

In this update we focus on how Coronavirus has impacted the workplace and highlight other changes that you'd be forgiven for having forgot about!*



Coronavirus in the Workplace

Can you make employees come to work?

Following the PM's announcement on Monday 23 March 2020 that the country was to stay at home unless it was "absolutely necessary" to go to work, there has understandably been confusion.

The Government's "**Full Guidance on Staying at Home and Away from Others**" advises that "*Travelling to and from work*" is permitted but only where this "*absolutely cannot be done from home*" and as such, construction sites, factories and many office-based businesses not equipped for home working have remained open.

As things stand, whilst it flies in the face of the **#StayAtHome** message, this remains the case - employees CAN go to work if their job absolutely cannot be done from home and they practice 2 metre social distancing whilst at work. This could change at any minute...

Changes to Sick Pay

- SSP now payable from the 1st day of sickness rather than the 4th.
- First 2 weeks can be claimed from the Government per eligible employee.
- Those infected with COVID-19 and those told to self isolate are 'eligible'.
- Employees can obtain an 'isolation note' from NHS11 online as evidence.
- Entitlement to SSP continues during 'furlough' but no incentive for employees to report sickness as SSP likely less than 80% 'furlough' pay.

'Furlough' the word on everyone's lips

A couple of weeks ago few people knew what this word meant: a temporary leave of absence from work. It's been introduced by the Government as part of the 'Coronavirus Job Retention Scheme' allowing employees to stop work but remain on the pay roll as an alternative to lay-offs or redundancies.

Key points:

- The Government will cover 80% of an employees wages (salary before tax) per month up to £2,500 cap.
- For employees with variable pay it's 80% of the higher of the same month's earning from last year or average earnings in 2019-20.
- Employees must agree to be furloughed (we recommend they sign an agreement)
- They will remain employees but are NOT allowed to work for at least 3 weeks.
- The employer doesn't have to top up to 100% pay.
- No requirement for minimum wage as employees are not working.
- Annual leave continues to accrue during furlough.
- Businesses can re-employ those made redundancy since 1 March & furlough them.
- HMRC are setting up an online portal for employers to access the grants.
- Scheme set for 3 months but may be extended.

FAQs:

- **Can it be imposed?** Employers can't unilaterally change terms of employment, employees must be consulted and agree (if your contracts have a lay-off clause this may allow you to furlough without agreement but we would recommend you seek legal advice)
- **What if employees don't agree?** If the normal redundancy definitions are met, you could dismiss by reason of redundancy but would have to follow a fair process.
- **Can I furlough just some employees?** Yes, but you need to consider who you choose carefully; treating it almost like a redundancy selection - ensuring it's fair etc. If you are furloughing more than 20 employees you need to submit a HR1 form.
- **Is everyone eligible?** Only those on the PAYE system as of 28 February 2020 & not zero-hour contract, casual workers or the self-employed. You can't furlough employees already on sick leave or self-isolating & those on maternity leave would have to return to work in order to then be furloughed.
- **Do I have to repay the Government?** No, it is a grant not a loan.
- **Do I still have to pay NI & pension?** 13.8% NI is payable but can be claimed back as can auto-enrolment contributions of 3%. You may want to agree a mutual break with your employees for other contributions.

Coronavirus 'Self-employed Rescue Scheme'

The Proposals which will form an amendment to the new Coronavirus Act 2020 will ensure the Government 'tops up' self-employed earnings by way of a taxable grant up to 80% of net monthly trading profits (based on the average of the last 3 years) or maximum of £2,500.

Who is eligible?

You can apply if you are self-employed or a member of a partnership and:

- At least half of your income comes from self-employment.
- Your trading profits are under £50k.
- You have traded in the tax year 2019-20.
- You intend to trade in 2020-21.
- You have submitted a tax return for 2019.
- You are trading when you apply or would have been if not for COVID-19.
- You have lost trading/partnership trading profits due to COVID-19.

Other Key points:

- Unlike Furlough, you CAN continue to do business.
- The Scheme will be open for 3 months initially.
- Will be open from June 2020.
- Deadlines for tax returns extended to 23 April 2020.
- Grant based on taxable profit after the claim of capital allowance.
- HMRC will contact you directly if you are eligible.



Coronavirus & Annual Leave

Can I make employees take annual leave?

- Yes, as long as you give employees twice as much notice as the length of leave.
- You can ask furloughed employees to take leave subject to the above rules & 'holiday' pay (although it's thought you can recover 80% from the Government)

Carry Over

- An amendment to the 'Working Time Regulations'.
- Enables 'Key Workers' to carry over up to 4 weeks annual leave into the next 2 year leave period.
- Balance of 1.6 statutory leave is unaffected.
- Allows businesses the flexibility to manage their workforce.
- Protects the right to paid annual leave.

Coronavirus - Other Key measures

Landlord & Tenant

- All new or existing housing possession actions suspended for 90 days.
- The Government strongly advises landlords not to issue new notices seeking possession or to commence new possession proceedings.

Local Authority Grants

- £10k 'one off' grant, if you have Small Business or Rural Rate relief.
- £25k 'one off' grant - as above but for retail, hospitality or businesses operating from small premises with a rateable value between £15-51k.
- Rates 'holiday' for 2021/21 for retail, hospitality & leisure business inc. nurseries.

Deferral of Tax liabilities

- VAT payments due between 20 Mar-20 Jun 2020 deferred until 31 March 2021.
- VAT returns still need to be submitted on time.
- Cancel existing direct debits to avoid automatic payments.
- Self-assessment tax liabilities due on 31 Jul 2020 deferred until 31 Jan 2021.

Extension to file Business Accounts

- All UK business can apply for an extension to file their accounts & avoid automatic fines.

Case Watch - A review of recent decisions

Can you backdate 'Disability' Status? (Tennant v Tesco Stores, Feb 2020)

- Ms Tennant worked for Tesco since 2005 but was sick for considerable periods due to depression from September 2016.
- She brought a discrimination claim for treatment between Sept 16 & Sept 17.
- The First Tribunal ruled her depression fulfilled the definition of disability (it was an impairment which had an adverse effect over 12 months).
- On Appeal the Tribunal ruled there was no discrimination as the depression was not long term at the time the alleged discrimination took place.

Ethical Veganism a 'Protected Characteristic'

(Casamitjana v League Against Cruel Sports, March 2020)

- The Claimant was dismissed for gross misconduct when he disclosed that his employer invested pension funds in companies involved in animal testing.
- He lodged a Tribunal claim, claiming he was sacked because of his beliefs.
- The Tribunal ruled that 'ethical veganism' was a 'philosophical belief' protected by the Equality Act 2010 in that it was genuinely held, more than an opinion or viewpoint and had a substantial effect on his everyday life and behaviour.
- The claim was settled for an undisclosed figure.

Case Watch - continued....

How much pay for Shared Parental Leave? (Re Building Services Group Ltd (in Liquidation), Feb 2020)

- Mr Hextall took shared parental leave but was paid less than his female colleagues who received an enhanced maternity pay.
- The Courts decided that this wasn't discriminatory.
- Mr Hextall appealed this decision and lost - the Court found that to equalise the pay would remove 'the special treatment afforded to a woman in connection with pregnancy or childbirth'.
- There is now firm legal precedent for employers to enhance maternity pay but offer statutory pay to staff taking shared parental leave.

Director's duties extend beyond Insolvency (Re Building Services Group Ltd (in Liquidation), Feb 2020)

- A sole Director purchased property from the company at a substantial undervalue without it being placed on the open market after the Company had entered administration.
- The appointed liquidator applied to the Court for 'declaratory relief'.
- The High Court ruled that the Director was in breach of his fiduciary duties which survive administration & therefore he was guilty of misfeasance under section 212 of the Insolvency Act 1986 (IA86).
- The Director was ordered to repay the money owed.

Looking Forward - new cases & awaited decisions

Pay for 'Sleep-In' Shifts (Royal Mencap v Society v Tomlin-Blake)

- Decision expected May 2020
- Concerns how National Minimum Wage (NMW) applies when a worker is required to 'sleep in' and be available for emergencies.
- The Court of Appeal previously held that time only counts for NMW when the worker is awake and actually working despite having to be available all night.
- The worker concerned appealed to the Supreme Court.
- It's expected that the Supreme Court will agree & the Low Pay Commission will be asked to recommend a minimum 'sleep in' payment.

Bullying in the Government (Rutnam v The Home Office)

- Sir Philip Rutnam resigned from his post as Home Office Permanent Secretary alleging bullying at the hands of female Home Secretary Priti Patel.
- Rutnam announced plans to sue the Government for Constructive Dismissal (meaning he had felt he had no choice but to resign owing to the conduct of his employer).

In the Know - Legislation & Guidance

Again, due to Coronavirus various planned changes have been postponed but others, mainly arising out of the Government's 'Good Work Plan' are still going ahead.....

Annual Increases

- 1 April: National Minimum wage up from £8.21 to £8.72 for over 25s.
- 6 April: Statutory maternity/paternity/adoption/parental bereavement/shared parental pay = £151.20
- 6 April: SSP up to £95.85

IR35 postponed

- New 'off-payroll' rules designed to prevent tax & NI avoidance.
- Were due to come in on 6 April.
- Now postponed for 12 months due to Covid-19.

Sexual Harassment

- New Guidance from the Equality & Human Rights Commission.
- Outlines legal employers duties to prevent & react to harassment & victimisation.
- Availability of guidance shifts burden back on employers.

Bereavement Leave

- New law in force from 6 April 2020
- Parents/guardians who lose a child under 18 (or suffer a still birth).
- Entitled to 2 weeks leave (1 or 2 blocks) within 56 weeks of the death.
- Those with 26 + weeks service entitled to Statutory parental bereavement pay.

Pay Gap

- Reports due 4 April suspended for 2019/20 due to Covid-19.
- Equal Pay Bill in Parliament = right to know what comparator earns, will widen scope of reporting.

T&C of Employment

- New law 6 April 2020.
- Written statement to be provided on Day 1 for all new employees.



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Dispute Resolution

Employment Law Advice
Contractual Disputes
Faulty Goods/Services
Debt Recovery
Property Disputes
Landlord & Tenant

**Advice correct as of 1 April 2020*

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