

# **EMPLOYMENT COURT PROTOCOL**

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

**Chief Judge Christina Inglis**

**Effective from 5 April 2022**

1. This Protocol sets out practices to be applied by the Employment Court under the COVID-19 Protection Framework (traffic lights) (Protection Framework).
2. Courts are an essential service and the Employment Court will remain open at all three levels under the Protection Framework to ensure access to justice. This protocol sets out a framework for ensuring that everyone who needs to participate in proceedings is able to do so. 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. In locations where the Protection Framework practices have not been fully implemented, the relevant transitional Red, Orange and Green level protocols will apply to the extent necessary.

### **PROTECTION FRAMEWORK RED LEVEL**

4. Employment Court business will be conducted to the extent possible by remote participation including AVL or other remote means.
5. In-person hearings may take place if a Judge decides that it is in the interests of justice to do so.
6. 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.
7. 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).

8. New filings will be triaged according to priority.

### **PROTECTION FRAMEWORK ORANGE LEVEL**

9. At the Orange level, all matters are presumptively conducted by remote technology (subject to the particular circumstances of an individual case which may mean an in-person hearing would be in the interests of justice).<sup>1</sup>
10. 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.
11. For all matters, 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).

### **PROTECTION FRAMEWORK GREEN LEVEL**

12. The presumption is that all matters will be conducted in person.
13. Representatives and parties may apply to participate in a hearing by approved remote technology. Particular consideration will be given to any health vulnerabilities of participants, the distance that would otherwise have to be travelled and the likely length and complexity of the hearing.
14. Notice of application to participate by remote technology must be given at least 10 working days prior to the hearing.

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

#### **Attending Court**

15. Where participants attend Court:
  - (i) Witnesses required to attend Court should not enter the courthouse until just prior to their scheduled attendance;

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<sup>1</sup> See also Courts (Remote Participation) Act 2010, ss 5 and 6.

- (ii) So far as possible, representatives should take instructions and brief witnesses at a different location from the courthouse. Rooms will be made available as far as practicable for interviews, and representatives may request breaks to take instructions safely using those facilities.

16. All participants attending Court for hearings longer than one day may be asked to take a Rapid Antigen Test (RAT) on each morning before the Court hearing commences, unless the presiding judge directs that this is not required.<sup>2</sup> 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 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**

17. 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**

18. 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](#)

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

[Guideline for Remote Viewings of Hearings](#)

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<sup>2</sup> This will be rolled out to all courts, but will not be in place in some courts as at 5 April 2022.

## Health and safety

20. 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. All physical distancing requirements must be observed.
21. Subject to the notes set out below,<sup>3</sup> and the over-riding discretion of the presiding Judge:
- (i) Court attendees must wear a surgical mask or a KN95 (or equivalent) mask at all times within the court precincts.
  - (ii) All participants in proceedings considered by the presiding judge to be high risk must wear a KN95 (or equivalent) mask at all times within the court precincts. These will be provided if required.
22. The following health and safety measures can be expected in the courthouse:
- (i) Access will be denied to anyone who is showing signs of illness, or has a body temperature of 38 degrees or higher.
  - (ii) Access will be denied to anyone who has tested positive for COVID-19 and is required to isolate, or who is a household contact of a confirmed case of COVID-19;
  - (iii) Appropriate masks will be provided at the entry to the courthouse for all those who do not have their own mask;
  - (iv) Cleaning products are available on site to enable staff and lawyers to keep their immediate areas clean (including AVL suites);
  - (v) Hand sanitiser will be readily available within the courtroom.

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3 (i) People who have a mask exemption card issued by the Ministry of Health will not be required to wear a mask.  
(ii) Leave may be given to court attendees to remove their mask when speaking.

23. 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**

24. Representatives are expected to assist the Court by:
- (a) Briefing clients and witnesses on the health and safety measures in the courthouse, as outlined above.
  - (b) Reducing the need for attendance in the courthouse 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**

25. Documents may be filed electronically, by post, courier or in person. Address details are contained in Addendum 1.
26. 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