

EMPLOYMENT COURT PROTOCOL

Employment Court operations under Covid-19 Protection Framework

Chief Judge Christina Inglis

9 February 2022

1. This Protocol sets out practices to be applied by the Employment Court under the COVID-19 Protection Framework (traffic lights) (Protection Framework). These practices are expected to be largely operational by 14 February 2022 but may be implemented incrementally in courthouses throughout the country as and when it is practicable to do so.
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 is 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).¹
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 is 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.

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

MEASURES APPLYING AT ALL PROTECTION FRAMEWORK LEVELS

Access to a Courthouse

15. In order to access a courthouse, persons must:²
- (i) Show a vaccine pass; or
 - (ii) Provide evidence of a negative PCR test administered within 48 hours of attendance; or
 - (iii) Provide evidence of a negative rapid antigen administered within 24 hours of attendance.³
16. If a representative, party or other participant does not know they will meet the requirements for accessing a courthouse, they are to advise the Court at least 10 working days prior to the hearing so the means of participation can be considered and, if appropriate, arrangements made for remote participation. Refer below for provisions regarding the attendance of witnesses.

Attending Court

17. Where participants attend Court:
- (i) Witnesses required to attend Court should not enter the courthouse 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 courthouse. Rooms will be made available as far as practicable for interviews, and representatives may request breaks to take instructions safely using those facilities.

² Nothing in this protocol will prevent the attendance at Court of any person required to attend Court, for example pursuant to a summons, legislative requirement or judicial direction, who does not meet the requirements in this paragraph. Appropriate health and safety measures will be put in place.

³ The Ministry of Justice will meet the cost of the rapid antigen test for any person required to attend Court, for example pursuant to a summons, legislative requirement or judicial direction.

Media access

18. Accredited news media will have entry to the Court in accordance with the requirements for accessing courthouses 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

19. 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](#)

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

[Guideline for Remote Viewings of Hearings](#)

Health and safety

21. Persons entering the Court building must register their attendance by scanning the QR code or by entering their details on a list maintained by the Registrar (or court taker, in the case of representatives).
22. 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.
23. Subject to the notes set out below,⁴ and the over-riding discretion of the presiding Judge:

4 (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.

- (i) Vaccinated court attendees and unvaccinated court attendees who have provided a negative COVID-19 test must wear a cloth mask, surgical mask or a KN95 (or equivalent) mask at all times within the court precincts.
- (ii) Unvaccinated court attendees who have not provided a negative COVID-19 test result, and 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.

24. 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, or has had close-contact with a suspected, probable or confirmed case of COVID-19;
- (ii) Appropriate masks will be provided at the entry to the courthouse for all those who do not have their own mask;
- (iii) Cleaning products are available on site to enable staff and lawyers to keep their immediate areas clean (including AVL suites);
- (iv) Hand sanitiser will be readily available within the courtroom.

25. 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.

26. In the event of community transmission within a courthouse catchment area, public health advice will be taken and further directions given.

Expectations of Representatives

27. Representatives are expected to assist the Court by:

- (a) Advising the Court at an early stage if they become aware that alternative measures are likely to be required for their client's attendance at the hearing because they do not meet the requirements for entry to a courthouse.

- (b) Briefing clients and witnesses on the health and safety measures in the courthouse, as outlined above.
- (c) 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.
- (d) 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. This should include consideration of any witness unable to attend Court by reason of the requirements set out above. 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

- 28. Documents may be filed electronically, by post, courier or in person. Address details are contained in Addendum 1.
- 29. 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

Emergency phone: 027 295 6673

Electronic filing to be sent to: 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

Emergency phone: 021 946 790

Electronic filing to be sent to: joseph.buckton@justice.govt.nz

Postal: Employment Court, DX SX 10009, Wellington