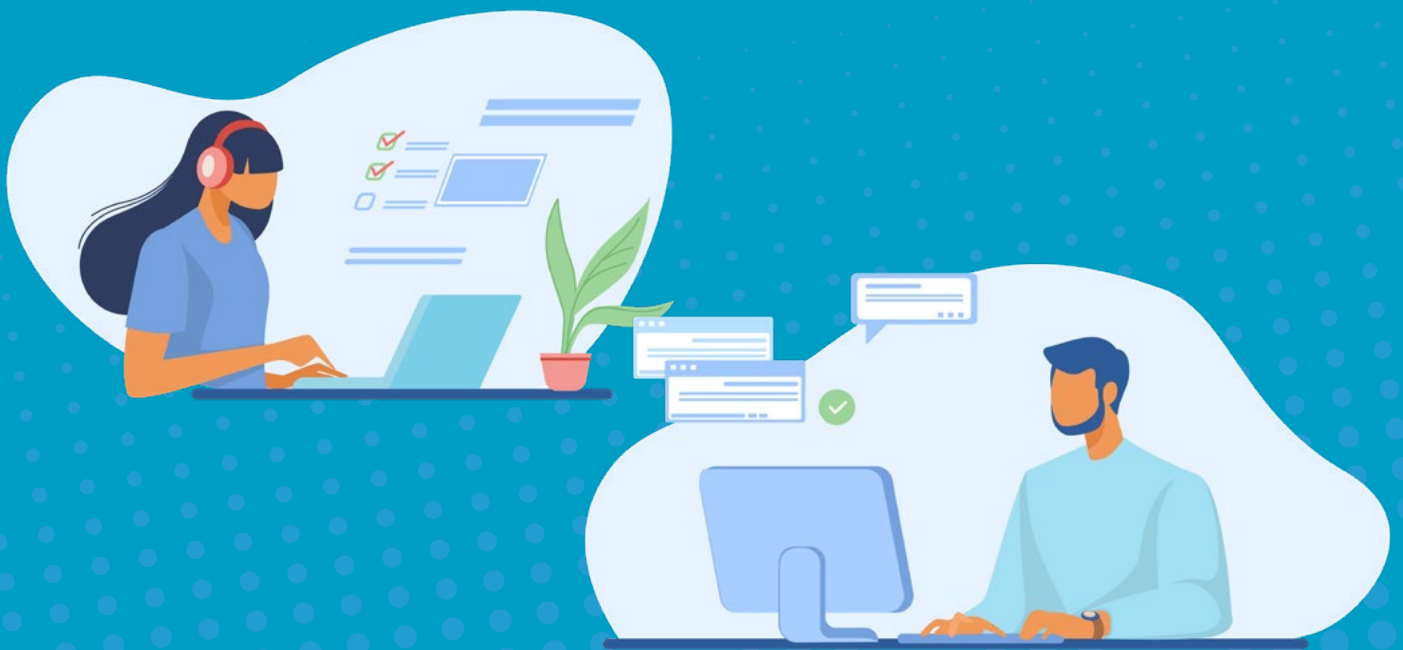


Human Resources: Returning to Work After Lockdown



Returning to Work After Lockdown

More and more businesses are preparing for a return to the workplace as government plans around relaxation of social distancing restrictions continue to emerge. This information sheet developed by Corinna Lloyd-Jones, Menter a Busnes' HR Director, outlines some current topical employment considerations.

Coronavirus Job Retention Scheme (CJRS)

On 12 May, the Government announced that the CJRS will remain open until the end of October, whereby furloughed workers across UK will continue to receive 80% of their current salary, up to £2,500 per month.

On 29 May, the Government confirmed that the CJRS will continue in its current form until the end of June, however from 1 July, new flexibility will be introduced where employers will be able to bring employees currently on furlough back to work on a part-time basis. Individual employers will decide the hours and shift patterns their employees will work on their return and will be responsible for paying their wages for time in work while the CJRS grant will be available for the cost of their furloughed hours.

Additionally, from August 2020, the level of government support provided through the CJRS will be slowly tapered to reflect that employees will be returning to work (although employees will continue to receive 80% of their current salary, up to £2,500 per month, for the time they are unable to work), as follows:

- **June and July:** The CJRS will pay 80% of wages, up to a cap of £2,500, as well as employer National Insurance and pension contributions.

- **August:** The CJRS will pay 80% of wages, up to a cap of £2,500. The employer will pay National Insurance and pension contributions.
- **September:** The CJRS will pay 70% of wages, up to a cap of £2,187.50. The employer will pay National Insurance and pension contributions and the other 10% of wages.
- **October:** The CJRS will pay 60% of wages up to a cap of £1,875. The employer will pay National Insurance and pension contributions and the other 20% of wages.

The existing furlough scheme will be closed to new entrants from 30 June 2020, and given that any furlough period must be for a minimum of three weeks, the latest date an employee can be placed on furlough for the first time is 10 June 2020.



Returning Employees to Work

For employees returning to the workplace following lockdown, including where they have been on a period of furlough, it is important to hold one to one return meetings, with a focus on health, safety and well-being. These discussions should be sensitive and open, with consideration of any adjustments and/or ongoing support to facilitate an effective return to the workplace. It is also a good opportunity to update employees of relevant changes and developments, particularly where their normal work duties or tasks have been affected.

Employers are strongly advised to keep a written record of the safety control measures they have put in place and the discussions they have had with their employees prior to their return to work.

1. How much notice should employers give employees that they are required back in work after furlough?

There is no set notice requirement under the CJRS, however employers should be reasonable and follow any commitments made to providing notice in communications to employees at the beginning of the furlough period.

2. Can an employee refuse to attend their normal workplace due to fears about coronavirus?

If homeworking or redeployment to a role that is suitable for homeworking is possible for the employee, then that may well be the temporary solution.

If not, the employer would need to carefully consider the specific circumstances and reason(s)

that the employee is concerned about attending the workplace, in-line with current public health guidance in place at the time, before deciding whether it would be discriminatory to refuse homeworking, take disciplinary action or withhold pay in light of the employee's refusal.

For example, if there is no discrimination risk and the public health guidance indicates that the employee could reasonably be requested by the employer to attend the workplace, it is possible that the employee could be investigated for possible misconduct on grounds of refusing to follow a reasonable management instruction, and their unauthorised absence as they are not willing to attend work. In cases of unauthorised absence, the employee is unlikely to be entitled to pay.

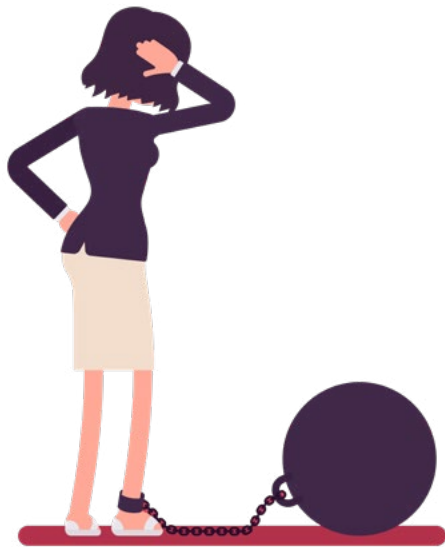
However, employees have the right not to be dismissed for complaining about or refusing to work in unsafe working conditions. If it can be proved that the main or only reason for a dismissal was for taking action over a health and safety concern, it will amount to automatic unfair dismissal. It is possible that a workplace in which there was a high risk of contracting COVID-19 and which had not taken appropriate health and safety control measures, could fall within this category. Employers are currently strongly advised to be sympathetic to any concerns staff may have and try to resolve them amicably to protect the health and safety of the employee.

For more information on working safely during the coronavirus outbreak, visit the HSE website: <https://www.hse.gov.uk/news/working-safely-during-coronavirus-outbreak.htm>

Alternatively, the coronavirus pandemic may have made a previous mental health condition, such as anxiety, harder for the employee to manage. An employee suffering from anxiety, for example, may find their condition is exacerbated by travelling or being in public places due to the increased risk of contracting COVID-19. If their anxiety prevents them from attending work in these circumstances, it is possible that they may be regarded as on sick leave and therefore entitled to SSP.

Where an employee suffers from severe anxiety, this could amount to a disability. Medical

advice should be sought as soon as possible from a specialist treating the employee, or occupational health, to determine whether the employee is disabled and, if so, to identify what adjustments, if any, should be made to assist their return to work.



3. Can an employee who falls into a clinically vulnerable category be required to attend work if their role cannot be carried out from home?

Some people, including those with weakened immune systems; aged 70 and over; with specific chronic pre-existing health conditions; and pregnant women, are clinically vulnerable, meaning they are at higher risk of severe illness from coronavirus. This group of people should take particular care to minimise contact with others outside their household.

There is a further group of people who are defined, also on medical grounds, as clinically extremely vulnerable to coronavirus, including those with specific serious health conditions. They are advised to follow shielding measures to keep themselves safe by staying at home and avoiding all contact with others, except for essential medical treatment or support.

Employers should consider their position very carefully before requiring an employee to attend the workplace if they fall into one of the vulnerable categories. The current guidance for employers is that those employees who are in the clinically vulnerable group should be strongly advised to follow the social distancing guidance and those who are clinically extremely vulnerable should be shielded and supported to stay at home.

Where homeworking is not possible for clinically vulnerable employees, they should be offered the safest available roles in the workplace, enabling them to maintain two metres distance from others. If this level of social distancing is not possible, employers should carry out an appropriate risk assessment and put appropriate control measures in place to manage the risk.

4. If an employee falls into a clinically vulnerable category, what are they entitled to be paid if they remain at home and homeworking is not possible for them?

Employees who are shielding as they are clinically extremely vulnerable are entitled to receive SSP for each day they are unable to work if homeworking is not possible for them. They will be entitled to SSP from day one of sickness, however must shield for a minimum of four days to be eligible for SSP payment from day one. They must also meet the other eligibility requirements for SSP.

If workplace health and safety risks cannot be eliminated or avoided for pregnant employees, including where homeworking or redeployment to a role that is suitable for homeworking is not possible, the employer should consider suspending the employee on grounds of health and safety, on full pay, as per the Management of Health and Safety at Work Regulations.

5. Can an employee refuse to attend their normal workplace if a close relative is in a clinically vulnerable category?

If homeworking or redeployment to a role that is suitable for homeworking is possible for the employee, then that may well be the temporary solution.

If not, again, the employer would need to carefully consider the specific circumstances and reason(s) that the employee is concerned about attending work, in-line with current public health guidance in place at the time. The current public health guidance does not expressly require someone living in the same household as someone who is shielding or clinically vulnerable to also shield themselves, and therefore stop working, so long as they carefully observe social distancing both at work and home. However, employers are expected to react sensitively to such genuine concerns, and, in many cases, allow a period of annual leave or unpaid (authorised) leave as a minimum.

6. Can an employer make employees who are on furlough redundant?

Yes. The Government guidance for employees who have been furloughed states that employees can be made redundant while on furlough or afterwards. The guidance for employers also notes that when the CJRS ends, employers must make a decision, depending on their circumstances, as to whether employees can return to their duties. If not, it may be necessary to consider termination of employment on grounds of redundancy.

It is important to remember, however, that the underlying purpose of the CJRS is to allow employers to maintain their workforce, therefore employers are strongly advised to consider alternatives to redundancies in the first instance.

7. What options other than redundancy could employers consider?

Given the unprecedented nature of the COVID-19 crisis, employees, trade unions or other representative bodies may be more open to exploring different options, particular when faced with business closures and job losses as the alternative, for example:

- using unpaid statutory leave
- granting unpaid sabbaticals
- temporarily reducing hours and/or pay

All of the above would require employee agreement. Where the employer recognises a trade union for collective bargaining purposes, depending on the terms of any collective agreement, they may be able to agree the change, particularly reducing hours and/or pay, with the union. This may be binding on all employees or may at least facilitate individual agreement.

If there is no union, employers will need to consult individually with the employees individually to explain the reasons and necessity for the proposed change, with the aim of obtaining employee consent. Any consent should be evidenced in writing.

This might enable some employees to remain employed without pay or on reduced benefits until the situation improves and redundancies may no longer be necessary.

If the employee refuses any proposals for change after meaningful discussion and adequate time to consider, the employer will need to decide whether to impose the change by dismissal and re-engagement on the new terms or adopt different measures, including redundancy.

Employers could also:

- give notice to employees to take annual leave (provided there is no contractual right not allowing). Although this would not result direct

savings, in the long term it would ensure a full workforce once the business re-opens and allow full focus on rebuilding the business

- consider whether there are workers and contractors whose contracts can be terminated without the risk of an unfair dismissal or redundancy payment claim

8. Can employers reduce pay for employees but require them to work the same hours?

Yes, through following the processes set out in Q7, however it may be more difficult to persuade employees to agree to this. The employer will need to ensure they fully explain the rationale, reasons and business cost in detail to minimise employee discontent.

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