

# **EMPLOYMENT COURT PROTOCOL**

## **Employment Court operations under Covid-19 Protection Framework**

**Chief Judge Christina Inglis**

**Effective from 26 April 2022**

1. Courts are an essential service. The Employment Court will remain open at all levels under the COVID-19 Protection Framework (Protection Framework) to ensure access to justice.
2. This protocol sets out a framework for ensuring that everyone who needs to participate in proceedings is able to do so. It sets out practices to be applied by the Employment Court under the Red, Orange or Green levels of the Protection Framework. The primary considerations that underpin this protocol, and decisions under it, are the interests of justice and the protection of the health and safety of everyone in the Court building.
3. This protocol applies subject to any directions given by the presiding judge in a particular case. The presiding judge may direct that requirements set out in this protocol do not apply in a particular case if the judge is satisfied that it is in the interests of justice to do so.

### **ENTRY TO COURT BUILDINGS**

4. The following requirements apply to entry into court buildings:
  - (i) A person may not enter the court building if they are showing signs of illness, or have a body temperature of 38 degrees or higher.
  - (ii) A person who has tested positive for COVID-19 and is required to isolate may not enter the court building.
  - (iii) A person who is a household contact of a confirmed case of COVID-19 may not enter the court building unless they are authorised to do so as a critical worker.

- (iv) A person may not enter the court building unless they are wearing a surgical mask or a KN95 mask.<sup>1</sup> Masks will be provided at the entry to the court building for all those who do not have their own mask.
- 5. The courts remain open to the public, but for health and safety reasons there may be limits on the number of people who are not directly involved in proceedings who are physically present in courtrooms and court buildings.
- 6. Every person in the public areas of a court building must wear a surgical mask or a KN95 mask at all times. A KN95 mask must be worn by participants in any hearings if the presiding judge so directs.
- 7. All physical distancing requirements must be observed.

#### **PROTECTION FRAMEWORK RED LEVEL**

- 8. Employment Court business will be conducted using remote participation technology, where that is reasonably possible and is permitted by law.<sup>2</sup>
- 9. In-person hearings may take place if a judge decides that it is in the interests of justice to do so.
- 10. The question of whether the hearing takes place in person or by remote technology will be considered as part of a directions conference or, following a request from the relevant case officer, dealt with on the papers after receipt of representatives' memoranda (whether joint or otherwise).
- 11. Notice of application to participate in person at hearings presumptively conducted by remote technology must be given at least five working days prior to the hearing.
- 12. New filings will be triaged according to priority.

---

<sup>1</sup> (i) All references to KN95 masks include references to masks of an equivalent standard such as P2 masks.  
(ii) People who have a mask exemption card issued by the Ministry of Health will not be required to wear a mask.  
(iii) A Judge may permit a participant in a hearing to remove their mask when speaking.

<sup>2</sup> See also Courts (Remote Participation) Act 2010, ss 5 and 6.

## **PROTECTION FRAMEWORK ORANGE LEVEL**

13. At the Orange level, all hearings of one day or less are presumptively conducted by remote technology where permitted by law, and subject to the particular circumstances of an individual case, which may mean an in-person hearing would be in the interests of justice).<sup>3</sup>
14. All other matters will take place in person unless a judge directs otherwise. A party may seek a direction that a matter that is presumptively to be conducted in person should be conducted using remote technology, where that is desirable in the interests of justice and to protect health and safety in the courts.
15. Where a hearing takes place in person, a party, counsel or other participant may apply to participate in the hearing by remote technology. Particular consideration will be given to any health vulnerabilities, the distance that would otherwise have to be travelled, and the likely length and complexity of the hearing.
16. Notice of application to participate in person at hearings presumptively conducted by remote technology must be given at least five working days prior to the hearing.

## **PROTECTION FRAMEWORK GREEN LEVEL**

17. The presumption is that all matters will be conducted in person. A party may seek a direction that a matter that is presumptively to be conducted in person should be conducted using remote technology, where that is desirable in the interests of justice and to protect health and safety in the courts.
18. A party, representative or other participant may apply to participate in a hearing by remote technology.<sup>4</sup> Particular consideration will be given to any health vulnerabilities, the distance that would otherwise have to be travelled, and the likely length and complexity of the hearing.
19. Notice of application to participate by remote technology must be given at least five working days prior to the hearing.

---

<sup>3</sup> See also Courts (Remote Participation) Act 2010, ss 5 and 6.

<sup>4</sup> For relevant factors see the Courts (Remote Participation) Act 2010, ss 5 and 6.

## **MEASURES APPLYING AT ALL PROTECTION FRAMEWORK LEVELS**

### **Attending Court**

20. Where participants attend Court:

- (i) Witnesses required to attend Court should not enter the court building until just prior to their scheduled attendance;
- (ii) So far as possible, representatives should take instructions and brief witnesses at a different location from the court building. Rooms will be made available as far as practicable for interviews, and representatives may request breaks to take instructions safely using those facilities.

21. All participants attending Court for hearings longer than one day may be asked to take a Rapid Antigen Test (RAT), or confirm that they have taken a RAT, on each morning before the Court hearing commences. This requirement may also apply to participants attending court for hearings of half a day or longer, if the presiding judge so directs. The Registry will advise representatives and any party who is not legally represented of the arrangements for testing for their particular case. If the hearing extends beyond one week, the presiding judge may direct that in the second and subsequent weeks, RAT testing is only required on the Monday and then on every second sitting day.

22. If participants are asked to take a RAT, and any participant declines to do so, the presiding Judge will determine whether and how the hearing will proceed. If any participant tests positive, the presiding Judge will determine on a case by case basis whether and how the hearing may be able to continue.

### **Media access**

23. Accredited news media will 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.

## **Remote participation and viewing**

24. The Guideline for Appearing by Audio-Visual Link, including in Virtual Hearings will apply to any hearings involving remote participants:

[Guideline for Appearing by AVL](#)

25. The Guideline for Remote Viewings of Hearings governs media and public access to hearings:

[Guideline for Remote Viewings of Hearings](#)

## **Health and safety**

26. The following health and safety measures can be expected in the court building:

- (i) Cleaning products are available on site to enable staff and lawyers to keep their immediate areas clean (including AVL suites);
- (ii) Hand sanitiser will be readily available within the courtroom.

27. Any concerns about health and safety in the Court should be raised with the Court Registrar or the Manager Justice Services in the first instance.

## **Expectations of Representatives**

28. Representatives are expected to assist the Court by:

- (a) Briefing clients and witnesses on the court building entry requirements and RAT testing requirements , as outlined above.
- (b) Reducing unnecessary attendances in the court building by representatives, their clients and witnesses by reviewing each attendance in advance and:
  - (i) Seeking remote participation in appropriate cases; and
  - (ii) Limiting the number of witnesses via the use of agreed facts.

- (c) Representatives should consider and endeavour to agree whether it is appropriate for any witness to participate remotely and advise the Court of any such proposals well in advance of the hearing date. The relevant provisions of the Courts (Remote Participation) Act 2010, will govern whether and how any witness may give evidence remotely. Also refer to the [Summary of Guidelines for a witness giving evidence by AVL](#).

### **Filing and filing fees**

29. Documents may be filed electronically, by post, courier or in person. Address details are contained in Addendum 1.
30. Filing fees are payable. An online “file and pay” system is available: [Courts of New Zealand file and pay](#).

## **ADDENDUM 1**

### **Registry contact details**

#### **Auckland**

Registrar: Mima Bobot

Level 2, 41 Federal Street, Auckland (cnr Federal and Wyndham Streets)

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

Level 5, District Court Building, 43-49 Ballance Street, Wellington

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