

## **Are you planning redundancies?**

The Coronavirus Job Retention Scheme – or furlough - may have been extended to 31 October 2020, but employers are already thinking about what their workforce might look like following the end of this subsidised period.

Despite the government's efforts to preserve jobs through the scheme, some employers are facing the reality that there may simply not be enough work for all their staff once furlough comes to an end.

According to a CIPD survey, one in four UK employers expect to make permanent redundancies because of the Covid-19 crisis. But those thinking this way need to remember that the usual rules surrounding redundancy continue to apply and, in the absence of further guidance from the government, have not been relaxed.

We already know of some employers who think that they can simply make those staff who have been on furlough the longest redundant, assuming that their roles are the least important. This is not a safe assumption.

Should it be necessary to make staff redundant, employers will need to ensure they follow the proper processes.

How you behave and treat your employees – both those being made redundant and those unaffected – during this time of crisis can have a huge impact on how your company is perceived – by staff, suppliers and customers alike once things start getting back to normal.

Handling it without due care and attention will not only make an already stressful time for your employees that much more difficult, but it could also adversely affect how your business is viewed externally, and your ability to attract future talent.

And remember that employees can still seek to bring tribunal claims if the process is not handled well, so businesses should weigh up all their options carefully to prevent issues arising at a later date.

## Practical Considerations

On a practical level, there's quite a big set of challenges around the whole redundancy process.

The standard 30-90 day consultation period (if you are making over 20 people redundant) is based on an office environment, where it's easier for staff to get together with their colleagues or union representatives. That timeline is not necessarily workable in a remote environment - and with the added dimension of employers juggling the timeframes surrounding furlough funding. If you're making fewer redundancies then there is no set consultation period but you will need to allow sufficient time to consult with individuals - and the challenges of remote working remain the same.

This may cause some tension as employers are going to be under pressure to start making the cuts, but the practical problems of organising consultations will be tougher.



The process will lose some of its human touch through remote forms of communication, such as video-calls. Going through proceedings over Zoom for example can make things feel much less human.

Managers need to consider how they can establish that human element within the conversation under very difficult circumstances – maybe even with the threat of redundancy hanging over themselves as well. How can redundancies be managed effectively when you can't sit in the same room? Here are some key points to be aware of:

### **Are there other options to redundancy you could consider first?**

Employers still have a legal duty to consider alternatives to redundancy and failure to do so is likely to render the dismissal unfair. Given the unique nature of the situation caused by Covid-19, staff may be more open to exploring different options.

Employers may be facing recruitment or salary freezes, removal of overtime and discretionary bonuses or reduced hours of working so discussions with staff may offer some options.

Employees who have been personally affected by the pandemic, may not want to return to work until much later, or have childcare issues such as home-schooling or where grandparents or other carers continue to need to shield. So other options could include using unpaid statutory parental leave or granting unpaid time-off. These might enable some employees to remain employed without pay until the situation improves and redundancies may no longer be necessary.

And suggestions from your staff for ways to avoid or minimise redundancies should also be sought as part of the consultation process.

### **Redundancy process**

Although the usual rules around redundancy have not been changed, there are some additional considerations to keep in mind:

**Selection** The focus should not be on prioritising furloughed staff for redundancy - the business should put a plan together to consider what roles it will require going forward. If this is likely to result in dismissals, then all affected staff should be placed at risk of redundancy, and this shouldn't just be furloughed staff.

Employers need to be aware of potential unfair dismissal claims when making furloughed employees redundant.

### **Consultation**

Social distancing and home working have made face to face consultation meetings harder to carry out so this will need some extra thought.

Think about how you will contact your employees and how will you send them relevant paperwork. Do you have their home email addresses / do you have a home / mobile telephone number, and do you know if the employees have access to a computer?

For people without access to a computer, you could post or courier documents.

If you propose to carry out the individual consultation meetings by video conferencing, check the employee will have access to a computer or smartphone. Alternatively, you can consult by conference call, but bear in mind that it will be harder to see body language and how they are reacting to the news.

If someone is on flexible furlough and in the workplace for some of the time, consider whether some or all of the consultation can happen face-to-face on days they are working.

It is a common practice to allow the employee to be accompanied at redundancy consultation meetings by a colleague or union rep, although this is not a statutory right. The furlough guidance for employers has confirmed that acting as an employee representative does not amount to “work”, so colleagues who are furloughed could still act as a companion without risking the furlough subsidy.

Although you are under no legal obligation to allow the employee to be accompanied by a friend or a family member, this may be allowed under your own policies and procedures or as a discretionary measure in these unusual circumstances. In practice, it will be difficult for you to ensure nobody else is present in the room while holding the meeting remotely (especially if this is by phone call rather than video conference) – so it might be sensible to encourage the employee to have a friend or family member to accompany them.

**Think about the following:**

- Explain that you will be taking notes of the meeting and will share a copy of the notes with them. Remind them that they may also take their own notes during the meeting.
- At the start of the meeting, ask the employee to confirm that they are not recording the meeting. If you are concerned about this, remind them that they do not have a legal right to record the meeting and that this may be viewed as a breach of trust and confidence as well as misconduct. You could also explain that covert recording may be in breach of data protection legislation.
- Ensure that only relevant parties receive an invitation to the online meeting, and that the line for hosting the meeting is secure and compliant for data protection purposes.
- Ask the employee to attend the virtual meeting from a private and quiet room if possible where they will not be disturbed.

**Talk openly about your decision making**

In this particularly emotional time, people will take redundancy even more personally than usual. Your staff may have preconceived notions about why they are being let go, so you need to give them detailed considered answers about the decision making in order to allay those fears and feelings.

Remember that this conversation is about someone's livelihood – it's their feelings of rejection and shock that you're dealing with so try and recognise that. Take time to explain the reasons for the redundancy and why it's a hard business decision, and the actions that were taken to avoid redundancy and facilitate redeployment. Don't be defensive, and make sure you have the answers to those 'why me?' questions.



Regular, honest and two-way communication is vital so that staff don't have to rely on the grapevine to hear what's happening. Make sure everyone knows their contribution to the business was valued and selection for redundancy selection is in no way a reflection on them personally.

### **Help people find help**

While there are sources of information out there for staff to use to understand their rights and what they can do, they aren't necessarily in the best headspace to do it. This is even more true right now when the situation is already emotionally heightened.

As a result, it is important that employers point their staff in the direction of the right resources and talk them through what they can do in more detail than they might have done in a normal redundancy situation. Go the extra mile and actively advise them to look at the internet, go to ACAS etc.

### **Is it unfair to make employees redundant while furlough is available?**

There is an argument that it is unfair to make employees redundant when the government-funded furlough scheme is available as an alternative. The fairness of a redundancy dismissal depends on all the circumstances at the time, so it is not necessarily unfair to make employees redundant when furlough is available.

The latest date that an individual could be put on furlough for the first time was 10 June. This means that anyone who was not furloughed by that date cannot raise this unfairness argument, because furlough is no longer available as an alternative. From August onwards employers will have to start making increased

levels of contributions towards employee wage costs, and the affordability of this may be a reason why employers have to consider redundancies rather than continued furlough.

### **Redundancy payments**

The guidance is clear that employees' redundancy rights, and other employment rights, will not be affected by being furloughed. So any employees being made redundant are of course entitled to redundancy pay (if they have two or more years' service) as well their contractual notice period and any accrued but untaken annual leave.

Staff are entitled to be paid their full salary during their notice period even if they have only been receiving the relevant percentage of furlough pay during furlough. Redundancy pay and any outstanding annual leave should be also be paid at the full rate of pay. (There may be some exceptions to this so always seek advice when making these calculations.)

One last point - new government guidance is being published on an almost weekly basis and fundamental changes have been made since the first guidance notes were published. This means it is important for employers to keep matters under close review.

For further information on this topic and for tailored advice for your own company's situation then please contact

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