

**CORONAVIRUS IMPACT
CONTINGENCY PLANNING, SHORT-TERM WORKING AND STAFF LAY OFFS**



Businesses are starting to experience the real impact of the coronavirus pandemic and it is no longer a case of if it will affect us but when. The Government are urging businesses not to make hasty decisions regarding lay offs. However, if you are facing potential difficult decisions within your business these guidelines are designed to help you objectively consider and understand the options which may be available to you.

You are advised to refer to www.gov.uk for up to date information as the situation evolves.

Why might Coronavirus result in this situation?

- Reduction in customers using your services or buying your products
- Interruptions to supply chains and inability to supply goods or services as normal
- Government instruction to temporarily close doors
- Business continuity factors resulting from an increase in staff absence meaning you are unable to operate as normal
- Other external factors meaning you cannot operate as wished

What other working options could I consider?

The Government are encouraging home working as much as possible. Subject to the nature of your business this may or may not be practical.

If you do have roles which could work remotely this should be a serious consideration. Subject to staff having the necessary equipment, access to required information and information security measures, IT skills, and affordability of any set up costs. Even if staff are less productive at home, this is still better than no work being carried out at all.

Where working from home is not possible, consider if your goods or services could be provided in a different way and be open to creative ideas your team may suggest.

I have employees who are fit to work (not showing symptoms) and wanting to work yet being advised to stay at home. What are my options?

Where staff absence will be increasing it is understandable that you will want to encourage workers who are not ill to continue working and keep your business running, albeit in a reduced capacity.

Some staff who are classed as vulnerable and/or who potentially fall into the groups being advised to socially isolate, may not want to do so. If working from home is possible, this should be made available.

Unless advisory measures change to enforcement measures, and assuming they remain fit to work and do not present any known risks;

Speak with individuals, explore what they would prefer to do, and risk assess options.

Consider any additional precautions you could introduce to enable them to continue working.

For example,

- increasing distance between workstations,
- creating separate workspaces
- allowing different working patterns to minimise interaction with others
- moving them into different roles (subject to skills or training)
- ensuring access to equipment only they use, e.g. hand-held devices, tools, keyboards, kitchen utensils

It is advisable to carry out a risk assessment of your workforce to identify anyone for whom social isolation may apply. Consider each case on its own merit based on personal circumstances, the role they undertake and any skills which mean they could temporarily carry out different duties.

Can I ask them to take paid holiday?

Under normal circumstances employers can ask staff to take a limited amount of holiday if they decide to shut for a given period. However usually twice as much notice as the period of leave being taken needs to be given. Clearly current circumstances mean that giving staff notice may not be possible.

If staff volunteer or are willing to use some paid leave this can be agreed. However, this should be for a limited time and, whilst you can encourage this as an option, it is not advised that you enforce it. Annual leave should ideally be used for real periods of rest and recuperation and you need to ensure staff remain able to take paid holiday during the remainder of the year.

Can I reduce hours or send staff home if we don't have enough work?

If your contracts of employment **have an explicit clause** enabling you to place staff on short term working or lay off, it will be more straightforward to implement temporary changes. Time off will either be in line with any agreed company payments or unpaid.

Implied, generic common law enables employers to send staff home if there is insufficient work to do, however this does not give employers the right to withhold pay. If you do not have an explicit clause and you reduce the amount of work offered or send staff home, they will need to continue to receive their normal salary.

What is short term working?

Short term working is when you offer staff less hours per day or reduce the number of days worked each week, or a combination of both.

What is lay off?

Temporary lay off applies when you send staff home due to lack of work, which may be with or without pay.

What is the maximum period of time for short term working or lay offs

There is no statutory time limit and it will be down to individual circumstances and how the changing global situation directly affects your business.

I don't have an explicit short time working or lay off clause, what options are there?

If contracts of employment **do not have an explicit clause** enabling you to implement short term working or lay off, you will technically be in breach of contract if you implement such changes without staff agreement and/or you refuse to pay normal salary. Worst case employees may decide to bring an employment tribunal claim.

You will need to consult with your workforce and mutually agree any temporary changes to their terms and conditions. If you are unable to seek agreement, normal pay will apply.

How can I seek agreement to temporarily change terms and conditions?

Holding honest conversations with staff is a good starting point.

Explore if they are willing to mutually agree a temporary period of reduced hours at their normal rate of pay, a reduced rate or a period of unpaid leave.

Explore any ideas they may have and be open to working in a different way which makes the best of a difficult situation.

Where mutually agreed changes are approved, it is good practice to take notes of conversations and confirm the key points in writing.

Subject to your cash flow or reserves, explain these are temporary, voluntary measures during exceptional times which will reduce financial pressure for the business, reduce risk of business insolvency and ensure jobs are available to return to once the pandemic is over.

What should I include in any written voluntary agreement?

You may already have a formal agreement with employees' representatives (from trade unions or staff associations) that allows negotiations of terms and conditions like pay or working hours. This is called a collective agreement.

If you are introducing something new, meet with your team and honestly discuss what the current situation is, what is potentially around the corner and what this means for them and the business.

Explore every option and find out what they might be open to, they might just surprise you.

Where the ability to make temporary changes has been agreed, confirm this in writing.

Key points to cover will include

- What will trigger changes being implemented?
- What the potential changes are – e.g. reduction in hours, reduced working week, stopping commission or discretionary payments, undertaking different work, periods of reduced pay, periods of unpaid leave?
- Which staff may be affected?
- Estimated time changes will be in place, e.g. initially 1 month?
- Review dates and criteria?
- Communication methods?

What are Statutory Guaranteed Minimum Payments

Where work is not offered, employees with 1-month continuous service will be entitled to £29 per day for 5 days over a 3-month period. Basically, a maximum of £145. This is pro rata for part time staff and if normal day rates are less than £29, normal salary applies.

Staff must

- Make themselves reasonably available for work
- Not refuse reasonable alternative work, including work not normally covered within their contract
- Not be absent due to industrial action

If enhanced contractual payments are made, employees are not entitled to receive the statutory guaranteed minimum in addition.

This is statutory entitlement and failure by employers to pay may result in a tribunal claim.

Can employees work elsewhere whilst on periods of short term working or lay off?

Unless a contract clause explicitly prevents them from doing so, staff can accept other work during periods of short term working or lay off. They must

- Seek your agreement
- Not work for a competitor
- Make sure they are available to return to their original job once your business situation improves

When Does Redundancy Apply?

Unless employers make the decision to make roles redundant, the process differs during a lay off period and is more complex.

Employees can notify their employer in writing that they intend to claim for redundancy if they have not been offered paid work or received less than ½ weeks' pay for

- 4 consecutive weeks
- A total of 6 weeks within a 13-week period

Employers must respond within 7 days to either accept that redundancy now applies or counter claim due to anticipated work levels within the next 4 weeks, which is expected to last at least 13 weeks.

Under these circumstances, employees need to resign in order to claim redundancy.

Redundancy resignations must be submitted within 3 weeks either from

- 7 days after the employee gave a written claim (if no counter claim received) OR
- The date the employer withdrew any counter claim

What if I can't afford redundancy payments?

Employees must have 2 years continuous service to be entitled to redundancy pay.

Statutory redundancy pay calculations will apply as a minimum payment.

If it is agreed that redundancy applies employers are legally required to pay

- Statutory notice pay
- Accrued holiday pay
- Any other contractual payment due
- Redundancy pay (for those with 2 years' service or more)

You will need to demonstrate that your cash flow / cash reserves genuinely mean you are unable to afford to pay your staff what they are legally entitled to.

If this applies seek advice from your accountant and/or legal advisor as you may be required to declare insolvency.

For business who have been declared insolvent, employees can make a claim to the Government to receive their statutory notice pay and redundancy payment.

Further information is available on www.gov.uk

Support for business through the Coronavirus Pandemic

The Government have announced they will be introducing measures to support businesses affected by the current situation. This includes Government backed loans, grants and other measures. At the time of writing, details on when these will come into place, how they will work in practice or criteria involved are unknown. This has been set up to support businesses seek financial support to help challenging cash flow and may therefore offer you assistance.

Business Continuity Insurance

Check with your insurance provider if your current policy provides cover for paying staff wages under your business continuity cover.

If you do not normally offer home working, you are also advised to check that your Employer Liability Insurance provides cover or update your policy accordingly.

Tips for Planning Ahead?

Timescales for how long this situation will continue or how things will develop is unknown. Businesses are currently 'working in the moment' as things change by the day and the ability to adapt will be key. However, it is also important to consider what your business might need in a few weeks' time. How quickly will you be able to return to normal operations and fulfil customer requirements or orders when they come in?

If you can build up stock reserves or complete those tasks which normally get overlooked, now may well be a good time to get ahead of the game.

Getting ahead, where possible, will not only benefit your business in the longer term but also help to alleviate some financial pressure for your team where you can offer paid overtime, or enable staff to bank hours to use at a later date.

Adopting a proactive approach and financial planning to agree when key business decisions need to be made will demonstrate to your staff that you are only taking action that is genuinely necessary.

The Coronavirus pandemic is an exceptional set of circumstances and hopefully your staff will fully appreciate how this has, or will, impact your business. The key message is that any changes are temporary and designed to ensure the business is still operating when this is all over.

For further support on how manage the coronavirus impact within your business contact Debbie today at debbie@concilium-hr.co.uk or call on 07885 370054.