

## **GUIDANCE ON THE COVID-19 GOVERNMENT WAGE SUBSIDY AND POTENTIAL WAGE REDUCTIONS**

**Issued on 27 April 2020 by the ALWU Employment Law Committee**

The following guidance applies to employees in the legal profession on permanent or fixed-term employment agreements who are currently able to work from home and are not unwell from COVID-19.

### **THE ISSUE**

ALWU is receiving queries from members who are concerned that their employers will reduce their wages as a result of the COVID-19 lockdown and the potential financial recession that could follow.

### **STARTING POINT**

An employer cannot simply decide to reduce an employee's wages – the employee must agree to a variation of the wage provision in their existing employment agreement. If there is no agreement, then the employer will have the option to consider and consult on other restructuring options. However, this must also be carried out in a way that meets employment obligations.

### **HAVING THE DISCUSSION WITH YOUR EMPLOYER**

If your employer has told you they are planning on reducing your wages, you are entitled to clear information from your employer before you decide whether to agree to a variation of your employment agreement.

#### **1. Clarification about your employer's application for the COVID-19 wage subsidy**

To qualify for the COVID-19 wage subsidy the main requirements are:

- a. the business has experienced a minimum 30% decline in actual or predicted revenue over the period of a month, when compared with the same month last year, and that decline is related to COVID-19;
- b. the business has taken active steps to mitigate the impact of COVID-19; and

- c. for applications made prior to 27 March 2020, upon receiving the subsidy the business must use its best endeavours to retain employees. For applications made from 27 March 2020 onwards, the business must retain employees for the period of the subsidy i.e. 12 weeks.

You are entitled to ask your employer the date they filed their application (as this will determine whether you must be retained for 12 weeks), the status of their application and whether it has been approved. You can also search the public database to check whether your employer's application has been approved here: [services.workandincome.govt.nz/search](https://services.workandincome.govt.nz/search).

## **2. The date the proposed wage reduction will commence**

You are entitled to ask your employer for a specific start date so that you can organise your financial arrangements accordingly e.g. mortgage payments, credit card payments etc. If your employer is vague and says the reduction will commence once the firm's application for the Government wage subsidy has been approved or sometime in the next week(s), ask for more clarity.

## **3. The amount of the wage reduction**

Your employer must use their best endeavours to pay you at least 80% of your usual wages. If that isn't possible, your employer needs to pay you as much as possible. At a minimum, your employer must pay you at least the subsidy rate i.e. \$585.80 if working 20 hours or more per week (full-time rate) or \$350.00 if working less than 20 hours per week (part-time rate). However, you are still entitled to negotiate for an amount upwards of 80%. You are also entitled to negotiate a tiered rate throughout the 12 week period that decreases down from 100% over time. This would reduce the impact of an immediate drop in wages and would, for example, provide you with time to negotiate different mortgage arrangements with your bank.

## **4. Corresponding reduction in working hours**

If your employer wants to reduce your wages you are entitled to request that your workload be reduced in line with your wage reduction. For example, if your employer wants to reduce your wages to 80% of what you are normally paid, you can request that your workload be reduced to 80% of what you normally work. In simple terms, a full time employee would drop down from working five days a week to four days a week. If you are being asked to still work full time hours, you could make the argument that there has been no reduction in the employer's business and therefore a wage decrease is unjustified. You can also ask your employer if they will let you take accrued annual leave on the days you are not working to top up your wages.

## **5. Specific review dates**

Your employer may propose that you agree to a salary reduction until then end of the lockdown period or no later than one, two or three months after the end of the lockdown period. At the moment, the lockdown period is expected to last for four weeks from Thursday 26 March to Tuesday 28 April. However, this could be extended at short notice by the Government so it is

unclear when the lockdown period will actually end. You do not have to agree to a vague or essentially open-ended variation to your employment contract and are entitled to ask for calendarized review dates at weekly, bi-monthly or monthly intervals.

## **6. Consequences for not agreeing to a wage reduction**

This is a very important factor to take into account and you are entitled to ask your employer what will happen if you don't consent to a variation of your contract. A potential response from your employer may be that you could be made redundant. However, initiating a redundancy process doesn't mean your employer can immediately stop paying you. You must be paid in full during the process and employers must provide details of their financial position to justify the redundancy and also demonstrate that other alternatives have been considered.

Note that if your employer applied for the COVID-19 wage subsidy prior to 27 March 2020 they only have to use their best endeavours to retain you. If your employer applied from 27 March 2020 onwards they must retain you for the period of the COVID-19 wage subsidy i.e. 12 weeks and cannot make you redundant during this time. However, keep in mind that your employer can still initiate the redundancy process at any time during the 12 week period.

## **7. Clear timeframe to make your decision**

The employer may provide you with a very short timeframe (i.e. 24 – 48 hours) to advise them of your decision. You are entitled to ask for a reasonable timeframe especially if you have requested further information from them and decide to seek legal advice from ALWU or a private employment lawyer.

## **8. What happens if you can't agree before the deadline**

Until you have agreed to vary your employment contract, your employer legally needs to continue paying your normal wages. If it refuses to do so, then employees have the right to seek wage arrears under s 131 of the Employment Relations Act.

## **OTHER OPTIONS**

Depending on how your employer handles the situation, you could potentially make a claim for unjustified disadvantage. This needs to be raised as a personal grievance within 90 days of the disadvantage. If successful, one of the remedies would be reinstatement, meaning reinstating you to your full salary. On top of that, there would potentially be extra compensation for the hurt and humiliation that you suffered from the stress caused by this process. For your employer to defend this, it would need to show that the pay reduction was justified.

## **ASSISTANCE ALWU CAN PROVIDE**

### **Employment Law Committee**

ALWU's Employment Law Committee is chaired by employment law expert Maria Dew QC and consists of 8 highly experienced barristers, senior law firm employees and in-house practitioners as well as a clerk at the Employment Court. The role of this committee is to produce general employment law guidance for ALWU members on a range of issues which are affecting members. Please send any questions that you have about employment issues that you or others are experiencing to [employmentlaw@alwu.org.nz](mailto:employmentlaw@alwu.org.nz). We will identify common themes in those questions and put them to the Committee for its consideration.

### **Pro Bono Panel**

ALWU's hope is that the Employment Law Committee's guidance will assist many members to resolve issues arising in their workplaces. However, we recognise that there will be some situations in which members will need specialist support. To ensure that members can access that support, ALWU has created a Pro Bono Panel. The Panel is a group of highly experienced lawyers, including two QCs, who are qualified to practice on their own account and have volunteered to provide free legal advice and representation to members who require assistance with legal issues.

If you need assistance with an issue that you are facing in your workplace, no matter how large or small, please get in touch with us at [employmentlaw@alwu.org.nz](mailto:employmentlaw@alwu.org.nz). We will triage your request and ensure that someone with the appropriate expertise is able to assist you as soon as possible. Please just keep in mind that this is a volunteer service (and our volunteers are busy people) so a little patience may be required.