



March 2020

## **FREQUENTLY ASKED QUESTIONS- COVID-19**

### **What to do if my Client advises that they do not need our staff to provide services due to a temporary closure?**

It is important to check the contract that you have with your client to see if there is any provision to cover payment of wages to your employees, for either a notice period or the period of lay-off/short-time working.

Assuming no such agreement with the client exists, the company will have to decide whether they wish to make a payment to their employees.

### **Am I entitled to lay staff off or place them on short-time working if I do not have enough work for them?**

If you have a specific provision in your Terms and Conditions of employment, then you are entitled to place employees on layoff/short-time working. If you do not have such a provision, you are not entitled to do so without their agreement. We would suggest in the current circumstances that this is a national emergency and therefore you may be able to argue that these are exceptional circumstances which were outside everybody's control.

### **What to do if I believe I may not have enough work for employees in the near future?**

If there is a risk that the company may have to consider lay-off/short-time working, a general Protective Notice memo should be issued to all employees, indicating that there may be a risk at some future date of lay-off/short-time working, due to the prevailing economic uncertainty surrounding COVID-19 virus. It should advise staff that the company will give as much notice as is possible, should these measures have to be implemented.

### **What to do if I have no work for employees?**

Written notice of lay-off/short-time working dates should be given as early as possible to each affected employee. This notice should indicate briefly the reasons for the lay-off or short-time working, state the date on which the measures will come

into effect, that it will be reviewed on a day to day basis and the employee and their union representatives (where applicable) will be kept informed of developments.

Before taking the decision to place someone on lay-off or short-time working, employers should consider any alternative measures that could be implemented such as; facilitating working from home arrangements or different duties etc.

Employers may also wish to offer employees the opportunity to take their accrued annual leave should they wish or to avail of any time in lieu accrued, where applicable.

### **What if employees don't have enough annual leave?**

If an employee does not have sufficient annual leave accrued, then they will be laid off without pay or paid for hours actually worked during short-time working.

### **Do I have to pay an employee during a period of lay-off and short-time working?**

#### Lay-off

There is no statutory obligation to pay during a period of lay-off, provided there is a clause within the Terms and Conditions of Employment allowing for this.

An employer may decide to make a contribution to the employee during a period of lay-off such as topping up any state benefit, they may receive during this time, which is done at the Company's absolute discretion.

#### Short-time Working

Employees are entitled to be paid for hours actually worked during a period of short-time working. An employer may decide to top up any state benefit they may receive for the days that they are not working. Please note that state benefit is not payable for any day where any hours are worked.

### **Are employees entitled to be paid redundancy if placed on lay-off or short-time working?**

If it is not a clause in their Terms and Conditions of Employment, then an employee may claim that they have been made redundant.

Similarly, where an employee is laid off for a period of 4 continuous weeks or more or 6 weeks in a 13 week period, they are entitled to request to be declared redundant. An employer must advise, by way of a 'Counter Notice', the employee, within 7 days of notice being served, that they can offer at least 13 weeks normal employment, starting no later than 4 weeks from the date of notice served.

Failure to provide this 'Counter Notice' will result in the employee being entitled to be paid redundancy, provided that they have at least two years continuous service with you. They will not be entitled to notice payment in these circumstances.

Please note that for the purpose of being eligible to claim redundancy under the Redundancy Payments Act 1967, short-time working must be less than half their normal weekly salary or normal weekly hours.

### **How long can an employee be placed on lay-off/short-time working?**

Whilst there is no specified duration, except under the Redundancy Payments Act in relation to the above notice, it must be a temporary measure rather than a permanent one.

### **How do I decide who to place on lay-off or short-time working?**

Decisions surrounding who should be placed on lay-off or short-time working should be based on business needs only, unless redundancy policies provide otherwise, and applied on an objective basis.

### **What is the obligation on employers if employees have no childcare arrangements?**

There is no obligation on employers to pay employees who are unable to attend for work due to childcare issues. However, the government has requested that employers would consider any possible options that may be workable for them, including working from home arrangements.

Any such arrangements would be made between the employer and the employee.

Should this not be practical for employers, they may allow employees to take any accrued annual leave or unpaid leave.

### **What if a business remains open but the employee refuses to come in?**

You need to be reasonable and if the HSE/GP do not advise otherwise, employees are required to attend work as normal. If they can work from home and you are happy for them to do so, allow it and pay as normal. If person is not able to work from home, you may allow them to take accrued annual leave or unpaid leave.

If the employee refuses to attend, this may be seen as refusal to follow a reasonable request which may warrant disciplinary action. We would recommend that an employer would attempt to explore every possible option before adopting the disciplinary route.

### **Should I close my business?**

It is entirely up to the company whether they decide to close their operation. If it is feasible for an employer to work from home and an employer is happy for their

employees to do, employers can allow for it. If employers require employees to be in the office, act reasonably and do not panic. Postpone or cancel meetings with internal and external people, where they can. Do encourage social distancing of employees and encourage employees to continue with strict hygiene practices. Consider rearranging the office so people are not sitting in close proximity to each other but at least 2m away.

Seek advice from HSE.

**This update is provided by the MSS HR Support Service.**

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