

Employment Law Update

MAY 2020

Alternatives to Redundancy

The decision to make employees redundant can be difficult, and in times of economic uncertainty many employers will want to retain skilled and experienced employees wherever possible. There are a number of ways that employers can retain employees but make changes to help navigate the challenging times ahead. Some examples are set out below.

Unpaid leave

Arranging for employees to take periods of unpaid leave can assist by temporarily stopping or reducing work. However, employees' consent will be required unless the employment contract contains a clause which permits the employer to place employees on unpaid leave.

Reduce pay or benefits

An employee's pay is a condition of their employment contract. As such, it will be necessary to obtain the employees consent to a reduction in pay in order to avoid claims for breach of contract or unlawful deduction from wages. In this difficult economic climate, employees may consider agreeing to pay cuts in order to retain secure employment. Pay cut arrangements can be structured so that salary levels will recover over time.

Part-time and flexible working

When considering part-time and/or flexible work measures, it is important to ensure that part-time workers are not discriminated against or treated less favourably than full-time workers. When entering into flexible work arrangements, the following should be agreed in advance:

- The change to work conditions (such as hours, days and location).
- The duration of the arrangements (indefinitely or for a pre-agreed period).
- Whether the arrangements are subject to a probationary period.
- How the arrangements affect employees' pay, benefits and pension arrangements.
- Whether the arrangements will affect future training and/or promotion prospects.

If you have any queries relating to the above or require assistance in relation to an employment law issue, please contact Samantha Hyslop at samantha.hyslop@btmk.co.uk or 01702 238514 or Fiona McAnaw at fiona.mcanaw@btmk.co.uk or on 01702 238541.

Can terms of employment be changed?

In these unprecedented times employers are being forced to make precautionary changes to their businesses. One such change may well be amending an employee's terms of employment.

These changes may include reduced working hours, reduced salaries, or changes to contractual sick pay and bonuses to suit the needs of the business.

The easiest way to implement these changes is to obtain the written consent of the employee. However things can be more challenging where an employee refuses to give their consent and employers should proceed with caution in these circumstances.

Employers should first check if the terms of the employee's contract of employment authorise the change. This authorisation may take the form of a specific flexibility clause (permitting the employer to vary a specific area), or a general flexibility clause (permitting the employer to vary the terms of the contract).

In circumstances where the employment contract does not authorise change, there are two options available to the employer:

- unilaterally impose the change and rely on the employee's conduct to establish implied agreement; or
- terminate the employee's employment and offer re-employment on the new terms. (However, employers should note that an employee who has already refused to consent to the changes is unlikely to accept re-employment on those terms.)

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These options are not without risk and can leave employers open to claims such as breach of contract, unlawful deduction from wages, discrimination and unfair dismissal. As such it is advisable that employers obtain legal advice prior to making any such decisions.

If you have any questions concerning the above or would like to make an appointment with us, please contact one of our Employment experts on **03300 585 222**.

Furlough Update

Since the government's Coronavirus Job Retention Scheme (commonly known as furlough leave) was urgently brought in back in March 2020, a number of updates have been provided to clarify some of the issues that have arisen as things have progressed.

Duration of the scheme

On 12th May 2020 the government announced that the furlough scheme would be extended by a further four months until 31st October 2020. The scheme will run as normal until the end of July 2020, and thereafter it will be adapted to allow employers to bring workers who have been on furlough leave back part time. However, employers will be required to share the cost of bringing these workers back to work. Details of the revised scheme are expected to be announced in the coming weeks.

Annual Leave

It has been confirmed that holiday entitlement continues to accrue in the usual way whilst a worker is on furlough leave and taking holiday will not disrupt the period of furlough leave. However, employers should be cautious if they wish to compel workers to take annual leave whilst on furlough. The purpose of holiday is to allow a worker time to rest, relax and enjoy a period of leisure time, and as such employers should be mindful of whether employees can do so whilst restrictions such as social distancing and self-isolating remain in place.

Written Record of Furlough

Guidance published by HMRC in recent weeks set out that employers must obtain a workers consent to being placed on the furlough scheme in writing going forward. As this guidance was not offered at the outset of the scheme, HMRC will not refuse to reimburse employers if they did not obtain consent in writing in the early stages of the scheme.

Statutory Sick Pay

On 19th April 2020 HMRC updated its statutory payments manual to provide that employees do not qualify for SSP if they are on furlough leave.

If you have any questions concerning the above or would like to make an appointment with us, please contact one of our Employment experts on **03300 585 222**.

HR Retainer Service

There is no doubt that the coronavirus will have a considerable impact on the economy and the workforce in the coming months and years.

As a result of the challenging and uncertain times ahead, many businesses will be faced with employment issues arising out of the furlough scheme, or need to make changes to the way the workforce is managed.

At BTMK we have a specialist HR retainer service that can help employers with many of the employment issues that they may face following the return to work.

Our specialist employment team have experience in all areas of employment and HR law, and can assist employers in both contentious and non-contentious matters. The HR retainer includes the following:

- Telephone and email advice.
- Issuing pre-existing contracts to new starters.
- Preparing documentation relating to grievances, disciplinary issues, sickness absence and redundancies.
- Settlement agreements.

Employers who sign up to the retainer will also benefit from preferential hourly rates for works that fall outside the scope of the retainer, as well as fixed rates for the preparation of employee contracts and handbooks.

If you would like further information or would like to discuss the details of the HR retainer service, please contact Samantha Hyslop at samantha.hyslop@btmk.co.uk or **01702 238514** or Fiona McAnaw at fiona.mcanaw@btmk.co.uk or on **01702 238541**.

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Employee Contracts and Handbooks

On 11th May 2020 the Government announced its plans to help the workforce safely return to work. With that in mind, many employers are looking to introduce some flexibility to their way of working to maintain social distancing requirements whilst saving money. There are a number of staff policies that employers may be able to review or implement to help with the transition back to work. Examples of such policies are as follows:

- Holiday policy;
- Sickness absence policy;
- Disciplinary policy;
- Flexible working policy;
- Whistleblowing policy; and
- Homeworking policy.

Not all staff policies form part of the employment contract, and as such employers are able to amend non-contractual policies to meet changing commercial needs. However, employers should note that even a policy that is expressed to be non-contractual (for example, enhanced redundancy or sick pay) can become contractual through regular application. Policies which are considered contractual in nature will require the employee's consent prior to any amendment.

For employers who are concerned that their staff handbook or employee contracts may be out of date, BTMK's experienced employment team can review and update non-contractual staff policies and advise on how to make changes to employment contracts and contractual policies. For employers who do not yet have these policies in place (or simply want to start afresh) BTMK can prepare employee contracts and staff handbooks tailored to the specific needs of the business.

If you would like further information or would like to discuss an employment law issue, please contact Samantha Hyslop at samantha.hyslop@btmk.co.uk or **01702 238514** or Fiona McAnaw at fiona.mcanaw@btmk.co.uk or on **01702 238541**.

Redundancy and Settlement Agreements

As the UK workforce begins taking steps to return to work, many employers are wondering what the effects on their businesses will be once the furlough scheme

comes to an end in October. The government has announced that it will be making the scheme more flexible from the end of July, to allow workers to come back to work part time. However, definitive guidance has not yet been confirmed, and for many the revised scheme may only offer a temporary solution.

Settlement Agreements

Settlement agreements can be useful when terminating employment or settling employment claims. They form a binding agreement between the employer and employee which prevents an employee from pursuing a number of claims against the employer in exchange for a settlement payment. Settlement agreements are often the most efficient and cost effective method of terminating employment.

Redundancy

When deciding to make employees redundant, employers should ensure that they follow a fair process to avoid claims for unfair dismissal or discrimination. Employees should be selected for redundancy based on fair criteria, and employers should ensure that they consult with potentially redundant employees individually.

If an employer is considering making 20 or more employees redundant in any 90 day period, it must also consult with trade union representatives or other elected employee representatives before redundancies are made. Employees should also be given the option to appeal the decision.

Employees with at least two years' continuous service are entitled to a statutory redundancy payment in addition to any contractual redundancy payment or other benefits that the employer may provide.

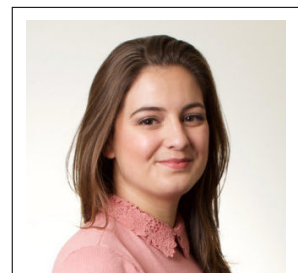
If you require advice or assistance in relation to a possible redundancy situation or defending a claim in the employment tribunals, please call us on **03300 585222**.



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