need for judgements to be made. Functioning will reflect what is happening in the wider community.

Health Act

- 10 In an emergency, section 70 of the Health Act empowers Medical Officers of Health to prohibit the attendance of children under the age of 16 years in schools and similar places. (An amendment to the legislation is being considered which may extend the power to prohibit attendance by all students at schools and tertiary education institutes.) If educational and childcare facilities are closed, employees with carer responsibilities may be needed at home. Facilities for people with afflictions and those in day care type arrangements etc are likely to be less available if illness becomes widespread. This will increase family caring obligations of some public servants. If the pandemic takes hold, the need for many public services is likely to increase in inverse ratio to the ability of departments to provide those services.
- 11 Chief executives may believe that in the context of their business, continued functioning is not possible having regard to workplace safety and good employer obligations, and that operating to the “fullest possible extent” under the CDEM Act is a very minimal operation.

Health and Safety in Employment Act

- 12 The Health and Safety in Employment Act will be a primary consideration in any emergency situation for both employers and employees. The Act specifies in section 6 that “Every employer shall take all practicable steps to ensure the safety of employees while at work; and in particular shall take all practicable steps to:
- Provide and maintain for employees a safe working environment...and provide for the safety and health of their employees at work...”
- 13 Section 19 of the Act requires every employee to take all practicable steps to ensure the employee’s safety at work.
- 14 The Department of Labour website currently explains what that Act requires and sets out practicable measures appropriate in a pandemic. The obligation is to do what a reasonable and prudent person would do in the same situation to ensure the safety of employees, while they are at work.
- 15 Because it is an objective standard determined by the standards and practices of industry and society generally, whatever a substantial group of agencies decide to do may well set the standard. The greater the risk of illness, the greater the effort and resource needed to be “reasonable”. Because section 19 restrains employees doing anything likely to endanger themselves or other people, there is a risk that some staff may consider that any exposure to other people during a pandemic is endangering and that they are therefore precluded from working.

- 16 Section 28A of the Act states that employees have the right to refuse to perform work if they believe it is likely to lead to their suffering serious harm. However their belief must be on reasonable grounds, and they must have attempted to resolve the matter with their employer before they can continue to refuse. The right to refuse unsafe work does not apply unless the understood risks of the work have increased materially. Therefore, the right of an ambulance worker or a nurse to refuse is different to that of, say, a carpenter. It is also different to that of a sworn Police officer, firefighter or member of the armed forces. The activation of section 28 should always be treated as an intervention of last resort (it depends on good faith engagements having already taken place between the employer and employees and while it may resolve the immediate issue it is unlikely to do much for the on-going employment relationship). To sustain a claim under section 28A it will be necessary to show that the risk of infection at work is manifestly greater than the risk of infection in the general community, something that is becoming increasingly difficult to do. While the incidence of H1N1 outbreaks is currently limited to isolated clusters, it appears that it is very close to spreading throughout the community. At this point quarantining by MoH is likely to become less effective and any distinction between community and workplace infection risk will also become indistinguishable.