

Wurkplace LIVE: HR Advice for Employees & Employers Coronavirus – Furlough Update

Host: Mark Whitfield
Panellist: Mark McKeating
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16th June 2020



AREAS COVERED IN THIS SESSION:

- Furlough update / clarifications
- Flexi scheme 1st July
- Return to Work – Communication
- Introducing Mark McKeating – Kuits Solicitors
 - managing employee's refusal to return to work
 - collective consultations
 - other challenges that employers are facing with employment in these times



Furlough - Headline News

Rishi Sunak announced on 12th May 2020 that the Coronavirus Job Retention Scheme will be extended for four months, until the end of October 2020.

There were a number of changes – mainly employer contribution and employees being able to return on a part time basis



Furlough - Headline News

June	Govt. continue to pay 80% of wages up to a cap of £2500 as well as employer NIC's and pension contributions – no change.
July	Govt. continue to pay 80% of wages up to a cap of £2500 as well as employer NIC's and pension contributions for the hours the employee does not work – no change Employer able to bring employee back on part time hours for which they are paid their usual pay.
August	Govt. will pay 80% of wages up to cap of £2500 for the hours the employee does not work. Employers will pay employer NIC's and pension contributions.
September	Govt. will pay 70% of wages up to a cap of £2187.50 for the hours the employee does not work. Employers will pay employer contributions and 10% of wages to make up 80% total to cap of £2500.
October	Govt. will pay 60% of wages up to a cap of £1875 for the hours the employee does not work. Employers will pay employer contributions and 20% of wages to make up 80% total to cap of £2500.



Furlough - 1st June Flexi Furlough

From 1st July - existing scheme closure and 'flexible furlough' begins

- The old Scheme will close on 30 June (has closed to new entrants prior post 10 June).
- From this point onwards, employers will only be able to furlough employees that they have furloughed for a full three-week period prior to 30 June.
- 31st July is the final date to submit claims for any employee furloughed before the 30th June
- Employers who want to place new employees on furlough must have done so by 10 June so the minimum 3-week period required can be achieved.
- From 1 July, flexible furlough can be used which includes part time working.
- For example, an employee who works 5 days a week can be brought back to work for 2 days a week. The employer will pay wages for those 2 days as normal. The Scheme will "continue to cover" the employee for the other 3 working days.



Furlough - 1st June Flexi Furlough

- There is no minimum period, although any claim through the CJRS portal must be in respect of a minimum one-week period (ie employers can only put in four claims a month, not 31).
- The number of employees you can claim for in any claim period starting from 1 July 2020 cannot exceed the maximum number of employees you claimed for under any claim ending by 30 June 2020.
- If you are a parent returning to work after statutory maternity or paternity leave you remain eligible for furlough even if you are being furloughed for the first time after 10 June.
- Finally, if you are intending to furlough an employee on a part time working pattern, you must seek written agreement to the new change to terms and conditions of employment.



Returning to Work - Communication

- Provide a reasonable period of notice of requiring them to return to work.
- Listen to concerns and have a virtual open-door policy.
- Be aware of which of your employees are clinically vulnerable and clinically extremely vulnerable.
- Communicate the practical measures you are taking to staff on a regular basis to help reassure them that their health, well-being, and safety is your top priority.
- Support employee's mental health during their return to work. Be conscious of any difficult situation's employees may have experienced or are experiencing at home during lockdown.
- It will be vital to have a re-induction process for returning staff, especially for those who have been furloughed. Employers should address any changes that have happened in the workplace including procedures, policies etc





Handling employees refusing to return to work
Presented by Mark McKeating

1. On Health and Safety grounds

Sections 44 and 100 Employment Rights Act 1996 (ERA);

- “reasonably believed” that there was a “serious and imminent danger” provides protection from suffering a detriment or being dismissed for not returning
- Fact dependant/be careful about any employees in the ‘vulnerable’ group

Whistleblowing’ – sections 43A-K ERA

- Worker has made a “qualifying disclosure” to a relevant person (employer)
- A disclosure of information which relates to 1 of 6 types of a “relevant failure” e.g. breach of health and safety laws for failure to provide a safe system of work and is in the “public interest”
- Protection from dismissal and/or a detriment
- How you an employer handle a concern from an employee/worker?

2. Lack of childcare

1. Statutory “dependants” leave - s.57A ERA

- Arrangements for the provision of care for, a dependant (including a child) who falls ill and/or where there has been an unexpected disruption or termination of arrangements for the care of a dependant

2. Statutory parental leave (under s.76 ERA 1996 and the Maternity & Parental Leave etc. Regulations 1999, “MAPL Regulations”)

- An employee is entitled to take up to 18 weeks per qualifying child for each employee (Regulation 14 MAPL Regulations)
- Cannot take in excess of 4 weeks in respect of any individual child during any year and in blocks of one week

How should an employer respond to the request above?

Collective Consultations

Collective consultation – overview

- If **20 or more employees** are placed at risk of redundancy at **one establishment** within a period of 90 days or less – at least **30 days consultation**
- If **100 or more employees** are placed at risk of redundancy at **one establishment** with a period of 90 days or less – at least **45 days consultation**
- To coincide with furlough scheme and avoid employer contribution on 1 August 2020 (dates in brackets to meet scheme end);
 - **16 June** – 45 day consultation (15 September 2020)
 - **1 July** – 30 day consultation (30 September 2020)

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Collective consultation – Case Study

- Car dealer – 65 employees across two sites in close proximity
- 60 staff on furlough but gradually brought back to work
- Need to reduce costs by 20% across 5 teams, but unlikely that every employee will agree to a pay cut
- Proposing to dismiss 15 employees on grounds of redundancy before 1 August

Questions

- Is collective consultation required?
- What are the next steps?
- Can I dismiss employees on furlough?

