

## **COVID-19: WORKFORCE IMPLICATIONS OF THE GOVERNMENT SUPPORT TO BUSINESSES**

# ashfords

Many businesses will be worried about the implications of COVID-19 on their ability to stay afloat and continue to employ and pay staff. Some will be exploring whether to lay off staff or how to manage paying staff with a reduced cashflow. The Government Support to businesses initially announced on 17 March 2020 may feed into these difficult decisions.

### **GOVERNMENT SUPPORT TO BUSINESSES - ANNOUNCED ON 17 MARCH 2020 (UPDATED ON 18 MARCH 2020)**

As part of the wider support measures announced, the government has confirmed that the following support will be available:-

- Reclaim of 2 weeks' Statutory Sick Pay per employee – for small and medium businesses with less than 250 employees (as at 28 February 2020) where an employee has claimed SSP as a result of COVID-19.
- A Coronavirus Business Interruption Loan Scheme – for businesses to access loans and overdrafts up to £5 million, which are interest free for the first 6 months.
- A £25,000 grant to retail, hospitality and leisure businesses operating from small premises (with a rateable value of £15,000 - £51,000).
- A grant of £10,000 to businesses that are currently eligible for small business rate relief or rural rate relief.
- A COVID-19 Corporate Financing Facility for larger firms.

Other measures include business rates holidays for the retail, hospitality and leisure industries, and the HMRC Time to Pay Scheme to support businesses paying tax.

### **DO THE MEASURES HELP YOUR BUSINESS?**

The government will be hoping that these measures give reassurance to businesses in uncertain times. Statutory Sick Pay measures will help cover the immediate costs of sick pay, while loans or grant funding could be used to cover costs of investing in technology to support remote working, meeting their wage bill or dealing with pre-existing liabilities and cash flow issues.

For businesses that are able to continue to operate remotely, there will of course be challenges, but the measures should offer short term financial support, with the hope that they are able to remain in business in the longer term.

Where flexible or remote working is not possible, some business may have no choice but to shut down operations temporarily as a result of government advice. While the measures announced will help these businesses to some extent, many business will still inevitably be considering what to do with a workforce that is willing and well enough to work. Employees who are not off sick and are ready for work will largely still be entitled to be paid (depending on their contractual terms). For businesses with ongoing wage bills but no live operations, continuing to pay staff as required could have catastrophic consequences.

Although the availability of loans and other support may help, even loans on generous terms eventually have to be repaid and it is inevitable that some businesses will be considering how they can limit any losses at an early stage; for some, this could mean requesting employee's take unpaid time off, or making redundancies.

### **IMPLICATIONS AND OPTIONS - WHAT CAN YOU DO WITH YOUR WORKFORCE?**

It is important to distinguish between what steps you can take and what steps would require the agreement of employees.

Steps that you may be able to take **unilaterally**: -

- **Using annual leave** - employers can require staff to take annual leave. Notice must be provided of at least twice as many days as the period of leave to be taken, for example where an employee is required to take 5 days off, they must be given 10 days' notice.
- **Lay off** – some contracts will allow for employees to be laid-off or put on short-time working for a temporary period. The contract must provide for this for it to be enforced on employees and a statutory guarantee payment must be paid. Employers should be aware that employees can claim that they have been made redundant if they are laid-off for extended periods (4 or more weeks in a row, or 6 or more weeks in any 13 week period with no more than 3 weeks in a row), so advice should be sought before relying on these provisions.
- **Redundancy** - if employees' roles are no longer required, redundancy may be an option. Full and fair processes must be followed to avoid a claim for unfair dismissal and employers should be mindful of the collective consultation requirements. There are exemptions from the consultation obligations if it can be shown that 'special circumstances' exist which make it impossible or impracticable to comply in full. For example, where insolvency has occurred as a result of a sudden disaster (and not a gradual deterioration) this may constitute special circumstances. Employers must ensure compliance with the obligations as far as reasonably practicable and advice should be sought on your specific situations before seeking to rely on 'special circumstances' as a reason not to comply with the consultation obligations.

Steps that could be taken **with agreement** from employees:

- **Voluntary lay off** – employees take time off of work unpaid. Although this may seem like an unattractive option, employees may agree, particularly if the alternative is redundancy. Employers could explore payment options to spread payments, for example paying 9 months' pay over a 12 month period or a retainer payment for the months of no work.

- **Voluntary reduction of hours** - asking staff to reduce their contracted hours on a temporary basis.
- **Encouraging staff to take annual leave** - even though you can require an employee to take annual leave on sufficient notice, many employees will appreciate the difficult circumstances and may be willing to take annual leave voluntarily (avoiding the notice requirements).
- **Redeploying staff either internally or externally** - if there are other functions that staff can be asked to work on then these options should be considered and discussed. Collaborating with other employers may also be an option. There are a number of companies that are in urgent need of temporary staff to support the efforts required to tackle COVID-19. There are legal complexities to lending or borrowing staff to other companies that must be considered but working together in this way could help balance the impacts of COVID-19.

We always recommend taking advice which is tailored to your specific circumstances.

Please do get in touch with Lorna Clark or Jenny Marley if you would like to discuss options for your business.