

Declaration – COVID-19 Wage Subsidy August 2021

This declaration forms part of your application for the COVID-19 Wage Subsidy August 2021 (the subsidy).

By applying for the subsidy, you are declaring that:

1. Your business meets the **eligibility criteria** to apply for the subsidy:
 - **You operate a business** (being a registered business, sole trader or self-employed person [1], a registered charity [2], an incorporated society [3], a non-government organisation, post settlement governance entity or, under specified circumstances, a commonly-owned group [4]) in New Zealand that employs and pays the employees named in your application.
 - **Each of the employees [5] named in your application (named employee/s) is legally employed** by your business, is employed in New Zealand **and has not been given notice of redundancy**, at the date of your application.
 - Your business meets the **revenue decline** test:
 - your business **is being or will** be affected by the move to Alert Level 4 on 17 August 2021; and
 - your business has had, or you are predicting will have, a **decline in revenue [6] that is attributable to the effect the move to Alert Level 4 on 17 August 2021** has had on your business and that is [7]:
 - **of at least 40% over the period 17 August 2021 to 30 August 2021 (inclusive) (revenue test period), when compared to a typical 14-day consecutive period of revenue in the six weeks immediately prior to the move to Alert Level 4 on 17 August 2021 (default comparator period); or**
 - if you are an employer that has highly seasonal revenue, of at least 40% over the revenue test period when compared to the same 14 consecutive days in 2020 or 2019 (seasonal comparator period), provided you can demonstrate that the seasonal nature of your business makes it harder to meet the 40% revenue decline using the default comparator period than if your business was not of a seasonal nature; and

- in relation to both the calculation of revenue for the test period and the calculation of the revenue for the relevant comparator period, exclusive of any payments made to you from this subsidy, other COVID-19 Wage Subsidy schemes, the COVID-19 Short-term Absence Payment scheme, COVID-19 Leave Support schemes, COVID-19 Essential Workers Leave Support scheme, COVID-19 Resurgence Support Payment scheme or the COVID-19 Small Business Cashflow scheme.
- You will prepare and retain evidence to support this declaration, such as records that demonstrate:
 - how the decline in your revenue was attributable to the move to Alert Level 4 on 17 August 2021; and
 - if you are an employer that has highly seasonal revenue:
 - the basis on which you claim your business to be of a seasonal nature; and
 - how the seasonal nature of your business made it harder for your business to meet the 40% revenue decline using the default comparator period than if your business was not of a seasonal nature.
 - Before making this declaration, you have taken active steps to mitigate the impact of the move to Alert Level 4 on 17 August 2021 on your business activities (including but not limited to engaging with your bank, drawing on your cash reserves as appropriate, making an insurance claim).
 - At the time of making your application, you are not receiving a payment under this COVID-19 Wage Subsidy August 2021 scheme, the COVID-19 Short-term Absence Payment, COVID-19 Leave Support schemes or COVID-19 Essential Workers Support Scheme in respect of any of the named employees.

2. Your obligations to use the subsidy to retain and pay named employees

- You acknowledge that the granting of your application and your receipt of the subsidy does not override your existing obligations under employment law, including (but not limited to) the

Employment Relations Act 2000, Minimum Wage Act 1983, Holidays Act 2003 and Health and Safety at Work Act 2015.

- You will not make any changes to your obligations under any employment agreement, including to rates of pay, hours of work and leave entitlements, without the written agreement of the relevant employee [8].
 - You will not unlawfully compel or require any of the named employees to use their leave entitlements for the period you receive the subsidy in respect of those employees [9].
 - You will:
 - from the date of your application, retain the named employees for the period you receive the subsidy; and
 - use the subsidy to support paying the ordinary wages and salary of the named employees, in accordance with their employment agreements and statutory obligations, for the period you receive the subsidy; and
 - use the subsidy to meet your obligations in relation to this subsidy; and
 - repay any amount of the subsidy that is not required for these purposes and that cannot be used to support paying and retaining other affected staff.
 - You remain responsible for paying the ordinary wages and salary of the named employees.
 - For the period you receive the subsidy, you will:
 - use your best endeavours to pay at least 80 per cent of each named employee's ordinary wages or salary; and
 - pay at least the full amount of the subsidy to each named employee; but
 - where the ordinary wages or salary of a named employee as at 16 August 2021 is lawfully below the amount of the subsidy, pay the employee that amount.
 - Ordinary wages or salary means:
 - in relation to a named employee, the ordinary wages or salary as specified in the employee's employment agreement or in accordance with relevant statutory obligations as at the date you apply for this subsidy; or
 - in relation to you if you are a sole trader or self-employed person, the weekly amount that you regularly pay yourself as at the date you apply for this subsidy.
3. Providing information about you, your business and your named employees to the Ministry

You will provide the Ministry of Social Development [10] with information about you, your business and (with their consent) the named employees to the extent required by the Ministry of Social Development and its auditors to undertake analysis, in order to enable the Ministry to make decisions about your application or applications for other COVID-19 support (including COVID-19 wage subsidies, the COVID-19 Leave Support schemes, COVID-19 Essential Workers Leave Support Scheme and the COVID-19 Short-term Absence Payment), and to review or audit any subsidy or other COVID-19 support that is granted (to you or another applicant) and how any subsidy or other COVID-19 support granted is paid to employees.

4. Consent to the Ministry sharing information about your application with other agencies

You consent to the Ministry of Social Development sharing information about you or your business provided with respect to your application (both at the time of application, and any information provided at a later time) with other agencies (including non-government agencies) to the extent necessary to make decisions about your application or applications for other COVID-19 support, and to review or audit any subsidy or other COVID-19 support that is granted (to you or another applicant) and how any subsidy or other COVID-19 support granted is paid to employees.

5. Consent to other agencies providing information about you to the Ministry

You consent to other agencies (including non-government agencies) providing information about you or your business to the Ministry of Social Development and its auditors, to the extent necessary in order for the Ministry of Social Development to make decisions about your application or applications for other COVID-19 support, and to review or audit any subsidy or other COVID-19 support that is granted (to you or another applicant) and how any subsidy or other COVID-19 support granted is paid to employees.

6. Discuss your application with your named employees and gain their consent to information sharing

- You have discussed this application with the named employees.
- You will inform the named employees of the outcome of your application and the conditions that apply to your receipt of the subsidy.
- The named employees have consented (in writing, if practicable) to the following matters:

- The named employees consent to:
 - the information about them [11] in your application being provided to the Ministry of Social Development; and
 - you providing the Ministry of Social Development with any further information about them required in order for the Ministry of Social Development to make decisions about your application or applications for other COVID-19 support, and to review or audit any subsidy or other COVID-19 support that is granted (to you or to another applicant) and how any subsidy or other COVID-19 support granted is paid to employees; and
 - you advising the Ministry of Social Development if they end their employment relationship with your business at a time when you are receiving a subsidy with respect to them.
- The named employees consent to the information about them provided to the Ministry of Social Development with respect to this application (both at the time of application, and any information provided at a later time):
 - being used by the Ministry of Social Development to make decisions about your application or applications for other COVID-19 support, and to review or audit any subsidy or other COVID-19 support that is granted (to you or to another applicant) and how any subsidy or other COVID-19 support granted is paid to employees; and
 - being shared by the Ministry of Social Development with other agencies (including non-government agencies) to the extent necessary in order for the Ministry of Social Development and its auditors to undertake analysis, in order to enable the Ministry of Social Development to make decisions about your application or applications for other COVID-19 support, and to review or audit any subsidy or other COVID-19 support that is granted (to you or to another applicant) and how any subsidy or other COVID-19 support granted is paid to employees; and
 - being used by the Ministry of Social Development to make decisions about other assistance and entitlements to the extent your application and any subsidy granted is relevant to them (for instance,

where your application is relevant to an employee's application for other assistance).

- The named employees consent to other agencies (including non-government agencies) providing information about them to the Ministry of Social Development and its auditors, to the extent necessary in order for the Ministry of Social Development to make decisions about your application or applications for other COVID-19 support, and to review or audit any subsidy or other COVID-19 support that is granted (to you or to another applicant) and how any subsidy or other COVID-19 support granted is paid to employees.
- If you are a sole trader or self-employed person and this application is made with respect to yourself (that is, you meet the criteria in paragraph 1), then by submitting this form you are declaring that you consent to the matters set out in this section.

7. Consent to the Ministry using other information it holds about you or your business

You consent to the Ministry of Social Development using information about you or your business (excluding any personal information about the named employees) held by the Ministry of Social Development for other purposes (including information held about you or your business in relation to the supply of goods and services to the Ministry of Social Development, and information held about you or your business in relation to funding provided by the Ministry of Social Development to you or your business for the provision of services and social supports to communities) being used by the Ministry of Social Development and its auditors to the extent the information is relevant to the Ministry's decisions about your application or applications for other COVID-19 support, and to the review or audit of any subsidy or other COVID-19 support that is granted (to you or another applicant) and how any subsidy or other COVID-19 support granted is paid to employees.

8. Advise your named employees they can request access to information you have provided in your application under the Privacy Act

You will advise the named employees that they have the right to request access to all information held about them under the Privacy Act, and can visit <https://www.msd.govt.nz/about-msd-and-our-work/newsroom/2020/covid-19/covid-19-wage-subsidy-employer-search.html> to make a request.

9. Publication of information about you

You consent to the Ministry of Social Development publishing information about your business and the level and duration of any subsidy provided to you (excluding any personal information about the named employees) on a publicly accessible register.

10. Notify changes in eligibility

You will notify the Ministry of Social Development within 5 working days if anything changes that may affect your eligibility or entitlement to the subsidy, including if any of the named employees end their employment relationship with you.

11. Repaying the subsidy

You agree to repay the subsidy or any part of the subsidy paid to you if you:

- fail to meet any of the obligations about how you must use the subsidy; or
- were not or stop being eligible for the subsidy or any part of the subsidy, including where you predict that you will meet the revenue decline test but, as a result of your actual revenue, you do or did not;
- provide false or misleading information in your application; or
- receive insurance such as business interruption insurance for any costs covered by the subsidy.

12. Provision of true and correct information

You acknowledge and agree that all of the information you have provided to the Ministry of Social Development is true and correct.

13. Consequences of non-compliance with the obligations in this declaration

You acknowledge that you may be subject to civil proceedings for the recovery of any amount you receive that you are not entitled to and/or to prosecution for offences under the Crimes Act 1961 if you:

- have provided false or misleading information; or
- fail to meet any of the obligations about how you must use the subsidy; or

- receive any subsidy or part of a subsidy that you were not entitled to receive, including where any predicted decline in revenue of the relevant period is not realised.

14. Authority to make this declaration

You are making this declaration on behalf of your business and you have the authority to do so.

15. The Ministry may amend this declaration

You acknowledge that the Ministry of Social Development may amend this declaration at any time and at its discretion.

16. Declaration forms part of your application

You acknowledge that this declaration forms part of your application.

17. Use and collection of information

In submitting your application you also acknowledge and/or agree:

- The Ministry of Social Development collects the information in this application to determine whether you are eligible to receive assistance.
- The Ministry of Social Development will use the information provided in this application (both at the time of application, and any information provided at a later time) for the purposes addressed in this document, including to assess your eligibility to receive the subsidy or other COVID-19 support and to audit and review any subsidies or other COVID-19 support granted. We may also use the information to contact you or for research and reporting purposes, or to advise you on the matters relating to the assistance you applied for.
- The Ministry of Social Development will not use the information provided in this application for any other purpose unless required or authorised by law.
- Under the Privacy Act 2020 you have the right to request access to all information held about yourself and to request corrections to that information.

[1] That may or may not employ other employees.

[2] Incorporated under the Incorporated Societies Act 1908 and registered under the Charities Act 2005; or registered under the Charities Act 2005.

[3] Incorporated under the Incorporated Societies Act 1908.

[4] The specified circumstances under which a commonly-owned group is a business for the purpose of this declaration is where one company within the group employs all the employees, who carry out their work at other companies within the group, and the other companies generate the revenue for the group (in other words, the employment and revenue generation functions are separated within the group). The company within the group that employs the staff must be the company that makes this declaration.

[5] "Employee" includes you if you are a sole trader or self-employed person that does not employ employees, unless the context requires otherwise.

[6] Businesses can include a fall in projected capital income as revenue for the purpose of an application where:

- the business is a research and development intensive "start-up" business; and
- they have no revenue other than seed or venture capital or Government funding; and
- they are recognised by Callaghan Innovation as a legitimate research and development start up business.

[7] Where a commonly-owned group is a business for the purposes of this declaration as described in [4] above:

- the default comparator period must be used to calculate the revenue decline test across the business; or
- the seasonal comparator period may be used to calculate the revenue decline test across the business.

However, where one or more of the companies that comprise the business are seasonal in nature and the seasonal nature of those company or companies makes it harder for the business to meet the 40% revenue decline test using the default comparator period than if the company or companies were not of a seasonal nature, the business may use the seasonal comparator period for those companies that are seasonal in nature and the default comparator period for those that are not, to determine the aggregate revenue decline across the business (if any) for the purposes of the revenue decline test.

[8] It is unlawful for you to unilaterally vary an employment agreement to reduce an employee's wages or salary in order to receive the subsidy, without the agreement from the employee. You must continue to comply

with your obligations as an employer including under the Employment Relations Act 2000.

[9] Other than as you are lawfully permitted to do, including as provided for in an employee's employment agreement. For further information:

<https://www.employment.govt.nz/leave-and-holidays/annual-holidays/taking-annual-holidays/>

[10] The “Ministry of Social Development” includes the Chief Executive of the Ministry of Social Development and their staff.

[11] For clarity, information “about employees” in these bullet points does not include identifiable information about other people (e.g. members of employees' households). The Ministry of Social Development will collect, use or share information about other people only if required or authorised by law.