

Employment matters to consider during the current economic and health crisis

The impact of the coronavirus outbreak will be more significant and longer lasting than was first imagined. With that in mind businesses should focus primarily upon the health and wellbeing of their teams, and what they can do operationally to minimise the spread of the virus.

Governments across the world continue to issue guidance, and mandate actions that businesses and individuals must take to support this effort. This is a fast-moving landscape, with new legislation being introduced at record speed. We are working hard to keep our clients up to date.

This note provides some practical steps that may be taken by businesses in relation to their employees and working practices.

HEALTH AND SAFETY ISSUES (This topic is covered more fully in a separate fact sheet)

As an employer you have a duty of care to your employees and should continue to take all reasonably practicable steps to ensure their health, safety and wellbeing. This applies whether they are working from your premises or elsewhere. At a time of global distress and uncertainty, demonstrating concern for the physical, emotional and psychological health of your staff is not just about complying with your legal requirements – it makes good business sense too. Showing that you care for your employees will build trust, reinforce your commitment to them, and maintain engagement, morale and productivity. It will also help ensure you have a committed workforce once the current economic challenges and constraints of the pandemic are over.

Some of the steps you should take include the following:

- Stay up to date and comply with, the government's guidelines and advice on the pandemic.
- Ensure all staff are aware of NHS guidelines on maintaining good health, including hygiene, social distancing and remote working.
- Wherever possible, take all steps to ensure that you and your staff observe published guidelines.
- Review hygiene provisions in your workplace and provide adequate facilities to ensure staff are able to comply with the guidance on handwashing and sanitising and increase the regularity with which you clean all parts of your facilities.

- Ensure that you have a reliable system for communicating with your employees about up to date guidance and advice. This might be a good time to ensure that you have up to date contact information for all your staff, bearing in mind your data protection obligations.
- Review and revise your health and safety and other policies to ensure they are up to date and relevant in the circumstances and ensure that they are provided to all staff.
- Enable and monitor dispersed working by providing adequate support to staff both on work related matters, technology and other relevant issues.
- Perform audits and remote checks on dispersed working environments to identify hazards and assess the risks of your dispersed work force, and determine what, if any, measures need to be put in place.
- Continue to be especially considerate of employees who are more vulnerable, such as those with pre-existing conditions that make them more at risk, and elderly, disabled and pregnant employees.

MANAGING A DISPERSED WORKFORCE (This topic is covered more fully in a separate fact sheet)

During this prolonged period of lock down you may be managing a dispersed workforce for the first time, including many individuals who have never worked from home. More than ever, you might need to consider being flexible with your employees, particularly those who are not used to working from home, and who may have conflicted obligations on their time and space. Meaningful, open and regular communication will help to keep your workforce feeling supported and will help them remain engaged and motivated.

Some of the steps you should consider taking include the following:

- Review, revise or adopt a home working policy to ensure that you set out clear expectations and procedures.
- Review the health and safety of employees' home working environments. Employers are responsible for the health and safety of all their employees, including those who are working from home.
- Ensure that your data protection and confidentiality policies are amended if necessary and clearly communicated to all employees.
- Ensure that your dispersed work force complies with your health and safety policy, and other policies, including those on data protection, confidentiality and grievance and disciplinary matters.
- Be mindful of your obligation to make reasonable adjustments for disabled and pregnant employees, which might mean being flexible with how and when they perform their duties.
- Ensure employees have the appropriate technology support and are provided with appropriate training where necessary.
- Communicate clear expectations to employees within dispersed working arrangements.
- Ensure you are mindful of employees' particular concerns and stresses of working from home, including childcare obligations and space constraints.
- Implement regular meaningful communication and contact with your staff to safeguard their psychological and emotional wellbeing, including where possible, by video, which can increase a sense of being valued, which will impact staff morale and engagement.
- Introduce town-hall meetings where your employees (perhaps through elected representatives if appropriate) can voice particular concerns and issues that arise in the new dispersed working environment and deploy a nominated person or team to liaise and respond to concerns.
- Provide a confidential forum or mechanism for staff to raise personal concerns and fears, such as financial pressures, or health, emotional or psychological concerns.

DEALING WITH YOUR WORKFORCE IN THE CURRENT ECONOMIC DOWNTURN

(This topic is covered more fully in a separate fact sheet)

As the longer term effects of the economic downturn become clearer, many employers will face difficult decisions regarding a reduction in their work force. The government will provide some relief through their Job Retention Scheme, designed to help employers retain staff during the pandemic, even if they are forced to temporarily shut their business. This is discussed more fully in a separate factsheet.

We also offer the following recommendations as part of your decision making during this time:

- Consider your workforce needs along with your continued ability to meet your contractual obligations to your employees.
- Consider your ability to pay any shortfall in money recovered from the Job Retention Scheme, and your ability to pay staff in advance of getting money from the Scheme.
- In light of the current uncertainty, consider reviewing your workforce needs on a more regular basis. It is a good idea to keep employees up to date with any planned reduction in the work force – although losing a job is never a pleasant experience, most employees find the unknown and the fear of losing their job just as stressful as the news itself and most will appreciate being kept up to date.
- Review your employment contracts so that you are aware of what it is you can and cannot do under your contracts.
- Consider amending your employment contracts to provide amended terms regarding pay, working hours and other provisions that might enable you to reduce costs and preserve jobs that you might otherwise have to make redundant.
- Although an employee must generally provide consent to amend their contract, there are ways in which you can implement unilateral changes to terms and conditions of employment, subject to statutory employment protections for employees, including protection from unfair dismissal and unlawful discrimination, and of course subject to breach of contract issues.
- Consider which of your employees you might wish to furlough on the government's job retention scheme, and on what criteria, while being mindful of legal obligations.
- Consider whether you will nevertheless need to reduce your work force by making some employees redundant.
- If you have provisions in your employment contracts permitting you to lay-off your employees (not a common clause in most private sector contracts), you may be able to request your employees remain at home without pay if there is no work for them.

SICKNESS ABSENCE

- Contractual sick pay provisions will apply to employees who are off with sickness and you should comply with your contractual obligations to your employees unless you amend contracts.
- *The Statutory Sick Pay (General) (Coronavirus Amendment) Regulations 2020* provide that SSP will be available to anyone who:
 - > has symptoms of the virus, however mild, and is staying at home for seven days, beginning with the day on which the symptoms started (day 1)
 - > lives with someone who is self-isolating and is staying at home for 14 days, beginning with day 1 is already
 - > self-isolating as above and develops the symptoms of the virus, however mild, and is staying at home for seven days, beginning with the day the symptoms started.

- *The Statutory Sick Pay (Coronavirus) (Suspension of Waiting Days and General Amendment) Regulations 2020 (SSP Suspension of Waiting Days Regulations)* permit the payment of statutory sick pay from day one of an employee's absence from work (rather than day four), where the employee is incapable, or deemed to be incapable, of doing work by reason of the coronavirus. This applies retrospectively for absences on or after 13 March 2020.
- These amendments will be kept under review by the Secretary of State in line with corresponding provisions in the Coronavirus Act 2020 and will not expire in 8 months as was originally provided.

HOLIDAY LEAVE

- The government has announced an amendment to regulation 13 of the Working Time Regulations which will allow workers to carry over up to 4 weeks of holiday for two leave years, where due to the coronavirus pandemic, they are unable to take all of or some of the holiday to which they are entitled.
- The remaining 1.6 weeks of holiday entitlement will continue to be governed by the existing legislation which allows employees to carry it over for up to a year if so agreed.
- Consider whether you wish to require employees to take holiday at set times on appropriate notice, which might give you some added flexibility in the short term. When you are able to operate at full speed again, you may need to consider your employees' needs for rests and breaks, even if they have used up all their holiday at your request.

FAMILY OBLIGATIONS

- Employees affected by the closure of schools will face the challenge of juggling their duties to you and childcare and might choose to avail themselves of statutory parental leave or the right to time off to care for dependants. This leave only applies to employees, not workers, and is unpaid.
- Consider offering to furlough an employee who cannot work in those circumstances, so that they would be entitled 80% of their pay up to a cap of £2,500 per month. Provided the employee agrees to amend their terms of employment they could reduce their hours by 20% so that you do not have to make up their full salary.
- Consider entering into other temporary, flexible arrangements around reduced pay, hours and duties, which might ensure you are able to retain valuable staff.
- Ensure that you do not use family obligations or other discriminatory factors in determining how you treat your staff at this time, including in any decisions as to who to furlough.

DATA PROTECTION CONSIDERATIONS (This topic is covered more fully in a separate fact sheet)

- Consider your data protection policy and obligations to staff, and remind your workforce of their obligations, particularly those working remotely.
- All Information about an employee's health is a "special category of personal data" under the Data Protection Act 2018, which means that it can only be processed by the employer in defined and restricted circumstances.
- If an employee tests positive for Coronavirus or informs you that they are displaying symptoms of the virus, you should notify other employees about the infection risk as soon as possible. You should, for instance, inform them when the individual was last in the office or around other employees, and inform them that appropriate precautions have been taken to minimise infection risk, however, you should not reveal the identity of the relevant individual.

- The ICO has confirmed that it will take a pragmatic approach to data protection enforcement in light of the pandemic, and it has confirmed that although employers can disclose to colleagues that an employee has contracted the virus, they do not need to provide more information than is necessary and in most cases, it will not be deemed necessary to reveal the individual's identity.

HOW CONEXUS LAW CAN HELP

Businesses and individuals will need legal advice to help them understand the risks they may face and the options that may be open to them.

We are available to assist in reviewing the laws in many jurisdictions across the world, and to review specific contracts. We are also available to provide practical, business-orientated advice on how to best protect yourself from the ongoing commercial effects of Covid-19.

Contact

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ABOUT CONEXUS LAW

Conexus Law is an independent specialist law firm providing legal and commercial advice to clients who work in sectors where the built environment, technology, engineering and people converge. We work on projects across the globe.

Built environment

We work on complex or mission-critical projects, where the “normal rules” may not apply. These projects might present complex procurement challenges, might be one-of-a-kind, or might relate to the construction of mission critical facilities where the risks of project failure far outweigh the initial capital outlay.

Connected world

This is where the built environment and the digital and virtual worlds operate and converge. Our work relates to projects such as data centres and other digital infrastructure, cloud deployment, smart cities, internet of things, blockchain and the like.

Cutting edge

Our clients in this sector are visionaries and entrepreneurs; autonomous cars, drone technology, artificial intelligence, new energy, big data and virtual reality. Clients might be early stage companies looking to move from proof of concept to early deployment, or the innovation teams of more established players.