

Furlough

## Questions and Answers - 14<sup>th</sup> May 2020

### 1. Can you give us a quick Furlough update? SARAH

Sure, I can give you a 10 point recap!

1. 80% of 'regular payment' up to £2500
2. Be on Payroll on 19 March 2020 (extended from 28 Feb)
3. Part time/full time/zero/agency/flexible contracts all eligible
4. In place until end of June (extended from end of May) - now until end of October.
5. Must be furloughed in 3-week blocks
6. If not breaking existing contract employees can work for other employers
7. Employees can still undertake training as long as does not contribute financially to organisation and must be paid minimum wage
8. Employees continue to accrue holiday
9. SSP and Furlough Pay cannot be claimed at the same time for the same period
10. Finally .... Furlough Leave is a 'change of contract' and so you must seek written consent to the change before placing someone on FL.

### Have there been any other updates / further clarifications?

Yes. The headline is that Rishi Sunak has announced on 12<sup>th</sup> May 2020 that the Coronavirus Job Retention Scheme will be extended for four months, until the end of October 2020. Until the end of July, there are no changes. From August to October 2020, the scheme continues on the basis furloughed employees can be brought back part-time and employers may have to contribute.

Full details will be published by the end of May and are subject to change.

### Updated Holiday Guidance including for Furlough employees:

Main clarification: - employers can compel employees to take holiday whilst on furlough leave (ensuring they follow correct notice period):

Employers can:

- require workers to take holiday
- cancel a worker's holiday, if they give enough notice to the worker

The required notice periods are:

- double the length of the holiday if the employer wishes to require a worker to take holiday on particular days
- the length of the planned holiday if the employer wishes to cancel a worker's holiday or require the worker not to take holiday on particular dates

Employers can ask workers to take or cancel holiday with less notice but need the workers' agreement to do so.

Advise you to visit the gov.uk website for all information.

<https://www.gov.uk/guidance/holiday-entitlement-and-pay-during-coronavirus-covid-19#taking-holiday>

**We have been having a number of enquiries about the redundancy process - what can you tell us about redundancy and Furlough?**

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- Ensure selection criteria fair and not based solely on the criteria made for FL - would advise start from the beginning
- Whilst not clear in guidance as we understand it consultation and notice to terminate can be held/given in period of FL
- Redundancy payment can't be claimed under the furlough grant and again, as we understand it PILON and accrued but untaken holidays can't be claimed under the scheme

### **Caveat to all of the above**

- There may be a risk of unfair dismissal if employment terminated whilst able to claim under CJRS - although not yet tested at Tribunal. We would advise that employers are able to demonstrate that they have done everything that they can to avoid redundancies using the coronavirus financial measures provided by the government.

### **Can you take us through any other updates please?**

#### Furloughed employees working as union or non-union representatives

Whilst on furlough, employees who are union or non-union representatives may undertake duties and activities for the purpose of individual or collective representation of employees or other workers. This means that it is not a breach of Furlough for an individual to be accompanied by a colleague during disciplinary meetings, grievance meetings, or redundancy consultations.

#### Company directors with an annual pay period

Directors who pay themselves once a year (typically one-person businesses where most revenue is taken as dividends) are, subject to certain conditions, eligible for furlough.

#### Parental Pay

Furloughed workers planning to take paid parental or adoption leave will be entitled to pay based on their usual earnings rather than a furloughed pay rate. For more information, visit: <https://www.gov.uk/government/news/furloughed-workers-to-receive-full-parental-leave-entitlement>

### **Do you want to talk us through what you and Karen will covering today? SARAH:**

These are certainly unprecedented times. There is the combined challenge of protecting people's health, both physical and mental and their jobs, livelihoods and the economy whilst preventing a detrimental impact on the countries social systems!

The announcement by the government on Sunday changed the rhetoric from 'stay at home' to 'stay alert' (in England only) and encouraged people who can't work from home to return to work where it is safe to do so.

This continues the message that employees who can work from home should continue to do so and employees who cannot work from home and whose employers are still operating should go to work but health and safety, social distancing guidelines should be adhered to.

Today we will be focussing on:

- Staff Engagement, Health and Wellbeing for furloughed staff
- Home working
- Returning to Work

### **2. Let's kick off with Staff Engagement, Health and Wellbeing - SARAH**

A question we have been asked is 'how can you keep teams engaged with the business when on furlough leave?'

This is a great question and we always start with:

'they are your employees - they are still your teams - the only difference is that they are temporarily furloughed.'

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With that in mind it is key that all of the great people practices you have in place to engage and motivate your teams outside of these extraordinary times should be pulled upon ten- fold at this stage!

### Why?

It is a time of uncertainty which can cause anxiety and stress, people are socially isolated and may be concerned about the future of the organisation and their part in it. This can impact on their health and wellbeing and cause anxiety.

Continuing to ensure that your employees feel part of the team will help them to feel connected to the business.

The way in which organisations handle this situation will help towards engaging and retaining employees and will deter staff from looking for alternative employment. Could also impact on employer brand and how future employees view the company.

There is also a legal aspect - employers have a statutory duty of care for people's Health and Safety and to provide a safe place to work. This extends to employees at home.

Employee wellbeing is a modern concept which seeks to improve the physical, mental and emotional state of staff while they are at work. This includes things like comfort and reducing physical injury, mental health and 'psychological safety'.

It is important that employers are fully aware of their responsibilities and include these responsibilities in their decision making.

### How can businesses support their staff at this time?

The first step is to recognise that we are going through a huge change both emotionally, physically in some cases financially and the impact that this is having on your teams.

As we discussed in a previous webinar - the key again that underpins solid change management and people practices is **COMMUNICATION**.

I refer back to the phrase I adopted on a previous webinar ... *"People can manage change, what they can't manage is the unknown"*

### So, can businesses communicate with employees that are on Furlough leave?

We are often being asked what level of communication businesses can have with employees that are furloughed given the clear guidance that Furloughed staff must not work for their employer until furlough ends and if the employees do any work, then the employer's claims for the government grant may be jeopardised.

On the other hand, an employer's duty of care for employees continues during furlough so employers must maintain non work-related contact furloughed staff to discuss any personal matters, including their health and well-being, and to allow employees to ask any questions or raise concerns.

Contact helps maintain furloughed employees' loyalty and engagement so that they can return to work smoothly. Contact should be arranged ahead of time, so it is expected.

### Can you take us through some points for good solid communication in these circumstances whilst adhering to the government parameters:

#### 1. Structure

- Have a structured / planned approach to placing your workers on Furlough Leave, outline how you will communicate with them whilst on leave and how you will communicate bringing them back.

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- Give employees the details that you have - don't assume that they understand all of the principles of CJRS. This may help alleviate some stress around the situation.
- Discuss and agree how you will communicate - through personal email addresses? If so, confirm contact details are up to date.
- Be open to questions and available to discuss any concerns. This is particularly important now as the changes are afoot with the lifting of some of the restrictions.

### 2. Frequently Asked Questions

- Prepare a FAQ - some of your employees may have asked questions that others may be thinking but have not asked.
- Sending a FAQ out on a regular basis will keep your teams up to date, included and secure in the knowledge that you are keeping yourself and the business up to date. This may also alleviate any stress and clarify some burning questions.
- Be clear on who your employees point of contact is should they have any questions or concerns or specific HR queries.

### 3. Continue to communicate with your teams - whilst furloughed they cannot carry out work, but they can be contacted - they are employed and should feel part of the organisation and team.

However, there is a caveat to this. Whilst there is no guidance on the use of work email, if businesses choose to communicate with furloughed employees through existing work email addresses, they must ensure that when employees log on they do undertake any work at all.

### 4. A dedicated furlough support site ensures furloughed staff don't feel forgotten and can access any furlough Q&As, guidelines and updates and access to Employee Assistance Programmes.

Keeping people updated and aware of where what your business is doing - whether it is good or bad news for individuals - will help them to make their own decisions and give them some degree of security in very uncertain times.

The more you share, connect, and support each other the stronger your organisation will be. All of the above will support your employee's health and wellbeing and keep them engaged in the business.

- **Home and away - KAREN**

### **What does the future of work look like?**

This is impossible to answer however, this time has called for a challenge to traditional office based work. Companies such as Amazon have extended their work at home option until at least October. Twitter have said that their employees will be able to choose whether or not employees wish to return to the office.

Remember, that this period of homeworking has been mandatory and not something that has been planned for - you need to consider the best approach for your business and review as part of your overall business strategy and base decisions on business objective.

Employers could see an increase in flexible work requests from staff who were previously based at the business premises but who have since adapted to homeworking. You may also find that people want to return to the office when this may be something you are considering changing. Remember if you are looking to change your employees place of

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work this is likely to be a contractual change so consultation and agreement must follow as usual.

### **What happens if someone puts in a flexible working request? How do you refuse it if already able proved can work at home?**

Again - this situation is unusual and homeworking adopted quickly across the UK. With a possibility of increased flexible working requests, you must make sure you have an up to date policy that reflects statutory procedure. You must follow this procedure and if you refuse the request ensure that you have legitimate and objective reasons. If not handled properly you could leave yourself open to claims for constructive unfair dismissal and discrimination.

From a legal perspective, when homeworking :-

- Ensure that you have a homeworking policy / review your homeworking policy, include areas such as supervision, communication, how performance will be monitored. Confirm that your teams have read and understood.
- Confirm contact methods
- Ensure that all equipment is provided
- Confirm IT and broadband arrangements - will the employer contribute to costs?
- Be clear on your health and safety obligations
- Carry out risk assessments
- Support employees in getting right ergonomic set up
- Video conferencing - keep in touch
- Allow your teams to access the support they need

#### **➤ Managing a return to work - KAREN**

**So, this is topical in light of the recent announcement for England. What about when you are in a position to bring employees back to work? ...**

When you are in a position to return to work - firstly be sure to follow government guidelines.

The Govt have released a publication following the announcement made on 10<sup>th</sup> May 2020 called 'Covid-19 Recovery Strategy' and the link to Covid-19 Secure.

### **What does the publication state with regards to work**

- **For the foreseeable future, workers should continue to work from home rather than their normal physical workplace, wherever possible.**
- **All workers who cannot work from home should travel to work if their workplace is open.** Sectors of the economy that are allowed to be open should be open, for example this includes food production, construction, manufacturing, logistics, distribution and scientific research in laboratories. The only exceptions to this are those workplaces such as hospitality and non-essential retail which during this first step the Government is requiring to remain closed. As soon as practicable, workplaces should follow the new "COVID-19 Secure" guidelines, as set out in the previous chapter, which will be published this week. These will ensure the risk of infection is as low as possible, while allowing as many people as possible to resume their livelihoods.

Be clear though, that businesses that have been ordered to close cannot return to work.

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When returning to work you have a 'duty to protect, as far as reasonably practicable, employees health, safety and welfare.' How can you return to work safely? More is outlined in the governments 'Covid-19 Secure' guidelines by sector.

### Can you take us through some recommendations?

- You should give staff a reasonable period of notice of requiring them to return to work.
- Undertake a risk assessment / ensure safe systems of work and that they are being followed.
- Prepare a policy with clear guidance and communication. Include a procedure of how concerns will be dealt with. This will have an impact on your employees wellbeing and help alleviate any anxiety they may feel. Take a planned approach.
- Listen to concerns and have a virtual open-door policy
- Be aware of who is vulnerable due to things such as pre-existing medical conditions, disability, pregnancy and be aware of additional duties you have.
- Adhere to social distancing rules. Guidance given includes:
  - Staggering working hours (so all staff are not in at same time)
  - Ensuring employees are at least 2 metres apart (law in Wales)
  - Staggering use of social areas such as canteens and kitchens
  - Taping 2 metre spaces
- Remote meeting facilities and video-calls should be in place wherever possible to minimise the need for staff to travel
- 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. Make sure employees are clear about what procedure they should follow if they begin to feel unwell, both in the workplace and at home.
- Employers will need to continue to 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, employees may have been ill themselves or suffered a bereavement because of Coronavirus which will make their return to work more difficult.
- 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 in company services, procedures and any changes to work duties or tasks.
- Employers will need to manage the return of equipment that has been borrowed for homeworking.

In summary, in returning to work ensure that you undertake a risk assessment, consult fully with your employees and ensure that safe systems of work are fully implemented.

### What about from a legal perspective?

If employees have concerns about returning to work, they may have a claim under the Employment Rights Act 1996 for detriment or dismissal. If a worker raises a concern about a failure to provide a safe working environment this could amount to a protected disclosure under whistleblowing. Employees can also contact the HSE with concerns.

There are some issues that you will need to consider when restrictions are lifted / have been lifted, such as:

- **Staff who are required to shield or self-isolate-** you should allow them to work from home or if this is not possible, there is the option to furlough

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- **Staff who have suffered a bereavement-** while there is no statutory right to bereavement leave, other than in the case of the death of a child, you should be sympathetic to requests for additional time off during this period.
- **Childcare** - given that not all children have a planned return to school (only certain ages in England at this time) employees with childcare responsibilities may struggle. If unable to work from home an option is to continue with Furlough Leave.
- **Transport** - in England employees are advised to avoid public transport - have discussions with your employees about how this may affect them and what solutions are available.

**We would advise that you consider each situation on a case by case basis.** Have open communication with your teams and listen to their concerns.

### **Anything else we need to consider?**

- **Holidays-** As highlighted in previous webinars, staff are now allowed to carry forward some of their statutory holidays if they are unable to take them in the current leave year. Encourage staff to take previously agreed holiday dates, even if working from home as people still need time away from work.

It may be useful to relax normal rules around maximum numbers allowed off at once to ensure staff can use up their holiday entitlement whilst ensuring the business can still maintain its services.

- **Inclusion and equality** - ensure that decisions don't discriminate against certain groups of employees (for example - decisions about flexible, home or part time working due to school closures where women could be disproportionately affected leading to sex discrimination claims)
- **Looking ahead** - make contingency plans in case there is a second wave of coronavirus and limits are reintroduced.

This is a fast moving situation and it's important that you stay up to date with the latest Government and Public Health Guidance and the WHO guidance. The Health and Safety executive have also published evidence and guidance. Check the sources and ensure that you are clear on your responsibilities as an employer to protect your employees and your business.