

Employment Newsletter April 2020

Coronavirus - what should employers do?

The COVID-19 pandemic is creating significant health, social and economic challenges world-wide. This will present a number of challenges for employers. The key employment law issues raised by the outbreak are highlighted below:

Essential travel only: The Government has put in place travel guidelines which prohibits all but essential business travel, to minimise the risk of possible infection to the workplace.

Quarantining staff: If you have visited affected areas or in close contact with those who have you may be required to work remotely where possible for 14 days. Where remote working is not possible, the worker could be required to remain at home. Such a requirement would be justified on health and safety grounds; however, the employer would be required to continue full pay in these circumstances.

Self-isolation: Acas has published guidance for employers which states that workers will be entitled to statutory sick pay if NHS 111 or your GP advises them to self-isolate. The Government has also announced that statutory sick pay will be available for those who self-isolate from day one of absence (currently statutory sick pay is only payable from the fourth day of absence). It is also advisable to treat self-isolation as sickness absence under any enhanced company sick pay policy, to avoid employees coming to work in order to get paid and putting others at risk.

Refusal to go to work: There is the possibility that some employees who are healthy may choose to remain at home out of fear of contracting the virus. It will be the employer discretion on how they choose to handle the situation. The employer does not have to allow this and could, in theory, take disciplinary action against employees who refuse to come to work. However, depending on the circumstances, it will



usually be more appropriate to allow the employee to work from home or take holiday or unpaid leave.

Furloughed Employees

On 20 and 26 March 2020, the Government announced measures to protect employers and employees under the Coronavirus Job Retention Scheme (CJRS). Employers will be able to claim back 80% of the wages (up to £2,500 per month) for employees who have been furloughed (i.e. put on a leave of absence) in response to the COVID-19 pandemic.

Acas has published guidance for employers which highlights that employers must select employees for furlough in a fair way to avoid any discrimination. They also need to get agreement from the employee to do this, unless it's covered by a clause in the employment contract.

<https://www.acas.org.uk/coronavirus/if-the-employer-needs-to-close-the-workplace>

For further guidance, please see our recent article on the website titled "HMRC Publishes Details of Furloughed Employees Scheme".

https://www.rowberrymorris.co.uk/site/library/rowberry_morris_news/hmrc-publishes-details-of-furloughed-employees-scheme

Post-Brexit immigration system

The Government has unveiled details of how the immigration system will look from 1 January 2021. Most significantly, employers will need a sponsor licence to sponsor both EU as well as non-EU employees. The post-Brexit immigration system extends to cover both EU and non-EU nationals. We intend to comment further on this in a later article.

Off-payroll working

From 6 April 2020, HMRC has confirmed that changes to the off-payroll working rules will come into force. The new rules will only apply to payments made for services provided on or after 6 April 2020. "Wholly overseas" clients with no UK presence will not have to apply the new rules (but contractors working for such clients will have to apply the existing IR35 rules). HMRC will take a "light touch" approach to penalties in 2020/21.

Updated Vento Bands

There will be an update to the Vento bands for damages for injury to feelings. The new bands, for claims issued on or after 6 April 2020, are: -lower band: £900 to £9k, middle band: £9k to £27k, upper band: £27k to £45k (with the possibility of the most serious cases exceeding £45k). These figures take account of the 10% uplift from *Simmons v Castle*.

IR35 Postponement

The Treasury announced that there will be a postponement of the extension to the IR35. The Government remains committed to reintroducing this policy to ensure that people who are working like employees, but through their own limited company, pay broadly the same tax as those employed directly.

Businesses now have until 6 April 2021 to prepare to implement the new rules. It may be the case that some businesses may have already made preparations and some may already have issued status determinations. If this is the case, then those status determination statements should be withdrawn and redone next year.

Increase in employment tribunal awards

From 6 April 2020 the maximum compensatory award for unfair dismissal will rise to £88,519 and the maximum amount of a week's pay (used to calculate statutory redundancy pay amongst others) will increase to £528.

Holiday pay reference period adjustment

From 6 April 2020 the holiday pay reference period will increase to 52 weeks. Ultimately, this means that those that work

variable hours or those in seasonal roles it will mean that employers will now be required to look back across a 52-week period to calculate the average weekly pay for that employee. Previously the employer was only required to look back across a much shorter 12-week period.

Increase to statutory pay rates

From 5 April 2020 the following statutory rates or "family friendly" rates will increase to £151.20 per week or 90% of the employee's weekly earnings if this is lower than the statutory maternity pay, statutory paternity pay, statutory adoption pay; and statutory shared parental leave pay. From 6 April 2020 - Statutory sick pay will also increase to £95.85 per week for those too ill to work. This is paid by employers for up to 28 weeks.

Gender pay gap reporting

Due to the coronavirus outbreak, the enforcement of the gender pay gap deadlines for reporting this year (2019/2020) has been suspended. This means there will be no expectation on employers to report their data.

Neonatal leave

The March 2020 budget policy confirmed the Government's intention to introduce a 12 weeks' paid leave for parents of premature babies who are in need of specialist care in a neonatal unit.

For advice about any of the issues raised in the newsletter or other issues relating to employment law, please contact Anna Illingworth.

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