

KEY BUSINESS EARTHQUAKE ISSUES



As we are all aware, the Christchurch Earthquake on Tuesday 22 February 2011 is going to have a significant and on-going impact. Businesses are sadly no exception.

This newsletter considers some issues for businesses in the greater Canterbury region. Our Property team has prepared a separate newsletter that focuses on Earthquake related property issues.

BUSINESS INSURANCE

Business Insurance will be foremost in Canterbury business owners' minds at this time. It will likely dictate the future of a great number of businesses in the Canterbury region.

The type and scope of Business Insurance will be different for every business, and it will in turn depend on the specific terms of each policy. A business may hold insurance relating to material damage cover and/or business interruption cover. Material damage cover relates to physical damage to business assets, while business interruption cover relates to the financial implications for the business.

We recommend that you contact your insurer or insurance broker as soon as possible to clarify your Business Insurance cover.

It is important that you fully understand your Business Insurance policy. Any action you take must be consistent with the parameters of your relevant insurance policy. Please be aware any steps taken that may be contrary to your policy, may prejudice or potentially invalidate your cover.

Business Interruption Insurance

In general terms, Business Interruption Insurance policies relate to any loss the business may have suffered as a result of interference or interruption to the business.

Business Interruption Insurance may include: loss of profits, reduced turnover or increased cost of continuing to operate through the interruption. It may also include items such as wages, professional costs, relocation costs, marketing costs and the like.

The value of the Business Interruption Insurance available for your business will depend on the terms of your insurance policy, and it may be some time before you know what that value is. Business Interruption Insurance is usually a comparison of gross profits for a specified period compared with previous equivalent periods for the business. Some policies may include a schedule or formula for determining the value.

We recommend that you maintain open communication with your insurer or insurance broker. It is in the best interests of the insurance companies to help your business get up and running again. An example of this was after the last earthquake when Business A's premises were destroyed, the business insurance of Business A enabled it to purchase Business B and continue to trade as a new business from Business B's premises merging the customers of both. This represented a saving to the insurance company compared to the cost of paying out Business Interruption Insurance to Business A.

It is vital that you retain all records in relation to your business since the Christchurch Earthquake, including any extra costs or expenses you may have incurred as these may be recoverable through your business insurance.

We are able to assist with any Business Insurance issues.

EMPLOYMENT

“Do I still have a job?” will be the question on so many Cantabrians minds at this time.

As an employer, regardless of the situation that your business is in following the Earthquake, it is important that you maintain good and open communication with your employees. You have all suffered a traumatic experience, and levels of stress and anxiety will be heightened because of that. You may wish to offer counselling for your employees to help them deal with the recent events.

As a consequence of the Earthquake, a number of employment issues are likely to arise. The starting place for all employment related issues is the employment agreements for each of your employees.

Business Closure

In the event your business has had to close following the Earthquake you will need to consider redundancies or the concept of “frustration”.

All employers considering redundancies will need to closely review the terms of the respective employees employment agreements. A fair process must be followed at all times, although this may be simplified in the current circumstances. Redundant employees will be entitled to a payment of notice and any redundancy compensation. “Frustration” essentially releases both employer and employee from the employment agreement if it is impossible to perform, such as the business closing. However, the threshold for “frustration” is very high.

In some instances liquidation may be the only option for a business. In this situation employees are not entitled to any payment from the business, and will become a creditor of the business.

Business Continues

Despite the Earthquake, your business may be in a position to continue trading, either in your current premises, or relocated premises. It is likely however, that Earthquake related employment issues may still arise.

If, as a result of the Earthquake, an employee is sick or injured, or if they need to care for their spouse or dependent who is sick or injured, they may take sick leave. If your employee is unable to come to work because of other reasons, such as needing to care for family members or deal with the damage to their properties, you may agree with your employee that they take annual leave, or special leave with or without pay. It will be important that timeframes are put in place so that both parties clearly understand the way forward. This may include regular meetings and continual reassessment of the situation.

Unfortunately, business owners may also encounter employees who are able to return to work, but for one reason or another, do not wish to return to their place of employment. In these circumstances, following thorough consultation, you may need to consider disciplinary action or possibly termination of employment due to abandonment. However, employers will need to think very carefully whether termination is justifiable in the circumstances. All other avenues must have been exhausted before this approach is adopted.

We're able to assist with all employment related issues that may arise.

Government Assistance

The Government released the Christchurch Earthquake Support Package on Monday, 28 February 2011. This package assists employers based in the Christchurch area whose businesses have been affected by the Earthquake.

The Christchurch Earthquake Support Package consists of two parts:

- **Earthquake Support Subsidy**
- **Earthquake Job Loss Cover**

The Earthquake Support Subsidy is a subsidy for employers who believe they will remain in business and wish to retain staff. The subsidy is a lump sum payment to employers of \$500.00 gross per week per full-time employee (over 20 hours) and \$300.00 gross per week per part-time employee (20 hours or less). The subsidy is payable for a 6 week period.

To qualify for the Earthquake Support Subsidy, your business must be New Zealand owned and based within the Christchurch City Council area. Further, the Earthquake must have affected your business by: not being able to access the workplace due to damage or cordon; essential services are not available to your business or your business is experiencing a significant loss of trade.

In the event you have Business Interruption Insurance that includes wage cover, and there is any delay in obtaining that insurance, the Support Subsidy cover is available for that intervening period. However, it will need to be repaid once the insurance is received.

The Earthquake Job Loss Cover is a subsidy paid to employees whose employers are no longer able to operate, closed permanently or the employee is unable to contact their employer. The subsidy is payment of \$400.00 per week per full-time employee (over 20 hours) and \$240.00 per week per part-time employee (20 hours or less). This payment is made direct to the employee's bank account and paid weekly for a period of 6 weeks.

To qualify for the Earthquake Job Loss Cover, an employee needs to have been employed on 22 February 2011 by an employer in the Christchurch City Council area.

To apply for either of these subsidies, you can do so on-line: www.workandincome.govt.nz or by telephone 0800 779 997.

If you are unsure about your eligibility or the process, please contact us and we can assist you.

Disclaimer The above fact sheet contains general advice which is intended to be used as a guide only.

MDS Law is up and running from temporary offices at Level 1, 334 Lincoln Road. Please let us know if we can be of any assistance by contacting one of our property team below:

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