

Employment rights in the time of Covid

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for youth legal

28 October 2020

Employment rights in the time of Covid

- Agreement and/or CJRS furlough
- Job Support Scheme Open or Job Support Scheme Closed ('furlough 2')
- Effects on annual leave
- Health & safety, including whistleblowing
- Sick pay and special £500 payment
- Notice and notice pay
- Redundancy: fairness, consultation and rate of redundancy pay
- State's role as 'insurer' for limited unpaid sums and on insolvency
- New employment related offences
- Problems

Effect of Covid-19 on employment rights

- Any *agreed* contractual variations
- **Coronavirus Job Retention Scheme 2020**: a scheme *for employers to use*
 - Employee eligibility
 - No right to be furloughed...

Effect of Covid-19 on employment rights, contd

Job Support Scheme Open: *for employers from 1.11.20*

- Principles
- What it does and how it works
- Example

Job Retention Scheme Bonus: *for employers at 31.1.21*

but might help with retention, combined with JSS

Effect of Covid-19 on employment rights, contd

Job Support Scheme Closed: *for employers*

(an *alternative* to JSS Open. 'Furlough 2' for employees)

- Purpose
- What it is and how it works
- Example/s

Effect of Covid-19 on employment rights, contd

- **Annual leave during and after furlough/JSS**
 - May I take it/do I have to take it?
 - Does it build up during furlough and JSS?
 - Holiday pay rates: full or 80% or less?
 - Holiday pay rates under JSS Open/JSS Closed?
 - Carrying forward unused leave

Effect of Covid-19 on employment rights, contd

Health, safety and welfare

- workers required to continue during lockdown
 - workers required to return after furlough
 - working from home
- Laws protecting employees who:
 - make a public interest disclosure (whistleblowing)
 - raise H&S concern/leave work due to danger

Effect of Covid-19 on employment rights, contd

Statutory sick pay

- eligibility
 - usual amount
 - usual limits
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- Extensions: SSP **from 1st day** for 'true' Covid reasons

NOT payable at all to workers quarantining after holiday abroad

Effect of Covid-19 on employment rights, contd

Special **£500 payment** to self-isolating low-paid workers

- Purpose and intention
- Government imposed, local authority scheme
- Start date and details
 - Must be in receipt of a relevant benefit
- May still leave out some workers

Effect of Covid-19 on employment rights, contd

Notice periods, notice pay, PILON, pay rate

- Ordinary/pre-Covid law – a reminder
- Rate of notice pay during/after CJRS furlough
- Rate of notice pay during/after time on:
 - Job Support Scheme Open (ie working 1/5 or more)
 - Job Support Scheme Closed (not working)

Effect of Covid-19 on employment rights, contd

Redundancy dismissals

- Individual/s: **fairness?** Consultation; process and system; suitable alternative employment; time off
Note: mostly needs 2 years' continuous employment
- Collective redundancies (20 or more): consultation requirements; protective awards; defence
- Rate of redundancy pay
 - for calculation based on CJRS furlough
 - if calculated while on JSS Open or JSS Closed?

Effect of Covid-19 on employment rights, contd

Not new and no change, but likely to be needed more: State as insurer

Employer cannot/will not pay:

- **Redundancy pay** from National Insurance Fund (RPS)
- **Statutory maternity pay etc** from HMRC
- **Insolvent employer, *statutory sums*** due from employer will be paid by Government (Secretary of State for BEIS)

Other relevant law: new criminal offences

New offences, from 28 September 2020

Most relevant to employment:

- Defines ‘a requirement to self-isolate.’ Then:
 - Reg 8: worker must notify employer;
 - Reg 7: must ***not allow*** the worker to attend anywhere other than home for work purposes
- Fixed penalty notices £1,000; £2,000; £4,000; £10,000 for employee and employer. Or prosecution + fine.

Problems

- Required to work while furloughed, before/after 1 July
- Furloughed: 'only' paid 80%, 2/3 or less – or not at all
- Required to return to work when it is not Covid-secure
- Travel to work issues
- Left in limbo, no contact from employer

Problems, contd

- Returning from maternity leave
- Childcare: none available
- Other vulnerable employees
- Zero hours workers, reduced hours, no hours
- Dismissed/made redundant

Problems – employer insolvency?

- Is employer really ‘insolvent’?
 - Companies & partnerships: winding up or administration order, receivership or company voluntary arrangement
 - Individuals: moratorium under a debt relief order, bankruptcy or has died and estate is being administered as insolvent
- If YES, may be able to sue; see also slide 12
- If NO, more difficult situation...

Practical problems

- When work ends
- Must 'mitigate'
- Obtaining good quality free legal advice
- Establish the proper legal name of (former) employer
- Negotiating with (former) employer

Practical problems, contd

- Legal claims have time limits, mostly **3 months less 1 day** from last relevant event (eg dismissal). **6m-1d** if just statutory redundancy pay
- Within **3 months less 1 day**, must go to ACAS for early conciliation (save on a claim to SoS). Buys some extra time
- Fill in employment tribunal claim form (ET1) on-line
- Put your account in date order, briefly and clearly