



ActifHR

Where people matter...

October 2021 Update

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

In this Edition we report on:

- Life after Furlough
- When does an 'employment relationship' start?
- One in four jobseekers received no response to applications during pandemic

Life after Furlough

The Furlough Scheme was part of our working lives for 18 months. It cost over £70 billion and was the centrepiece of the Chancellor's intervention to stave off job losses, as the country effectively closed down in the face of the virus. At its height it supported over 11 million people and when it ended on 30 September, there were still between 1 million and 1.5 million on either full, or partial, furlough.

But now with the scheme at an end, businesses need to take some difficult decisions about their employees. If you've had your staff on furlough, you may be feeling understandably concerned about the additional costs as the scheme finishes. You might also be worried about job losses.

Many businesses have already used the furlough period to plan ahead and think carefully about their future. This has led to reorganisation or restructuring, together with active discussions with individuals about different ways of working including:

- Pay reductions

Tel: 01327 317537

M: 07947567661

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

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

- Career breaks/compulsory sabbaticals
- Using up annual leave
- Changing hours – going part-time and/or job shares
- Changing working location (to save money on premises)

Even though making staff redundant is upsetting, the economy now has record levels of job vacancies and with plenty of skill shortages in key industries. Retraining and reskilling is being actively offered, together with other incentives. This could mean that workers might be able to find another job sooner than they thought.

Flexibility and encouragement

With many furloughed employees returning to work, it's essential that business owners and senior managers maintain covid-safe measures and new working practices to keep the workplace and employees safe. Offering employees extra support, flexibility and encouragement is key. By setting up regular one-to-ones this will demonstrate your ability to listen and understand their needs, as well as learning how to manage expectations in a positive way.

After all, workplaces are a very different place than they were before the pandemic and workers have also got very different attitudes to work which will need to be accommodated.

Fair and balanced

If, however pay cuts, reduced hours and different working arrangements are not enough to reduce costs and redundancies are being considered, take the time to fully consult with staff and follow a fair and balanced process. Make sure this involves clear communication, appropriate notices and meaningful consultation. It's also important to be open, transparent and objective, with no bias, so staff feel informed and included throughout.

Employers: whatever route you choose, it's important to listen to your employees, especially when considering changing terms and conditions or commencing a redundancy process.

Contact us: we can assist with planning any restructures or changes to terms and conditions.

When does an 'employment relationship' start?

After a recent case, we examine if the National Minimum Wage 1998 (NMW) applies when new recruits are required to complete training before starting a job.

Tel: 01327 317537

M: 07947567661

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

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

The NMWA requires that all workers are paid at least the set rate for each hour of work or training undertaken. Employees can claim for a breach of the NMW provisions in the employment tribunal and HMRC may also take enforcement action against an employer.

In the recent case of *Opalkova v Acquire Care Ltd*, the point was raised, whether the NMW would also apply to job candidates where they must spend time undertaking compulsory training, as a condition of being offered a job.

HMRC guidance on this states: *“Care must be taken when training is undertaken prior to commencing work. In these cases, it is important to establish when a worker’s contract is formed and distinguish between what is work and what is part of the employer’s selection process.”*

In this case, the employee applied for a job as a carer, providing home care services for clients. Her job offer was conditional on her completing online training, prior to her start date plus taking an online test to obtain a Care Certificate. Only then was she given a contract of employment and a start date. She was not paid for the time she took training or while doing the test.

The Employment Appeals Tribunal found that consideration should have been given as to whether an employment relationship had been formed at an earlier date, than that stated in her contract of employment. The written terms of the contract, including the start date, were a factor to be taken into account, but the key point was whether she was undertaking work or training when during that time an employment relationship could be implied.

The decision highlights that the written contract regarding the start date should not always be taken to be the key factor. You also need to look at what happens on the ground.

Employers: if part of the recruitment process is described as a ‘trial’, ‘test’ or ‘recruitment exercise’ sometimes an individual will be a worker and entitled to the NMW for the time spent.

Contact us: we can help your business with reviews of staff structures and onboarding.

One in four jobseekers received no response to applications during pandemic

A quarter of jobseekers have not heard back from applications they submitted during the pandemic, research has revealed. Businesses could be damaging their employer brand at a time when competition for staff is intense.

Tel: 01327 317537

M: 07947567661

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

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

Nearly one in five applicants also said they had to wait more than two weeks for feedback on an application, despite a rise in job vacancies when compared with a year ago.

A bad candidate experience made individuals less likely to apply for future roles in the same company. Candidates were also unlikely to recommend the company to a friend, after a negative application experience. Many businesses are investing in appropriate automation technology to streamline some parts of the candidate response processes to ensure they always communicated with applicants throughout.

Even sending standard email responses to job applicants, just letting them know they weren't successful, went a long way to building a positive candidate experience. While applicants may be disappointed, the contact means they will be more likely to apply for jobs again in the future and encourage their friends to do so. It is also good practice to explain to applicants, in advance, what to expect of the application process, either through the job description or by email.

Employers: by not replying to an application, there is no visible communication between the employer and the candidate outlining why their application has been unsuccessful.

Contact us: we can assist with the recruitment and onboarding process, as well as drafting or reviewing employment contracts.



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

Tel: 01327 317537

M: 07947567661

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

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



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