



Employment Rights and the recovery from Coronavirus:

How do employers plan for the next stage?

By Alex Jones, Managing Director, 365 Employment Law

Legal

I have specialised in advising employers on employment law for nearly 20 years, and all businesses face periods where they need to make tough decisions. There is a general misperception among a lot of small businesses that it is difficult to dismiss staff in tough economic times. That is not the case. As a simple starting position, provided an employee is not being dismissed for a protected reason (eg a discriminatory one or whistleblowing),

an employee must have at least 2 years continuous service in order to be able to raise most claims, including unfair dismissal. Even then, if the business has a genuine structural or economic reason to reduce their headcount, redundancy is a process that is, in most circumstances, relatively uncomplicated. If however, the employer gets the process wrong, either procedurally or on any justification, it can lead to claims.

In times of recession, the ability to make staff redundant (provided there

is justification and a fair process), can allow an employer to reduce their headcount quickly and effectively, but also provide employees with a payment based on their length of service. Alternative methods on reducing costs, such as changes to working hours, changes to working days, or reduced pay, are fraught with difficulty, risk claims, and almost always require consent.

A number of businesses have relied on the Coronavirus Job Interruption

Scheme (CJRS), to avoid making those necessary but difficult decisions. The CJRS, which was announced in March, and is still running, allowed employers to furlough staff, and recover the lower of up to 80% or £2,500 for the employees wages through HMRC. During the initial period, which ended on 30th June 2020, employees had to be furloughed from their full contract, and were unable to carry out work for their employer. From 1st July, "flexible furlough" applies, where employers can use the scheme for part of the normal working week, and the employee works for the other part eg a 5 day per week employee could be furloughed (at the CJRS rates) for 3 days, but come into work for the other two days, on their normal contracted amount. As with the start of furlough, any variation should be dealt with by consent with the employee.

In any event, the government has made clear, the scheme will end in all formats by the end of October 2020. After the end of September, employers will only be able to claim back 60% of wages so a whole new set of negotiations with employees will need to occur.

As the scheme evolves towards an inevitable end, I am being contacted by a number of employers who are being proactive about how to deal with issues. Some businesses, have effectively been in hibernation, such as those in hospitality. Others have been affected on a short term basis. Either way, these are the steps employers should be taking to deal with the fact they will not have the financial support in the medium term:

- 1) Work out how they think the business will be affected when the wages contribution is reduced to



Alex Jones

60%. Negotiate with employees to reduce on that basis and/or part pay wages;

- 2) Consider their structure for when the CJRS support ends. Who might they need to make redundant both financially and from an organisational perspective;
- 3) Consider the timings of any redundancy process and start it in good time.

Employers should also remember that if they do have to make staff redundant, they need to fund the redundancy payments, but that the CJRS can be used for a notice period, provided that:

- 1) The notice is not paid in lieu ie employment continues;
- 2) They either top up the notice pay to the full entitlement, or reach an agreement with the employee to only pay the furlough amount.

Employers should also always remember, that any termination, needs to also be for a fair reason (such as redundancy) and follow a fair process.

Please always take advice.

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