



# Employment Law and the Recovery from Coronavirus:

How should employers manage staff issues?

By Alex Jones, Managing Director, 365 Employment Law

## Legal

We are in a difficult stage in the economic and public health issues of COVID-19 for small and medium

size business owners. Certain areas were heavily impacted, including catering and hospitality, temporary recruitment, and travel and tourism.

As the pandemic took off in March, I had employer client's from various areas, but particularly those from the sectors I mention, faced with huge drop in turnover (almost overnight), and the need to make immediate redundancies and in some cases, in order to avoid that, negotiate pay reductions by consent with staff. The Coronavirus Job Retention Scheme (CJRS), then put a lot of those decisions on hold.

Since the start of June, the economy has opened up in stages, but large

parts of the workforce are either not back at work, or working from home. Those areas that are back to full attendance, including factories and warehouse based business, have had to consider what protections and systems they need to put in place to protect staff. Sadly, in many cases, systems have not been put in place, and lower paid staff have at times been exploited.

Much of the focus has been on direct issues relating to staff, such as furlough, redundancies, phased returns etc. It is also important for employers to consider related issues relating to employment rights, some of which will not immediately come to mind:

### Health and Safety at Work

The Health and Safety at Work Act (HSWA) requires all employers to operate a safe system of work. The specific application

of that to the return to work and Covid-19 needs to be considered by employers. That should include a detailed risk management plan, that focuses on the specifics of their business/workplace and not just based on general guidelines eg 1 metre plus. Employers should think about the risk areas for possible transmission of COVID-19 and how those can be mitigated. A failure to do this could result in an investigation by the Health and Safety Executive in the event of an outbreak.

### The Commute to Work

Employers should appreciate that providing a safe workplace, can also extend to the worker's commute to work. Eg an office that dramatically reduces transmission risk is not enough, if workers attend the workplace, for example, via crowded public transport. Working out mitigation plans in that regard eg later starts, should be considered by all employers.



### Working Parents

Employers may face the situation where, as staff are brought back into the workplace, School and Nursery closures (even on a part reduced basis) could affect workers ability to attend the office in accordance with their normal hours. Employers may be inclined, if numbers need to be reduced through redundancies, to focus on those employees first. This could open them up to discrimination and/or unfair dismissal claims.

### Disability Discrimination

Most employers will have members of staff who would be classed as having a Disability for the purposes of the Equality Act 2010. I have seen a focus from employers on those with a disability who are potentially directly affected by COVID19 eg with lung conditions. If an employee has a disability, the employer has a Duty to

Make Reasonable Adjustments to assist with that disability in the workplace. Employers should consider what reasonable adjustments need to be made given the ongoing situation, and what they will do should lockdown's happen again, even at a local level. Eg An employee with extreme anxiety might consider working from home on a semi-permanent basis a means of avoiding escalation of their condition.

Redundancy Selection after Furlough Redundancies are inevitable later in the year when the CJRS Scheme ends. Employers should always have a transparent and fair selection process, and should be cautioned against automatically assuming that employees placed on furlough previously should be top of the list for redundancy selection.

### Worker attendance and local quarantines

A situation could arise where the

workplace area is open as normal, but employees live in an area where a local lockdown is in place. Employees will not, in law, be able to attend work. A dismissal as a result of that would likely be in unfair dismissal, assuming those staff have the relevant qualifying employment.

Employers should be as flexible as possible, and be alive to the possibility that the bar for reasonableness in any unfair dismissal claims will be lower, and justification for dismissal pre-Covid 19, will not necessarily be the same in the current environment.

**Please always take advice.**

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