

Employment Court: COVID-19 Protocol

All Alert Levels

Chief Judge Christina Inglis

6 September 2021

This protocol replaces the COVID-19 protocol issued on 28 August 2021 and applies from 11.59 pm on Tuesday 7 September 2021.

Regions under Alert Level 4

The following paragraphs apply to any regions under Alert Level 4.

1. All new matters will continue to be referred to a Judge and will be prioritised in the usual way. Parties are reminded of the ability to apply for urgency under cl 21 of sch 3 to the Employment Relations Act 2000. Any application should be supported by a full explanation as to why urgency is sought.
2. Although the Courts remain open, most hearings will need to be rescheduled as the Court is only hearing priority matters. Even with priority matters, it is unlikely in-person hearings will be conducted. Some such matters may be appropriately dealt with on the papers or heard remotely, for example by Virtual Meeting Rooms (VMR), a web-based videoconferencing system supported by the Ministry of Justice and Spark.
3. Judges will assess all cases scheduled to take place during the continuation of Alert Level 4 and convene telephone conferences with the representatives to discuss next steps, including dealing with matters on the papers, by telephone or audio-visual link, or by adjournment. Amendments to the High Court Rules ([High Court \(COVID-19 Preparedness\) Amendment Rules 2020](#)), providing for the conduct of hearings by remote participation, should be noted. These Rules, applied with any necessary modification, will likely guide directions and orders made by the Court (by virtue of reg 6(2) of the Employment Court Regulations 2000).
4. In the unlikely event an in-person hearing is required at Alert Level 4, paragraphs 16 to 23 below will apply, except the steps taken by the Ministry of Justice to ensure the safety of those coming into courthouses during this time, are as described on its website at [Alert Level 4](#).

5. Matters set down for hearing in the Employment Court are publicly notified on the Court's website and via the Court's Twitter account to enable those with an interest to contact the Registry if need be.
6. Updates will be sent out via the Court's Twitter account ([@EmploymentCourt](#)). The Court's webpage is being updated regularly.
7. All filing of Court documents in any region which is subject to Level 4 restrictions is to be by email or using File and Pay.¹ If a party does not have the ability to file electronically, mail will still be checked periodically. However, because of hygiene requirements, there will be a delay in processing documents received by post. No documents will be received for filing in person at Court Registries.
8. Difficulties in service may be drawn to the attention of the Court to enable appropriate directions and orders to be made facilitating electronic service.
9. The Court will not generally accept unsworn affidavits, but may, in appropriate circumstances, direct that an affidavit that does not comply be accepted for filing and be read and used in a proceeding (refer HCR 9.73). Practitioners may find it helpful to refer to guidance issued by the New Zealand Law Society.
<https://www.lawsociety.org.nz/professional-practice/covid-19-information/>
10. Participants should also feel free to contact the Registrar of the Employment Court directly for further guidance or clarification. The contact details are below.

Regions under Alert Levels 2 and 3

The following paragraphs apply to any regions under Alert Level 2 or Alert Level 3.

Triaging

11. The Employment Court will continue to process all new and existing proceedings. It remains open to hear matters, as appropriate, including in Auckland. Parties are reminded of the ability to apply for urgency under cl 21 of [sch 3 to the Employment Relations Act 2000](#). Any application should be supported by a full explanation as to why urgency is sought.
12. All new matters continue to be referred to a Judge and are prioritised in the usual way.
13. The Judges will assess all proceedings that are set down for hearing during the interim period and will convene telephone conferences as necessary to discuss next steps. Judges will consider whether a particular proceeding now should be dealt with on the papers, by

¹ [File and Pay — Courts of New Zealand \(courtsfnz.govt.nz\)](#)

remote participation, or by hearing in person. It is likely that some hearings will need to be vacated and set down for a later date.

14. At Alert Level 3, any hearing will probably proceed remotely, rather than in-person. Remote participation also is preferred at Alert Level 2, where appropriate. The Judges, however, will set down hearings in person where (1) alternative modes of hearing (for example, on the papers or via remote participation) cannot reasonably be accommodated; and (2) a hearing in person can be conducted safely; and (3) the Judge considers it appropriate to do so.
15. Representatives should contact the Court Registrar (contact details below) if they wish to raise any particular matters, including in relation to matters that have been set down for hearing.

Hygiene in the Court

16. All Courts have posters displaying the applicable NZ COVID Tracer QR code and paper records in place at the entranceway for attendees to record their attendance. People attending at Court are required to use them.
17. All those attending Courts are to wear face masks in public spaces and courtrooms (including representatives, parties and witnesses). Attendees will be offered a face mask if they do not already have one. A Judge may ask participants to remove masks when speaking.
18. Safe distancing will be observed in the courtroom, and people present will be required to maintain one metre social distancing, with alternate seats in public galleries taped off. Hand sanitiser will be available for use in all courtrooms.
19. The Court will not normally permit documents to be handed up. Documents that parties wish to produce should be scanned and shared by email at the appropriate time.
20. The Ministry of Justice will continue to take steps to ensure the safety of those coming into courthouses during this time, as described on its website [[Alert Level 3](#), [Alert Level 2](#)].
21. Any concerns about health and safety practices in the Court should be raised with the Registrar in the first instance.

Expectations of representatives

22. Representatives are expected to assist the Court by:
- a. Briefing clients and witnesses on public health messages, including:
 - (i) Not to come to Court if unwell
 - (ii) To advise their representatives as early as possible if they are unable to attend Court
 - (iii) The social distancing, masking and attendance recording expectations in the courthouse and precincts
 - (iv) How exhibits will be handled in their case
 - (v) The limits on attendance by support persons and members of the public.
 - b. Reducing the need for attendance in the courthouse by representatives, their clients and witnesses by reviewing each attendance in advance and seeking remote participation for appropriate cases and witnesses. The Court may be able to accommodate witnesses giving evidence remotely where a good reason exists. This should be raised by counsel in the relevant directions conference.
 - c. So far as possible, taking instructions and briefing witnesses outside the courthouse.
 - d. Raising any deficiencies with cleaning, the availability of cleaning supplies or physical distancing with the site manager immediately.

Community transmission response

23. It remains possible that a new cluster of COVID-19 community transmission may be confirmed within the location served by a courthouse. In that event, the Court will rely on official advice. Steps may be taken to reduce in-person attendances at the Court to help protect those working or appearing there. The extent of any restriction will depend on the circumstances and official advice or notices. The restrictions would be publicly notified in advance on the Court's website and via Twitter ([@EmploymentCourt](#)).

Filing/service/affidavits

24. All filing of Court documents should be by email, or by File and Pay, if possible.² However, documents can be filed by post and Employment Court Registries will be open to receive filing in person where that is necessary.

² [File and Pay — Courts of New Zealand \(courtsfnz.govt.nz\)](#)

25. Filing fees under the [Employment Court Regulations 2000](#) must be paid at the time documents are filed.
26. Difficulties in service may be drawn to the attention of the Court to enable appropriate directions and orders to be made facilitating electronic service.
27. The Court will not generally accept unsworn affidavits, but may, in appropriate circumstances, direct that an affidavit that does not comply be accepted for filing and be read and used in a proceeding (refer [HCR 9.73](#)).

Access

28. Matters set down for hearing in the Employment Court, and to which the public would otherwise have access, will continue to be publicly notified on the [Court's website](#) and via the Court's Twitter account ([@EmploymentCourt](#)) to enable those with an interest to contact the Registry, so that appropriate access arrangements can be put in place.
29. Accredited news media will continue to have entry to the Court in order to report Court proceedings, and to ensure continued open and transparent justice. Remote access for accredited news media, will continue to be facilitated in accordance with current protocols.
30. The Court's Twitter feed and web page continue to be updated regularly.
31. Participants should feel free to contact the Registrar of the Employment Court directly for further guidance or clarification. The contact details are set out below.

Regions under Alert Level 1

The following paragraphs apply to regions under Alert level 1.

32. For regions under Alert Level 1 the Employment Court operations will, in general, be as normal.
33. The use of remote participation will remain available for use on application in appropriate cases.
34. If counsel, or other persons required or proposing to attend a hearing (for example, a party or a witness) are unwell, they should not attend Court. If this applies, the presiding judge should be advised so that alternative arrangements for the appearance can be made.
35. All Courts have posters displaying the applicable NZ COVID Tracer QR code and paper records in place at the entranceway for attendees to record their attendance. People attending at Court are expected to use them.

36. Face masks and hand sanitiser will be available in courts, and their use is encouraged.
37. The Ministry of Justice will continue to provide the hygiene measures described on their website [[Alert Level 1](#)].
38. Any concerns about health and safety practices in the Court should be raised with the Registrar in the first instance.

Contact details

Auckland

Registrar: Mima Bobot
Phone: 09 916 6359
Email: mima.bobot@justice.govt.nz
Emergency phone: 027 295 6673

Electronic filing to be sent to: mima.bobot@justice.govt.nz
Postal: Employment Court, DX CX 10086, Auckland

Wellington and Christchurch

Registrar: Joseph Buckton
Phone: 04 918 8313
Email: joseph.buckton@justice.govt.nz
Emergency phone: 021 946 790

Electronic filing to be sent to: joseph.buckton@justice.govt.nz
Postal: Employment Court, DX SX 10009, Wellington