



together*

IT'S **AGAINST THE** **LAW** TO STOP YOU TAKING SICK LEAVE!

Some employers do not necessarily understand their responsibilities and obligations under the law regarding sick leave. With some basic advice you can enforce your rights and help make New Zealand safer from COVID-19.

Can my employer stop me taking paid sick leave?

No. It is a breach of the Holidays Act to deny you available paid sick leave. It is also a breach of employment standards under the Employment Relations Act. Penalties for breaching the Holidays Act go up to \$20,000. It is up to you to decide if you need to call in sick and stay home. If you are following public health advice to self-isolate, you cannot go in to work and an employer cannot ask you not to follow that advice.

In limited circumstances, where your employer has good reason to believe you are abusing sick leave, they can ask you to provide a medical certificate. But they must have a very good reason and they must pay all the costs associated with getting the medical certificate.

What if I do not have paid sick leave? Can my employer stop me taking unpaid sick leave?

The Holidays Act is silent on the issue of unpaid sick leave. However, there is no power for employers to insist that someone works while they are sick. In fact, it is not legal to make someone come to work if they are unwell and they have workplace-transmissible illnesses under the Health and Safety at Work Act (HSWA), as this also risks the health of their colleagues and visitors to the workplace.

In the first instance, your employer should check if they are eligible for the COVID-19 leave scheme so they can access government funding for you to stay home.

What could happen to my employer if they were prosecuted under the Health and Safety at Work Act for making me work when I had COVID-19?

There is no sentencing precedent for exposing your staff to a known and deadly pandemic, but this would clearly pose an unacceptable, and technically catastrophic risk to any workplace contacts, customers and your co-workers. Given how much publicity there has been about the pandemic, and if you had told your employer that you had COVID-19 symptoms, were being tested and had to isolate, it is arguable this behaviour is 'reckless' under the Act – endangering someone's life or seriously endangering their health. Under section 47 of the HSWA, recklessness carries a maximum penalty of \$3M for the business or 5 years imprisonment for 'officers' (owners and managers).

What can I do if my employer tries to force me (or someone I work with) to work when they are sick?

You have the right to stop doing unsafe work (under section 83 of the Health and Safety at Work Act and international law). You may stop doing work if you believe the work is unsafe and may continue to not do the work if you reasonably believe it is still unsafe. ("Reasonably" has a legal meaning and includes that you must tell your employer about the issue first).

If you stop doing unsafe work, you must remain available for alternative duties, but you cannot suffer a pay deduction as a result. After telling your employer, you should inform your workplace health and safety rep, your union and the government agency WorkSafe - 0800 030 040

What else can I do to make it safer to take sick leave?

- Sign on to get safer sick leave here: www.together.org.nz/safer-sick-leave
- And make work safer here: www.together.org.nz/make-work-safe