



ActifHR

Where people matter...

May 2021 Update

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

In this Edition we report on:

- Right to Work Checks
 - Considering redundancies when the Furlough scheme ends
 - Disciplining staff for misconduct outside the workplace
-

Right to Work Checks

On 30 March 2020, temporary changes for employers carrying out right to work checks during the coronavirus pandemic were put into effect and will remain in place until 20 June 2021. So, checks can still be carried out over video calls until this date.

Job applicants and existing workers can send scanned documents or a photo of the documents by email or a mobile app, rather than sending on the originals. If they cannot provide the required documents, then employers should use the Employer Checking Service.

Checks are necessary and you must make sure you check the documents set out in the guidance, *'Right to work checks: an employer's guide'*, or use the online right to work checking service. It is an offence to knowingly employ someone who does not have the right to work in the UK.

Tel: 01327 317537

M: 07947567661

E: caroline.robertson@actifhr.co.uk/info@actifhr.co.uk

ActifHR Ltd, Innovation Centre, Silverstone Park. NN12 8GX

The process to check documents involves:

1. Asking the worker to send in a scanned copy or photo of their original documents by email or mobile app.
2. Ask the worker to hold up the original documents to the camera so that you can check them against the digital copy of the documents in a video call.
3. Note the date you made the check and mark it down as “*adjusted check undertaken on [insert date] due to COVID-19*”.
4. An employer can use the online right to work checking service if the worker has a current Biometric Residence Permit/Residence Card, has the right status under the EU Settlement Scheme or points-based immigration system.

When the temporary adjustments end, from 21 June 2021 you must either:

1. Check the applicant’s original documents.
2. Or check the applicant’s right to work online once they give you their share code.

Retrospective checks

It’s not necessary to carry out retrospective checks on those who had a COVID-19 adjusted check between 30 March 2020 and 20 June 2021. If the job applicant can't show their documents, you should contact the Home Office Employer Checking Service to obtain a ‘Positive Verification Notice’, if they have a right to work. This gives the employer a statutory excuse for 6 months from the date in the notice.

Employers: Make sure you have right to work checks in place for current, new employees and workers.

Contact us: For specialist HR advice and guidance, including contracts of employment and policies

Considering redundancies when the Furlough scheme ends

The flexible furlough scheme is due to end on 30 September 2021. Once it ends, it is anticipated there will be increased redundancies across many sectors. The percentage on furlough leave has risen between October 2020 and January 2021 and extending the scheme has allowed employers to avoid additional redundancies so far.

Tel: 01327 317537

M: 07947567661

E: caroline.robertson@actifhr.co.uk/info@actifhr.co.uk

ActifHR Ltd, Innovation Centre, Silverstone Park. NN12 8GX

What do employers need to know when planning redundancies after furlough?

Since July 2020, government guidance has been clear that employees who are made redundant while on or returning from furlough are entitled to a statutory redundancy payment, as long as they have two years' continuous employment including their notice pay.

The redundancy payment should be calculated using their normal wage (i.e. their pre-furlough salary). But from the 1 December 2020 employers can no longer use the job retention scheme to pay the notice period.

What should be paid during contractual notice periods if an employee is on furlough leave?

There is a weird quirk in employment legislation, which allows employers to pay the furlough leave payment amount if an employee's contract entitles them to more notice than the statutory minimum notice period. To break this down:

1. If an employee is only entitled to the statutory minimum notice period, the employer must pay 100 per cent of the employee's normal pay during the notice period; but
2. If the notice period in the employment contract is at least one week more than the statutory minimum notice period, then the employer is at liberty to pay an employee their reduced furlough rate of pay during their notice period.

Before considering redundancies, an employer must consider alternatives, such as recruitment freezes, redeployment, delaying wage increases, not paying discretionary bonuses or terminating temporary employees' contracts.

Employers: Consider strategies to implement before considering redundancies where possible.

Contact us: We can help your business with reviews of staff structures, cost cutting measures and redundancy procedures and consultation.

Disciplining staff for misconduct outside the workplace

We are often asked if a business can discipline staff for misconduct that occurred outside the workplace? It all depends. An employer needs to show the individual's behaviour affected the organisation's reputation or that of their colleagues.

If there is an allegation of misconduct against an employee at work, it is usually clear whether an investigation and/or disciplinary needs to be carried out. However, if the misconduct has taken place outside the workplace, it is difficult to know whether the employer has the right to initiate disciplinary proceedings.

There may be occasions when there is an overlap between the employee's private life and their employment, it is not always clear cut. This could be the case if the employee's behaviour outside work affected colleagues or if they used company property without authority.

Risk to a company's reputation, as well as a loss of trust in the employee may also be factors. If the employer is regulated, then any criminal proceedings may directly affect the business.

The recent Employment Appeal Tribunal (EAT) case of *K v L (UKEATS/0014/18)*, is an example of this overlap, where a teacher was dismissed for having indecent images on his home computer. The EAT held the dismissal was unfair, on the basis that the allegation of reputational risk had not been properly put to the employee. By not giving the employee sufficient notice of this they did not have the opportunity to address it at the disciplinary.

The point that is particularly relevant to misconduct outside the workplace, is an employee must have a clear understanding of all the allegations against them, right at the start of any disciplinary proceedings, including reputational risk. For alleged misconduct outside the workplace, employers may not be able to fully investigate the misconduct, so it is therefore important that an explanation is set out and where possible an investigation of the overlap between the alleged misconduct and the employee's employment.

In setting out all the allegations, employers can potentially avoid being put in the awkward position of being unable to take any action (despite harm being caused), if the misconduct allegations themselves cannot be investigated properly.

Employers: Factors such as reputational damage or using work property for personal use may be sufficient grounds for disciplinary action, as long as the employer puts these concerns clearly to the employee.

Contact us: We can assist with investigations, disciplinary, grievances and appeals



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



You are receiving this e-mail from ActifHR Limited as you are either a client of ActifHR Limited or have consented to receiving these updates, being one of the lawful basis to process under the General Data Protection Regulations. To stop receiving these emails, please send a return email with 'unsubscribe' in the title.

Disclaimer: This newsletter is provided for general information only and does not constitute legal or other professional advice. If you require advice on a specific Human Resource issue please contact caroline.robertson@actifhr.co.uk. ActifHR Limited accepts no responsibility for any loss which may arise from reliance on information contained in this newsletter.

Tel: 01327 317537

M: 07947567661

E: caroline.robertson@actifhr.co.uk/info@actifhr.co.uk

ActifHR Ltd, Innovation Centre, Silverstone Park. NN12 8GX