

# Employment Court: COVID-19 Protocol

## COVID-19 Protection Framework

Chief Judge Christina Inglis

21 December 2021

This protocol applies to all regions from Monday 31 January 2022 and covers the way the Employment Court will operate under the COVID-19 Protection Framework (traffic light system). Current traffic light settings for regions throughout the country are available here: [traffic light map](#).

For any regions under Alert Levels, the Employment Court: COVID-19 Protocol dated 6 September 2021 continues to apply.

The Courts are an essential service and the Employment Court will remain open at all traffic lights and during any localised lockdown.

### For all Regions

The following paragraphs apply to all regions and at all traffic lights.

1. Matters set down for hearing in the Employment Court are publicly notified on the Court's website ([Employment Court](#)) and via the Court's Twitter account ([@EmploymentCourt](#)) to enable those with an interest to contact the Court Registry if need be.
2. The Court's webpage and the Court's Twitter account are being updated regularly.
3. **Limits on access to courthouses:** Access to courthouses is generally limited to people who present a current My Vaccine pass showing that they have been fully vaccinated against COVID-19.<sup>1</sup> People should be prepared to show photo identification if required. Alternative arrangements will be available for unvaccinated people who are required or entitled to appear at Court in person. Those arrangements will be by direction of a Judge or by the Registrar and will likely include the need for evidence of a negative COVID-19 test administered within 72 hours prior to entry to the Court.
4. Representatives, parties, witnesses and other persons who are unable to meet the requirements set out at paragraph 3 above may participate in or observe a hearing by remote technology. Accredited news media also will continue to be able to access proceedings, either by entering the Court or through remote access, in order to report Court proceedings, and to ensure continued open and transparent justice. Inquiries may be made to the Registry.

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<sup>1</sup> Noting that screening is subject to the Ministry's operational capability, so that, initially, it may not happen at all courthouses.

5. If representatives or other persons required or proposing to attend a hearing (for example, a party or a witness) are unwell, they are not to attend Court. If this applies, the Registry should be advised as soon as possible so that alternative arrangements for the appearance can be made. Screening questions and thermal screening may be required at the courthouse points of entry. Access to a courthouse may be denied to anyone with possible exposure to COVID-19 or showing signs of illness, including having a temperature of over 38 degrees.
6. Please also refer to the Court's [Guideline for appearing by audio-visual link including in Virtual Hearings](#), [Summary of Guidelines for a Witness giving evidence by audio-visual link including in Virtual Hearings](#) and [Guidelines for Remote Viewing of Hearings](#).
7. It remains possible that the Court will receive advice regarding one or more courthouses. 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 ([Employment Court](#)) and via Twitter ([@EmploymentCourt](#)).

## **Regions on Traffic Light Red**

The following paragraphs apply to any regions on traffic light red.

8. 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.
9. Although the Courts remain open, some hearings will need to be rescheduled and others will be 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.
10. Judges will assess all cases scheduled to take place during the continuation of traffic light red and convene telephone conferences with the representatives to discuss next steps, including options of 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). One consideration in determining whether a matter is to be dealt with in whole or in part through remote participation or on the papers is the known vaccination status of participants, noting the limits on access to courthouses set out in paragraph 3 above.
11. If an in-person hearing takes place during traffic light red, paragraphs 21 to 27 below will apply (covering hygiene in the Court, and expectations of representatives). In addition, 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 [COVID-19 information](#).

12. All filing of Court documents should be by email, or by File and Pay, if possible.<sup>2</sup> However, documents can be filed by post and Employment Court Registries will be open to receive filing in person where that is necessary.
13. Difficulties in service may be drawn to the attention of the Court to enable appropriate directions and orders to be made facilitating electronic service.
14. 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: [NZLS COVID-19-information](#).
15. 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 on Traffic Light Orange**

The following paragraphs apply to any regions on traffic light orange.

### **Triaging**

16. The Employment Court will continue to process all new and existing proceedings. It remains open to hear matters, as appropriate. 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.
17. All new matters continue to be referred to a Judge and are prioritised in the usual way.
18. The Judges will assess all proceedings that are set down for hearing and will convene telephone conferences as necessary to discuss next steps. Judges will consider, and as necessary will discuss with the representatives, whether a particular proceeding should be dealt with on the papers, by remote participation, or by hearing in person. Some hearings may need to be vacated and set down for a later date.
19. At traffic light orange, the Judges will set down hearings in person where (1) they can be conducted safely, taking into account the known vaccination status of participants and noting the limits on access to courthouses, as set out above in paragraph 3; and (2) alternative modes of hearing (for example, on the papers or via remote participation) are less appropriate or cannot reasonably be accommodated; and (3) the Judge considers it appropriate to do so.
20. 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**

21. 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.

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

22. All those attending Courts are to wear face masks covering their mouth and nose in public spaces and courtrooms (including representatives, parties and witnesses), unless they hold a valid exemption. Attendees will be offered a face mask if they do not already have one. A Judge may ask participants to remove masks when speaking.
23. 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. This may mean there will be capacity limits in courtrooms. Hand sanitiser will be available for use in all courtrooms.
24. 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. If required, this can occur during the hearing.
25. 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 at [COVID-19 information](#).
26. Any concerns about health and safety practices in the Court should be raised with the Registrar in the first instance.

### **Expectations of representatives**

27. Representatives are expected to assist the Court by:
  - a. Ascertaining the vaccination status of their clients, witnesses and other attendees, so far as reasonably possible. This should include sighting copies of participants' My Vaccine passes.
  - b. Briefing clients and witnesses on public health messages, including:
    - (i) not to come to Court if unwell;
    - (ii) not to come to Court if they have not been fully vaccinated against COVID-19 unless alternative arrangements have been made with the Court;
    - (iii) to advise their representatives as early as possible if they are unable to attend Court;
    - (iv) the social distancing, masking and attendance recording expectations in the courthouse and precincts;
    - (v) how exhibits will be handled in their case, for example if there has been a direction that documents will be produced only by digital means at the hearing; and
    - (vi) the limits on attendance by support persons and members of the public.
  - c. 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 is likely to be able to accommodate witnesses giving evidence remotely. This should be raised by representatives in the relevant directions conference.

- d. So far as possible, taking instructions and briefing witnesses outside the courthouse, and having witnesses not enter the courthouse until shortly before they are due to give evidence.
- e. Considering whether the number of witnesses can be reduced through the use of agreed facts.
- f. Raising any deficiencies with cleaning, the availability of cleaning supplies, masks or sanitiser, or physical distancing with the Registrar immediately.

### **Filing/service/affidavits**

- 28. All filing of Court documents may be by email, or by File and Pay.<sup>3</sup> However, documents can be filed by post and Employment Court Registries will be open to receive filing in person where that is necessary.
- 29. Filing fees under the [Employment Court Regulations 2000](#) must be paid at the time documents are filed.
- 30. Difficulties in service may be drawn to the attention of the Court to enable appropriate directions and orders to be made facilitating electronic service.
- 31. 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](#)).

### **Regions on Traffic Light Green**

The following paragraphs apply to regions on traffic light green.

- 32. For regions on traffic light green the Employment Court operations will, in general, be as normal, subject to the requirements below.
- 33. At this stage, the limits to access to courthouses set out in paragraphs 3 and 5 above would continue to apply.
- 34. The use of remote participation will remain available for use on application in appropriate cases, with the Court taking into account the known vaccination status of participants and noting the limits on access to courthouses.
- 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 required to use them.
- 36. All those attending Courts are to wear face masks covering their mouth and nose in public spaces and courtrooms (including representatives, parties and witnesses), unless they hold a valid exemption. Attendees will be offered a face mask if they do not already have one. A Judge may ask participants to remove masks when speaking.

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<sup>3</sup> [File and Pay — Courts of New Zealand \(courtsfnz.govt.nz\)](#).

37. 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. This may mean there will be capacity limits in courtrooms. Hand sanitiser will be available for use in all courtrooms.
38. The Ministry of Justice will continue to provide the hygiene measures described on their website at [COVID-19 information](#).
39. Any concerns about health and safety practices in the Court should be raised with the Registrar in the first instance.

## **Registry contact details**

### **Auckland**

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

Electronic filing to be sent to: [mima.bobot@justice.govt.nz](mailto: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](mailto:joseph.buckton@justice.govt.nz)  
Emergency phone: 021 946 790

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