Adviser Network Meeting

Employment Law: Furlough, Redundancy and Rights During a Pandemic

29.10.2020

This morning's topics...

1. Furlough
2. Contract Variations
3. New Schemes
4. Redundancy

The Stats

- The Coronavirus Job Retention Scheme has paid out almost £40 billion since its launch in March 2020
- 12.2 million people have benefited from furlough support
- Since March, the number of payroll employees has dropped by 673,000
- More than 2 million jobs could be 'at risk' once furlough ends

Tribunal Backlog

- Rising demand at a time of restricted capacity
- Protracted waiting times
- Growth rate of outstanding cases = 1% per week throughout the pandemic
- Estimations that overall outstanding claims will surpass 500,000 by Spring 2021 (throughout the UK).

Furlough

- Until the end of October, both full furlough and flexible furlough can be used by employer.
- On Saturday 31 October 2020, furlough will end.
- No more claims for furlough can be made after this.
Furlough Fraud

- Fraud increasingly reported by employees
- Records kept for five years
- Confession period introduced

Ending Furlough

- Employers should talk with staff about any plans to end furlough as early as possible and encourage staff to raise any concerns about returning to work
- If ending furlough, employers should give staff notice in writing
- No minimum notice period

Contract Variations

An employer can make a variation to an employment contract if:

- there’s a ‘flexibility clause’
- the employee agrees to the change
- the employee’s representatives agree to the change (for example, a trade union)

An employer can force a change of contract on employees (unilateral change), although this should be a last resort and could lead to legal action.

Job Support Scheme Open (JSSO)

- Will run from 1 November 2020 to 30 April 2021 (support reviewed in January 2021)
- Employees must work at least 20% of their 'usual hours' and must be on the payroll (and an RTI submission submitted on or before 23 September 2020)
- Employer pays for hours worked and contributes 5% towards hours not worked
- Do not need to have previously used the Furlough Scheme
Employer Eligibility

- Must have a UK bank account and use UK PAYE schemes.
- Test for large employers, no test for SMEs and charities
- Fully publicly funded organisation are not expected to use the scheme
- Employers MUST have agreed the temporary working arrangement for shorter hours in writing with employees (or union).

Employee Eligibility

- Must be on an employer’s PAYE payroll between 6 April 2019 to 23 September 2020.
- Must work at least 20% of their usual hours and they can undertake training in their working hours whilst being claimed for.
- Staff on any type of contract are eligible, including those on variable or zero hours and agency workers.
- Minimum period of seven consecutive days.

Payments

- Grant must be used to pay the employee.
- The Government will pay 61.67% of hours not worked up to a cap of £1,541.75 per month, as well as NIC and pension contributions.
- Employers can top up employee’s wages above the 5% contribution at their own discretion.
- Ensures employees earn a minimum of at least 73% of their ‘usual wages’ (where their usual wages do not exceed the reference salary of £3,125).
- Employers need to pay the Government contribution upfront and reimbursed. Grant will only be payable in arrears.
- Employers using the JSSO will also be able to claim the Job Retention Bonus if they meet the eligibility criteria.

<table>
<thead>
<tr>
<th>Actual worked hours</th>
<th>Government contribution (%)</th>
<th>Employer additional (%)</th>
<th>Employer total contribution (%)</th>
</tr>
</thead>
<tbody>
<tr>
<td>20%</td>
<td>61.67% (of remaining 80% salary)</td>
<td>5%</td>
<td>25%</td>
</tr>
<tr>
<td>30%</td>
<td>61.67% (of remaining 70% salary)</td>
<td>5%</td>
<td>35%</td>
</tr>
<tr>
<td>40%</td>
<td>61.67% (of remaining 60% salary)</td>
<td>5%</td>
<td>45%</td>
</tr>
<tr>
<td>50%</td>
<td>61.67% (of remaining 50% salary)</td>
<td>5%</td>
<td>55%</td>
</tr>
<tr>
<td>60%</td>
<td>61.67% (of remaining 40% salary)</td>
<td>5%</td>
<td>65%</td>
</tr>
<tr>
<td>70%</td>
<td>61.67% (of remaining 30% salary)</td>
<td>5%</td>
<td>75%</td>
</tr>
<tr>
<td>80%</td>
<td>61.67% (of remaining 20% salary)</td>
<td>5%</td>
<td>85%</td>
</tr>
<tr>
<td>90%</td>
<td>61.67% (of remaining 10% salary)</td>
<td>5%</td>
<td>95%</td>
</tr>
</tbody>
</table>

HMRC Checks

- Payments may be withheld or need to be paid back if a claim is found to be fraudulent or based on incorrect information.
- The short time working agreement must be made available to HMRC on request.
- HMRC intend to publish the names of employers who have used the scheme. The public can report fraud to HMRC if they have evidence to suggest an employer is abusing the scheme.
- Employees will be able to check if their employer has made a claim relating to them via their Personal Tax Account.

What happens if there is not enough work for the employee?
What if the employee cannot work due to ill health (including Covid)?

Can an employee take annual leave while on the JSS?

**Job Support Scheme Closed (JSSC)**

- Also runs from 1 November 2020 to 30 April 2021 (with a review in January 2021)
- Employer must be legally required to close due to a coronavirus restriction – employer cannot simply decide to shut
- Will not apply where a business is required to close by a local PHA because of a specific workplace outbreak
- Only for employees who cannot work because of COVID restrictions and the employee must have ceased to work in order to claim
- Government will pay 2/3 of the normal pay of each eligible employee (up to a cap of £2,083.33 per month) - whole of grant must go to employee

**Comparison of JSSO and JSSC**

<table>
<thead>
<tr>
<th></th>
<th>JSSO</th>
<th>JSSC</th>
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<tbody>
<tr>
<td><strong>When to use?</strong></td>
<td>Open but reduced work</td>
<td>Required to close</td>
</tr>
<tr>
<td><strong>When?</strong></td>
<td>1 November 2020 to 30 April 2021 (review in January)</td>
<td>1 November 2020 to 30 April 2021 (review in January)</td>
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<tr>
<td><strong>Employee eligibility</strong></td>
<td>Eligible employees must be on payroll by 23 September 2020 and RTI submission for payroll made to HMRC on or before 23 September 2020</td>
<td>Eligible employees must be on payroll by 23 September 2020 and RTI submission for payroll made to HMRC on or before 23 September 2020</td>
</tr>
<tr>
<td><strong>Need to have previously used furlough?</strong></td>
<td>No</td>
<td>No</td>
</tr>
<tr>
<td><strong>Large business assessment test required?</strong></td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td><strong>Working hours?</strong></td>
<td>20% of usual hours</td>
<td>Employee must cease working</td>
</tr>
<tr>
<td><strong>Employer contribution?</strong></td>
<td>Normal pay for hours worked, 5% for remaining time plus NIC and pension contributions</td>
<td>NIC and pension contribution</td>
</tr>
<tr>
<td><strong>Government contribution?</strong></td>
<td>100% of hours not worked up to a cap of £3,085.75</td>
<td>2/3 of normal pay up to a cap of £2,083.33 per month</td>
</tr>
<tr>
<td><strong>Grant timescales?</strong></td>
<td>In monthly arrears from 8 December 2020</td>
<td>In monthly arrears, from 8 December 2020</td>
</tr>
<tr>
<td><strong>Notice of redundancy permitted?</strong></td>
<td>No</td>
<td>No</td>
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<td><strong>Still claim job retention bonus?</strong></td>
<td>Yes</td>
<td>Yes</td>
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Case study – Andrew

Employers need to have a written agreement with employees
Grant will be paid monthly in arrears with first payments due December 2020
Employers will be responsible for NIC and pension contributions
Employees cannot be made redundant or put on notice of redundancy when on JSSC
Once permitted to reopen, cannot use JSSC but may use JSSO
Case study – Emma

Job Retention Bonus
- Only available for employers who previously furloughed employees or will claim under the JSS
- For employer NOT employee
- Employee must be continuously employed from 1 November 2020 - 31 of January 2021
- Employee must earn at least £520 in each of November, December and January
- A £1,000 bonus will be paid in February, once HMRC receives the payroll information

Self Employed Income Support Scheme Extension
- The government will provide two taxable grants to support those who are self employed but are experiencing reduced demand
- The amount of profits covered by the two grants have been increased from 20% to 40%, meaning the maximum grant will increase from £1,875 to £3,750.
- Grants will be paid in two lump sum instalments each covering 3 months (November 2020 – January 2021, and February – April 2021).

New Criminal Offence
- New regulations September 2020 in England
- Once an individual is aware that they are required to self-isolate, they must notify their employer as soon as reasonably practicable and before they are next due to work.
- An employer who is aware of a worker’s requirement to self-isolate (whether by being notified or otherwise) must not allow them to come into work.
- Individuals and employers who breach these requirements without reasonable excuse could be fined between £1,000 and £10,000.

Redundancy

Key Considerations
1. There is a genuine redundancy
2. The numbers affected
3. Ways to avoid redundancy
4. Selection pool
5. Selection criteria
Key Considerations

6. Fair consultation
7. Suitable alternative employment
8. Statutory dismissal procedure
9. Redundancy payment
10. Unfair dismissal claims

Redundancy and JSS

- Employees cannot be made redundant or put on notice of redundancy during the period within which their employer is claiming the grant for that employee.
- Employer can remove employee from JSS and make them redundant

Further Support

- https://www.lawcentreni.org
- acas.org.uk/coronavirus
- www.nibusinessinfo.co.uk
- https://www.lra.org.uk/
- www.gov.uk/guidance/

QUESTIONS?

Advice Line: 028 9024 4401
employmentadvice@lawcentrelni.org