



Report

Date: 28 May 2020

Security Level: IN CONFIDENCE

To: Hon Grant Robertson, Minister of Finance
Hon Phil Twyford, Minister for Economic Development
Hon Carmel Sepuloni, Minister for Social Development
Hon Iain Lees-Galloway, Minister for Workplace Relations and Safety

COVID-19 Wage subsidy clarifications

Purpose of the report

- 1 The Ministry of Social Development implemented the wage subsidy scheme (WSS) to support the government response to COVID-19. Through the administration of the WSS, some further issues have arisen that require Ministerial decision.

Recommended actions

It is recommended that you:

Self-employed workers whose ordinary income is less than the subsidy rate

- 1 **Note** that under the current scheme, self-employed workers whose earnings are usually less than the subsidy rate will receive more money than they would usually earn during that period, because of the scheme's design and flat rate payment method
- 2 **Note** that the issue is particularly acute for self-employed workers who work limited hours, as they receive significantly more than they usually earn
- 3 **Note** that the operational approach for the current scheme is that if an employer has a surplus arising from employee wages being less than the subsidy rate, then they must use the difference to contribute to the wages of other affected staff and when there are no other employees, must refund the remainder back to MSD
- 4 s 9(2)(k)
- 5
- 6 **Note** that Cabinet agreed that under the extended scheme, employers must use any surplus funding from the subsidy to fund other employees' wages where possible and, where this is not possible, return any surplus funding to MSD
- 7 **Agree** that in the extended scheme repayment obligations will also apply to self-employed workers, where the subsidy rate is more than usual earnings

Agree/disagree

The eligibility of employees given notice of redundancy

- 8 **Note** that under the current scheme, if an employer gives an employee notice of redundancy during the subsidy period, the employer is required to repay the balance of any remaining amount not used for wages
- 9 **Note** that MSD has been approached by employers about the eligibility under the extended scheme of staff who have already been given notice of redundancy
- 10 **Note** that it goes against the purpose of the extended wage subsidy scheme for employers to receive the subsidy for employees to whom they have already given notice of redundancy, where they have no intention of changing that redundancy decision, as the purpose of the wage subsidy is to retain an employment connection
- 11 **Note** that employees who are made redundant may be eligible for the new COVID-19 Income Relief Payment from 8 June 2020
- 12 **Agree** that under the extended wage subsidy scheme employers who have given employees notice of redundancy before they apply for the scheme are not eligible to receive the subsidy for those employees unless the redundancy notice is withdrawn

Agree/disagree

Clarifying the period for assessing revenue loss

- 13 **Note** that under the extended wage subsidy scheme, Cabinet agreed to amend the current 30 percent revenue loss test to a revenue loss of at least 50 percent for a continuous 30-day period prior to the application date
- 14 **Note** that the intention of the 30-day assessment period immediately prior to an application is to reflect a businesses' financial circumstances at the end of the current scheme (if they are receiving the current scheme) and limits eligibility to businesses experiencing hardship after alert level 4
- 15 **Note** that concerns have been raised whether the 30-day period is flexible enough to accommodate time needed for employers to make revenue loss calculations and to engage with employees before applying
- 16 **Agree** to amend the revenue test under the extended wage subsidy scheme so that the business must have a revenue loss of at least 50 per cent for a 30-day period in the 40 days immediately prior to the application date (but beginning no earlier than 10 May 2020) versus the nearest comparable period last year

Agree/disagree

Amendments to the declaration form

- 17 **Note** that we are preparing changes to the declaration form completed by applicants to clarify that:
 - 17.1 the subsidy scheme does not override any employment law obligations that apply;
 - 17.2 employers must advise their employees about the outcome of an application for the subsidy;
 - 17.3 an employee's 'ordinary pay or wages' is to be calculated with reference to what is reflected in their employment contract at the point of applying for the wage subsidy

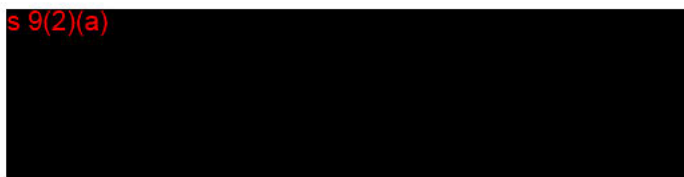
Wage Subsidy Extension implementation timeframe

- 18 **Note** that the current COVID-19 Wage Subsidy Scheme will end at 11.59pm on 9 June 2020, and that the Wage Subsidy Extension will begin at 9am on 10 June 2020
- 19 **Note** that Cabinet agreed that an employer cannot simultaneously claim under the targeted extension to the Wage Subsidy Scheme, the current Wage Subsidy Scheme, or the COVID-19 leave support scheme in respect of the same employee
- 20 **Note** that employers who applied for the original wage subsidy on the first day of application will have their 12-week subsidy end on 8 June 2020, which means that there is an additional day that employers could attempt to apply for the original subsidy a second time on 9 June 2020
- 21 **Note** that employers will only be able to apply for the current COVID-19 Wage Subsidy once per employee and the Wage Subsidy Extension once per employee

Next steps

- 22 **Note** that for the Wage Subsidy Extension Cabinet delegated authority to the Minister of Finance, the Minister for Economic Development, the Minister for Social Development, and the Minister for Workplace Relations and Safety to make technical or minor implementation changes, and agreed that these Ministers will report back to Cabinet on any changes [CAB-19-MIN-0219.01 refers]
- 23 **Note** that if you agree to recommendations 7, 12 and 16, Cabinet will need to be notified of these decisions
- 24 **Note** that to ensure applicants are given sufficient time to be aware of the changes and their obligations under the extended subsidy, we require decisions to be made as soon as practicable

s 9(2)(a)



28/5/20

Date

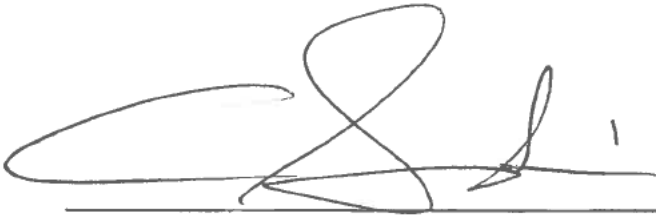
Policy Manager, Employment and Labour Market Policy

Hon Grant Robertson
Minister of Finance

Date

Hon Phil Twyford
Minister for Economic Development

Date



Hon Carmel Sepuloni
Minister for Social Development

2/6/2020
Date

Hon Iain Lees-Galloway
Minister for Workplace Relations and Safety

Date

Self-employed workers who are paid more than they usually earn through the Wage Subsidy Scheme

- 1 On 16 March 2020, Cabinet agreed to implement a temporary subsidy scheme to help affected employees and businesses to adjust to the impact of COVID-19. The scheme supports employers and employees by enabling employers to retain their staff and ensure they are receiving an income [CAB-20-MIN-0108].
- 2 In order to operationalise the scheme at scale and through existing MSD processes, the subsidy payments were fixed at a flat rate. As at 21 May 2020, MSD has approved 453,732 applications, paying 1,651,535 employees and 221,548 self-employed workers. The rate of payment was set at \$585.80 per week for full-time employees, where full-time is 20 hours or more per week, and \$350.00 per week for part-time employees, where part-time is less than 20 hours per week. The subsidy is paid as a lump sum covering wages over a 12-weeks period.

The wage subsidy is treated differently for employees and self-employed workers

- 3 Under the scheme, employees and self-employed workers are paid differently. Employees are paid the subsidy through their employer, who apply for the subsidy for all affected staff in the same application. The employer is paid the applicable flat rate for each employee (either the part-time or full-time rate) and then passes on the full subsidy to those employees. If an employee usually earns less than the subsidy rate paid for that employee, then the employer need only continue paying the employee's usual wages before the impact of COVID-19, resulting in a surplus for the employer.
- 4 The operational approach for the current scheme is that if an employer has a surplus arising from employee wages being less than the subsidy rate, then they must use the difference to contribute to the wages of other affected staff and when there are no other employees, must refund the remainder back to MSD.
- 5 Self-employed workers are paid at either the part-time flat rate if they work less than 20 hours per week, or the full-time flat rate if they work more than 20 hours per week. Paying this flat rate means a self-employed worker may receive more through the subsidy than they would usually earn. For example, if a self-employed person usually works for 25 hours per week, and they earn \$20 per hour, then their usual income would be \$500 per week, though if they are eligible for the wage subsidy, they would receive the full-time subsidy rate of \$585.80 per week, granting them a surplus of \$85.80.

6 s 9(2)(k)



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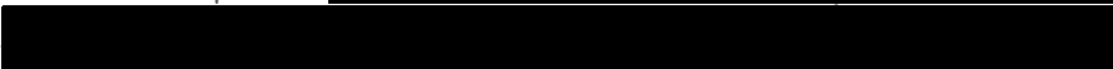
Paying the flat subsidy rate has led to some self-employed workers gaining more through the scheme than others

- 8 The amount a self-employed person might gain from the subsidy will depend on their usual hours and pay. The less a self-employed worker usually earns from their business, the more likely they are to gain from the flat rate subsidy payment.
- 9 The scheme's design including the flat rate amounts were necessary to implement the WSS, though this has led to windfall payments to people who might not have usually depended on their self-employed income to meet living costs. Self-employed recipients whose ordinary income is less than the applicable subsidy rate, particularly those working very low hours and earning considerably less than the subsidy rate,

are less likely to rely on the surplus amount that they have received to meet their living costs.

- 10 An example of a self-employed worker gaining a windfall payment through the scheme is eligible children and young people under 18 and below the tax threshold¹. MSD has received several subsidy applications of this type from children who deliver newspapers or circulars.
- 11 Applicants in this group receive an amount of money through the subsidy far in excess of their usual income before COVID-19 for their self-employed work. An eligible child or young person who earns less than \$2,340 annually or \$45 per week would receive the part-time subsidy rate of \$350 (\$4,200 over the 12-week period), resulting in a gain of at least \$305 per week above their usual income, or \$3,660 more over the 12-week subsidy period.

Cabinet has agreed that under the extended scheme employers will be required to return any surplus subsidy funding to MSD

- 12 Cabinet has agreed that under the extended scheme employers must use any surplus funding from the subsidy to fund other employees' wages where possible and, where this is not possible, return any surplus funding to MSD. This agreement was silent on whether the same obligations apply to self-employed workers.
- 13 We recommend that in the extended scheme repayment obligations also apply to self-employed workers. This means under the extended scheme whenever there is excess subsidy funding, that cannot be used to support the wages of other employees, it will be required to be repaid, whether the recipient is an employer or self-employed worker.
- 14 This obligation on self-employed workers to repay any surplus will be administered under the current high trust model, which will include auditing and assurance in line with the current process. § 9(2)(k)

- 15 If Ministers agrees, MSD will put out guidance so that self-employed applicants are aware of their obligations to repay any surplus.

The eligibility of employees given notice of redundancy

- 16 Under the current scheme an employer who has received the subsidy must retain staff for the duration of the subsidy (12 weeks). In some cases, employers have received the subsidy for their employees and part way through the subsidy period have had to make employees redundant because of financial difficulties.
- 17 Officials have clarified that in the case of redundancies an employee is eligible to receive the subsidy throughout their notice period until they cease employment. From the time the employment ceases, the employer will be required to repay any remaining balance of the subsidy for named staff. In this situation employers cannot use the subsidy to meet any redundancy payment obligation.

Eligibility of employees given notice of redundancy for the current scheme

- 18 A core obligation of the current scheme is that the person applying must have "employees ... legally employed by your business." In order to bring employees who have been given notice of redundancy (and whose employment ceases in the subsidy period) under the scheme within this requirement employers would need to either:

¹ Children and young people under 18 (or turned 18 on or after 1 January in the previous tax year and still at school) who derive income less than \$2,340 annually from a certain type of work, such as such as newspaper delivery and lawnmowing, are exempt from paying tax. Standard wages and salaries (for example, through a part-time job at a supermarket or cafe) are subject to PAYE regardless of the employee's age and therefore are not exempt from tax.

- Cancel the redundancy notice and make some sort of furloughed or alternate leave without pay arrangement with their employees;
 - Leave the notice of redundancy in force but extend the “notice” period so the person remains engaged as an “employee” for the duration of the extended subsidy application.
- 19 Whether to cancel or alter a redundancy notice is ultimately a matter for employers and employees (and unions) to agree upon.
- 20 Officials consider that employees in the first group should be eligible for the subsidy since they would be retained by their employers. However, we advised our view was that eligibility for the second group does not appear to be consistent with the purpose of the scheme.
- 21 We note that the final parameters of the extended scheme have not been fixed and are seeking Ministers’ confirmation of the intent of the extended scheme.

Recommended approach for employees given notice of redundancy in the extended scheme

- 22 Officials have been approached by employers who have been engaging with unions on redundancy processes. During that process a question has arisen about the eligibility under the extended scheme of staff who have already been given notice of redundancy.
- 23 Officials consider that it is inconsistent with the purpose of the scheme for employees who have been given notice of redundancy to receive the subsidy, when the intention of the scheme is to retain an employment connection through the impact of COVID-19. In order to qualify, employers would have to artificially extend the employees’ employment for the subsidy period with no intention of retaining the employee for longer, which could be perceived as deliberately subverting the intent of the scheme.
- 24 We note that many employees who have been given notice of redundancy (and once they stop being employed) are likely to be eligible for the new COVID-19 Income Relief Payment (CIRP). This payment has been created for people who have lost their employment between March and October 2020 due to COVID-19 and is available from 8 June 2020.
- 25 On the other hand, if an employer cancels a redundancy so that they remain eligible for the extended subsidy, then the employer will be able to receive the subsidy for those employees, including in instances where an employee is furloughed or remains in employment but is not paid (in which case they would not be eligible for the CIRP).
- 26 We therefore recommend clarifying that the extended scheme is not open to employers who have given employees notice of redundancy before they apply, except where the employer and employee agree to cancel the redundancy. If you agree we will clarify that this group is not eligible via changes to the application declaration and associated guidance material.

Clarifying the period for assessing revenue loss

- 27 Cabinet agreed to amend the current 30 percent revenue loss test for the extended scheme. The decision was that:
- “instead of the current 30 percent revenue drop test the business must have suffered, or expect to suffer, a revenue loss of at least 50 per cent for the 30-day period prior to the application date versus the nearest comparable period last year.” [emphasis added]
- 28 The targeted extension of the WSS will be available from 10 June 2020. The effect of the amended revenue test is so that employers need to be confident that in the 30 days immediately preceding their new application they have a 50 percent revenue loss. The intention is to reflect the position of the businesses applying for the extended scheme at the end of the period of the current subsidy and to limit the primary period of assessment to operation during alert level 2 (and the end of alert

level 3 in the case of applications from 10 June to 15 June). Limiting the assessment period primarily to alert level 2 and not to earlier alert levels restricts eligibility of the extended scheme businesses who are still experiencing financial hardship.

- 29 Concerns have been raised about whether this approach is flexible enough to accommodate the time needed for employers to make reasonable calculations about their revenue flow before applying, and also the need to engage with their employees about the application once they have assessed their eligibility. We agree that some degree of flexibility in the assessment period would be helpful.

Recommended approach

- 30 We recommend that applicants should be able to rely on any 30-day period within the 40 days immediately before they apply, but the 30-day period cannot commence earlier than 10 May 2020. This provides a degree of flexibility, still ties the assessment period to the end of any current wage subsidy period, but cannot be any earlier than alert level 2. If you agree we will reflect this in the declaration and associated guidance material.

Amendments to declaration form

- 31 When a person applies for the wage subsidy they must agree to criteria and obligations specified in a declaration form. The declaration form provides the legal basis for obligations imposed by the scheme and a means for recovering money where a person breaches the scheme.
- 32 We are making changes to the declaration to reflect the change to the revenue test agreed by Cabinet and have been exploring whether it is necessary to make others changes and whether we can improve the clarity of existing obligations.
- 33 We have identified three changes that we are flagging for your attention:
- 33.1 The current declaration requires employers to calculate their employee's ordinary wages with reference to what was in their employment contract at 27 March. Ordinary wages are relevant to the obligation to pay at least 80 percent 'of ordinary wages or salary' or, if the employee is usually paid less than the subsidy rate, to continue to pay their "ordinary wages or salary." The 27 March date was fixed to ensure a point in time for this assessment but needs to be updated to reflect the extension of the scheme. We consider it is not necessary to rely on a fixed date and will instead require employers to use the pay reflected in employment agreements at the date they apply for subsidy to define ordinary wages for the purposes of the wage subsidy extension.
- 33.2 We are making minor modifications to clarify that nothing in the scheme overrides *any* employment law obligations;
- 33.3 We are adding an obligation on employers to notify employees once the outcome of a subsidy application is known by the employer. There have been instances of employers failing to do so. This proposed obligation will supplement existing avenues for employees to check if an employer has applied via MSD.

Implementing the Wage Subsidy Extension

- 34 Cabinet recently agreed that the Wage Subsidy extension would begin on 10 June 2020. The current COVID-19 Wage Subsidy Scheme will end at 11.59pm on 9 June 2020, and that the Wage Subsidy Extension will begin at 9am on 10 June 2020.
- 35 Cabinet agreed that an employer cannot simultaneously claim under the targeted extension to the Wage Subsidy Scheme, the current Wage Subsidy Scheme, or the COVID-19 leave support scheme in respect of the same employee.
- 36 Employers who applied for the original wage subsidy on the first day of application will have their 12-week subsidy end on 8 June 2020. This means that there is an additional day that employers (who applied under the current scheme on the first day of applications) could attempt to apply for apply for the original subsidy a second time on 9 June 2020.

- 37 The policy intent is that employers should only be able to apply for the current COVID-19 Wage Subsidy once per employee and the Extended Wage Subsidy once per employee. Employers who have received the original subsidy for named employees should not be able to re-apply for this subsidy for a further 12 weeks on 9 June, and will be required to wait until 10 June to apply for the Wage Subsidy Extension.

Next steps

- 38 Cabinet delegated authority to the Minister of Finance, the Minister for Economic Development, the Minister for Social Development, and the Minister for Workplace Relations and Safety to make technical or minor implementation changes the Wage Subsidy Extension and agreed that these Ministers will report back to Cabinet on any changes [CAB-19-MIN-0219.01 refers].
- 39 If you agree to the recommended changes, Cabinet will need to be notified of these decisions. These changes are:
- 39.1 that in the extended scheme repayment obligations will also apply to self-employed workers, where the subsidy rate is more than usual earnings
 - 39.2 that under the extended wage subsidy scheme employers who have given employees notice of redundancy before they apply for the scheme are not eligible to receive the subsidy for those employees unless the redundancy notice is withdrawn
 - 39.3 that in the revenue test for the extended subsidy, a business must have a revenue loss of at least 50 per cent for a 30-day period in the 40 days immediately prior to the application date (but beginning no earlier than 10 May 2020) versus the nearest comparable period last year.
- 40 To ensure applicants are given sufficient time to be aware of the changes and their obligations under the extended subsidy, we require decisions to be made as soon as practicable.

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