



ActifHR

Where people matter...

September 2020 Update

Welcome to this month's update - where we discuss the latest guidance and legislation.

In this Edition we report on:

- Furloughed Employees to Receive Full Redundancy Payments
 - Guidance on Notice Periods
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Furloughed Employees to Receive Full Redundancy Payments

As of the 31st July, new legislation has been brought in to ensure that all furloughed employees receive redundancy payments at 100% of their normal pay, instead of the reduced furlough rate.

- * For those workers who do not have normal working hours, a week's pay is calculated looking at the 'reference salary' to claim furlough pay, under the Coronavirus Job Retention Scheme.
- * For those with normal working hours, any reduction in the amount payable for whatever reason whilst on furlough leave must be disregarded.

However, you must remove the cap that is put on by the Scheme to calculate a 'weeks' pay.

The legislation also covers other statutory employment rights that depend upon calculating a 'week's pay', namely:

- Notice pay (Ss.88 and 89 ERA)
- Pay for time off, to look for employment/training (Ss.53/54 Employment Rights Act ('ERA'))
- Compensation for failure to provide a written statement of reasons for dismissal (S.93 ERA)
- Compensation for unfair dismissal;
- Compensation for failure to comply with an order for reinstatement (S.117 ERA)

This is highly welcomed by employees who are being made redundant as it gives certainty to the redundancy payments they should be receiving.

Employers: We can assist with redundancy advice and support

Contact us: If your business is needing to make changes to staffing

Guidance on Notice Periods

Unfortunately, many employer are needing to undertake redundancy consultation to reduce staff costs as the furlough pay stops at the end of October. We have set out below guidance on notice periods:

1. The minimum notice period required by law

Start off by looking at the contract:

S.86 of the Employment Rights Act 1996 (ERA) outlines the statutory minimum notice period, which states, if you are employed for more than one month then an employee is entitled to one week for each year worked up to a maximum of twelve weeks for twelve years.

- If the given period set out in the contract is less than this, then the employee receives the statutory minimum.
- If the contract has a longer term contractual notice period then this must be paid over and above the statutory minimum notice period.

Both parties can agree to shorter notice periods.

If no written contract is given then the employee is entitled to reasonable notice, which usually is the statutory minimum but it may be longer if there is an industry norm.

2. Two situations when notice is not required:

- a) Fixed term contract – no notice period needed to terminate a fixed term contract. However, if the employee has worked in the business for more than 2 years, without following a fair procedure it could be found to be unfair dismissal.

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- b) If it is found to be gross misconduct. Again, for employees over 2 years you must follow a proper disciplinary procedure.
- 3. **Breach of contract**
This when an employee is dismissed without proper notice, they may have a claim for breach of contract.
- 4. **The law doesn't state how giving notice should be done but bear in mind:**
 - a) Put it in writing (exclude texts). Always best to send by first class post as an employee can refuse to accept signed for post.
 - b) Notice has to be unambiguous, clear and takes affect when communicated.
 - c) Give clarity with dates. The day you give notice is not calculated in terms of giving notice. So, if one month's notice is given on say 1st January the last day of work will be 1st Feb. If an employee gives notice confirm their last day of work.
- 5. **Alternatives to working out notice:**
 - a) Garden leave – This is useful if a senior employee is thinking of working for a competitor as it allows a business to enforce time off without providing work. You need to have a garden leave clause in the contract.
 - b) Payment in lieu of notice (PILON) Terminates an employment contract immediately. You need to have a PILON clause in your employment contract to allow you lawfully to pay this. You can get it agreed with an employee.

Employers: We can assist with redundancy guidance, contracts and letters

Contact us: If your business is needing to make changes to staffing

Returning Employees to the Workplace

More employers are returning employees to the workplace after the Government's guidance from the 1st August and with the re-opening of schools.

We are finding many businesses seem to have some employees unwilling to go back into the office.

There is a greater emphasis on considering individuals circumstances in the risk assessment, including how employees get to work, whether they are employees at higher risk.

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However, if you take the steps outlined in our recent webinar with Silverstone Technology Cluster <https://www.youtube.com/watch?v=B76pvp6LIIQ&feature=youtu.be>, you can ensure a practical and effective risk assessment is put in place and get employees back at work.

We have put together a package of documents including guidance and templates in step by step form to make it easy for a business to undertake the Covid-19 Risk assessments in a practical and straightforward way.

Employers: We can guide your business through the risk assessment process and the documentation you need for as little as £400 for the package.

Contact us: Please see our most recent webinar with Silverstone Technology Cluster <https://www.youtube.com/watch?v=B76pvp6LIIQ&feature=youtu.be>



Caroline has a wealth of experience supporting business clients with practical hands on HR and Employment Law advice. Caroline's pragmatic approach helps businesses of all sizes deal with complex HR situations. She qualified as a Solicitor in 1999 and now acts as a specialist Human Resource / employment Law Consultant to business.

Caroline Robertson, Director



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