

PEOPLE AND COVID-19 – SUPPORTING MATERIAL

Coronavirus Job Retention Scheme

- We are now in *Phase 3* of the Coronavirus Job Retention Scheme.
- The Scheme has been extended to 30th April 2021.
- Employers can claim 80% of an employee's usual salary for hours not worked, up to a maximum of £2,500 per month.
- Employers must pay for employer National Insurance contributions and pension costs.
- Employers can claim for employees who were employed on 30 October 2020, as long as they have made a PAYE submission to HMRC between the 20 March 2020 and 30 October 2020.
- Employers can furlough employees for any amount of time and any work pattern, while still being able to claim the grant for the hours not worked.
- Employers must consult with their employees and obtain their agreement to being placed on the scheme. This should be followed up with confirmation in writing.
- Employees can be fully or flexibly 'furloughed' as per the needs of the Employer.
- Employees cannot undertake any work for the Employer during the hours they are recorded as 'furloughed.' They can, however, participate in training.

Redundancy

Redundancy arises when Employees are dismissed because:

- The Employer has stopped, or plans to stop, carrying on the business for the purpose which the Employee was employed for.
- The Employer has stopped, or plans to stop, carrying on the business in the place where the Employee was employed.
- The business no longer needs as many Employees to carry out particular kinds of work, or this is likely to be the case in the future.
- The business no longer needs as many Employees to carry out particular kinds of work in the place where the Employees were employed, or this is likely to be the case in the future.



When Employers are considering making redundancies within their business, they should:

- Check if they have a Redundancy policy contained within their Handbook of HR Policies or other Company Policies.
- Familiarise themselves with the Labour Relations Agency Best Practice Guidance
- Plan ahead and consider the following:
 - How many jobs are to go?
 - What kind of jobs will be affected?
 - Which Employees will be affected?
 - Are there any alternatives to redundancy?
- Create a fair, objective, unbiased and consistent selection criteria ensuring that they do not unlawfully discriminate against certain employees.
- Consult with their Employees (or their representatives) and inform them of the reasons behind the proposed redundancies, the numbers and descriptions of those potentially selected, their chosen method of selection and the proposed timescale of the redundancy exercise.
- Conduct an initial 'at risk' meeting and follow up with an individual consultation meeting with each affected Employee.

Employers must consult with a Trade Union or Employee Representatives where it is proposed to dismiss 20 or more Employees at one place of work within 90 days or less. The consultation must include discussion about:

- Ways of avoiding redundancies
- Reducing the numbers to be dismissed
- Mitigating the consequences of any redundancies

Employers proposing to dismiss 20 or more Employees must also submit a HR1 form which provides relevant information to the Department for the Economy. If Employers fail to do this, they can face a criminal sanction.

Employers must be mindful of the Statutory Dismissal Procedure in place in Northern Ireland when dismissing Employees by way of redundancy. In short, they must:

- Send their affected Employees a letter of invite to a formal meeting advising of reason for proposed termination (redundancy) and inform them of their right to be accompanied.
- Conduct at least one, one to one meeting with each Employee.
- Provide each Employee with a letter of outcome advising them of their right to appeal their dismissal.

Changing Contractual Terms of Employment

Employer must be aware that contractual terms do NOT need to be in writing. They can be:

- Written
- Oral
- Implied
- Or a mixture of all

Once an Employee accepts a job on the terms set out by the Employer and begins work, a contract of employment is implied.

Terms and conditions of employment cannot be unilaterally varied by the employer. Both the Employer and Employee must agree any changes to the Contract of Employment.

Employees also have Statutory Rights and Entitlements which cannot be varied in any circumstance, regardless of what is agreed between the Employee and Employer.

If an Employer imposes a change to an Employee's terms and conditions of employment without the Employee's agreement then the Employer will be in breach of contract.

Employees in that situation, have the following options available to them:

- Accept the unilaterally imposed change to the terms and conditions of employment and by implication s/he will be deemed to have accepted the change so that it is incorporated into the contract of employment

- Resign and claim constructive dismissal on the basis that there has been a fundamental breach of contract sufficient to bring it to an end
- Remain in employment and continue to work 'under protest' whilst pursuing a claim in breach of contract
- Pursue a claim for unlawful deduction from wages

When Employers are considering making changes to the terms and conditions of employment of their Employees, they should:

- Consult with the Employee with a view to reaching agreement about the proposed change.
- Justify the proposed change to the Employee
- Be open and honest with the Employee about the reasons behind proposing the change
- Listen to the Employees concerns or any representations made by them.

If agreement is reached, an Employer must provide their Employee with a written notification of the change without delay.

If agreement cannot be reached, the following options are open to the Employer:

- Abandon the changes and try and find an alternative solution to meeting the business needs
- Dismiss and re-engage the Employee(s) on the new contract of employment

When dismissing and re-engaging Employees, Employers must be extremely cautious and ensure that they have tried to agree the changes first.

Employers will need to be considerate of the Statutory Dismissal Procedure and whether it is applicable in the circumstances and provide their Employees with their correct notice entitlement, whether that is detailed in the notice provisions contained within a written contract, notice implied by custom and practice or the minimum statutory notice applicable given the Employees length of service.

Living and Working with Covid-19

The Health and Safety Executive of Northern Ireland and the Public Health Agency have developed and published online a broad range of guidance for Employers specifically concerning Covid-19 in the workplace.

Employers must be aware, that they continue to have a duty of care towards their Employees and it remains their responsibility to take the necessary steps to ensure that the workplace is a safe working environment.

With regards to returning to work following reopening of society, Employers should regularly communicate to their Employees the practical measures they are taking to help ensure a safe return to the workplace.

Employers must be considerate and understand that it will be normal for some Employees to be anxious about returning to work. Particularly in the hospitality industry where Employees cannot work from home and they will be in direct contact with the public as well as other colleagues. Employers should encourage staff to raise any concerns they have, and try to resolve them together.

Employers should consider if they need to make changes on a temporary or permanent basis, to help employees return safely to the workplace and be mindful of their obligations in relation to such changes.

All Employers are required to undertake an updated covid-19 risk assessment before their employees return to the workplace. The risk assessment should be detailed and individual to the Employer's business. Templates are available online and these can certainly be used as guidance for Employers but cannot be relied upon in their entirety. Employers should take care to ensure that their risk assessment is fit for purpose and applicable to their business.

Employers have a duty to keep up to date with their obligations in terms of health and safety and should regularly check the HSENI and Public Health Agency guidance to ensure they are compliant. Risk assessments will need to be amended and updated as time passes and further risks are identified. Employers should also consider whether it would be useful to provide refresher training on health and safety or other matters, to their employees whilst they are on furlough.



Vaccinations

There has been a lot of talk in the media recently regarding vaccination passports and whether Employers will require their Employees to be vaccinated before returning to work.

Employers must note that there is currently a prohibition on mandatory vaccination in the UK and therefore, individuals cannot be forced to be vaccinated.

There is also the potential that any attempts to enforce or even enquire about covid-19 vaccinations could infringe on an Employee's right to a private life.

Employers should be cautious before making any decisions in relation to vaccinations. There are classes of Employees who will not be suitable for the vaccination and Employers must take care not to unlawfully discriminate against any Employees. Younger Employees will not receive the vaccination (if eligible) until after older employees or those with medical conditions so again, Employers need to be mindful of this.

In the future, there may be justification for Employers to require certain Employees to be vaccinated to be suitable for particular job roles (for example – in the medical or health industry), however, Employers should certainly take legal advice before considering implementing such policies in the workplace.



Useful links for Attendees

CJRS Scheme

<https://www.gov.uk/guidance/claim-for-wage-costs-through-the-coronavirus-job-retention-scheme>

Labour Relations Agency - Advice on Handling Redundancy

<https://www.lra.org.uk/sites/default/files/2019-03/Advisory%20Guide%20-%20Advice%20on%20handling%20redundancy.pdf>

Department for the Economy – HR1 Form

<https://www.economy-ni.gov.uk/publications/advance-notification-redundancies-hr1-form>

Labour Relations Agency – Agreeing and Changing Contracts of Employment

<https://www.lra.org.uk/sites/default/files/2020-05/Advisoryguide-varyingacontractofemployment%20May%202020%20Final.pdf>

HSENI – COVID-19 Workplace Risk Assessment Template

<https://www.hseni.gov.uk/publications/example-covid-19-workplace-risk-assessment-template>

HSENI - COVID-19 Advice and Guidance for Places of Work

<https://www.hseni.gov.uk/topic/covid-19-advice-and-guidance-places-work>

Public Health Agency – Guidance for the Hospitality Industry

<https://www.health-ni.gov.uk/hospitality>

