



**RESTAURANT  
ASSOCIATION  
OF NEW ZEALAND**  
*Representing, Educating and Promoting  
the Restaurant & Hospitality Industry*

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## **Guideline for managing risk of Swine Flu or other contagious diseases**

The current “swine flu” or un-seasonal influenza A(H1N1) pandemic has increased the need for caution in allowing employees who may have had contact with, or contracted, the disease to be in the work place.

The status of the pandemic, and the health authorities’ strategies for dealing with it are changing rapidly. The disease is now being spread through community contact – not necessarily from travellers – and it is now felt that it will become impractical to test every case of influenza to find out which particular variety it is.

There are grey areas around whether employees need to be paid if they are stood down or quarantined – employment law is not clear on this.

We believe that if a medical officer of health requires staff to be quarantined or your business closed, the occurrence is outside your control, and you will not have to pay staff who are not sick, unless they request annual leave, in which case you will need to pay for the time until the available leave is exhausted, or they are allowed to return to work.

If an employee is stood down (suspended) at your request, and they are not actually ill, you may have difficulty establishing that their suspension or lock out is reasonably necessary for health or safety reasons and if you proceed you may have to pay that employee while they are suspended.

We recommend that as a first step toward creating your policy for dealing with the various scenarios that may occur due to this disease, you meet with your staff to discuss the points set out below.

There are five distinct categories of risk to your business:

1. Employees who are displaying flu-like symptoms,
2. Employees who need to take care of dependent relatives,
3. Employees who have had contact with people who have the disease directly through family, friends or colleagues.

4. Your business needs to close temporarily on the orders of the medical officer of health,
  5. Your business needs to reduce opening hours or staff hours or close temporarily because of a lack of customers.
1. In the first case, we recommend that employees be instructed that they are not to attend work if they have influenza or the symptoms. Employees in this category will be entitled to sick pay, or if they have insufficient sick pay to use annual leave entitlement at their request. If they have run out of sick leave and annual leave entitlement they may still be required to stay away without pay – refer the section (3) below on health or safety risks. You may wish to require such employees to provide a medical certificate of fitness before they are allowed to return to work.
  2. If an employee needs time off to take care of dependent children (who do not have swine flu) when the local school has been closed because of swine flu, they will be able to use any annual leave they may have accumulated. Sick pay is only payable if the employee or the dependent person is sick or injured (Holidays Act), so if the dependent child has swine flu, or develops swine flu, sick pay may be paid. Once annual leave entitlement is exhausted, although an employer may allow paid annual leave to be taken in advance, there is no obligation to do so and the employee may end up taking unpaid leave.
  3. Employees who have had direct contact with infected persons should be required to advise you of that contact, and they may be required to stand down for 5 days. They may take annual leave, and if there is insufficient annual leave available they may be stood down without pay. Sick leave may only be used if they are actually sick.

**Please note that the official stance on quarantine and stand-downs for this cause is changing daily, so you should do whatever the health Department recommendation is at the time.**

Although the Employment Relations Act does provide for employees to be locked out without pay where an employer has reasonable grounds for believing that the lockout is justified on the grounds of safety or health, this is a last resort action to be taken only when an employee refuses to follow your policy and you have good reason to believe that their presence at work constitutes a real risk.

4. If your business is closed on the instructions of the medical officer of health, your employees may elect to take annual leave, or take time off without pay. Whether employees should be paid in this situation is uncertain, some employers are doing so, and Government departments seem to be doing so. We believe that you should not have to pay as the situation is outside of your control.

There may be room for a compromise, such as contributing something towards the first week's lost wages as those businesses which have Business Interruption cover through the Crombie Lockwood FAB package will be insured for loss of gross profit after the first 14 days – to a maximum payout of \$25,000.

5. A significant downturn in business may be met by a number of strategies.
  - You may reduce everyone's hours by agreement unless the employment agreement allows you to do so without agreement,
  - You may make some positions redundant,
  - You may encourage staff to use up annual leave,
  - You may require staff to take annual leave (needs 2 week's notice)

Whichever strategy you choose will require consultation with affected staff. as for any business restructuring. Having consulted, and considered any feedback given, you may implement your chosen strategy.