

July - September 2020



Getting Back to Business - Issues for Employers

COVID SECURE GUIDELINES

On 11 May 2020 the Government unveiled 'Our Plan to Rebuild', setting out its strategy for bringing the UK out of lockdown whilst recognising that coronavirus is likely to be around for the long-term.

Central to that plan were the 'Covid Secure Guidelines' which aimed to get businesses running and people back to work as safely as possible. They apply to 8 workplace settings e.g. offices, warehouses, shops. They consider:

- Approach to Risk
- PPE and face coverings
- Shift patterns
- Who can return to work?
- Social distancing
- Travel
- Communicating
- Cleaning
- Managing contacts

Regardless of which workplace, it is clear is that employers will have to be flexible and continually review their working practices.

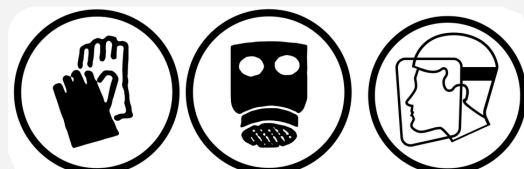
5 'KEY' Steps

The Guidelines are supported by 5 steps employers **MUST** take:

1. Conduct a 'Covid Risk Assessment' in line with HSE guidance & share results
2. Develop cleaning, hand washing & hygiene procedures & policy
3. Help people to work from home wherever possible
4. Maintain 2 metre social distancing - using signs/tapes, one ways systems
5. Manage transmission risk by changing working practices - screens/limiting appointment etc

EASING LOCKDOWN

- On 23 June 2020, the PM announced a plan for easing lockdown from 4 July 2020 including 'one metre plus' social distancing where 2 metres is not possible.
- The guidance for close contact services, hotels, 'tourists sites', restaurants, pubs & bars has also been updated in anticipation of re-opening.
- "Close proximity" venues (nightclubs, gyms, swimming pools and spas) will remain closed & task forces will help these sectors become 'Covid-secure' to facilitate re-opening.



Furlough - Developments

In March 2020 the Government introduced the 'Coronavirus Job Retention Scheme' to allow employees to stop work but remain on the pay roll. Since then over a quarter of the UK's workers have had their wages paid by the Government and there have been that many changes to the Scheme you'd be forgiven for being lost:

What's changed so far?

- Eligibility extended to those employed AND on a payroll submission on or before 19 March 2020 (previously 28 February)
- Main Scheme **extended** from 31 May to 30 June, with 80% contribution from Government
- Scheme then extended until 31 October 2020
- Confirmation that furloughed workers can be asked to take holiday but pay must be topped up to 100%
- Company Directors can be furloughed
- Closed to new members on 30 June 2020 (the last date to furlough for the 1st time was 11 June 2020)
- Those returning from parental leave exempt from deadlines



How will it change from now?

On 12 June 2020 the Government released details of how the Scheme will work from 1 July 2020 until termination on 31 October 2020:

Flexible

- Employers can bring furloughed workers back for any amount of time & any pattern.
- No minimum furlough period from 1 July 2020 (currently 3 weeks).
- 'Full Furlough' with no work or 'Flexible Furlough' where employees can return for a proportion of contractual hours only.
- On 'Flexible' furlough employers can only claim for the hours actually on furlough.

Contributions

- From 1 August 2020 employers will not be able to claim towards employer NIC & Pension costs.
- The employer will still need to pay 80% wages (or £2,500) but:
 - From 1 September 2020 support will reduce to 70%, or £2,187 (whichever is lower)
 - From 1st October 2020 support will reduce to 60%, or £1,875 (whichever is lower)
- Cap on number of claims can make is the maximum number made at one time between March and June 2020.

Practical Considerations

- As with the original Scheme, extensions or changes to furlough should be agreed with staff.
- The guidance on flexible furlough requires that adjusted working arrangements must be confirmed in writing;
- You should give employees reasonable notice of return even if your 'agreement' provided for immediate recall.

Other Big changes

Self Employed Income Support Scheme (SEISS)

First Grant

- Businesses 'Adversely Affected' before 13 July 2020 can claim 1st taxable grant
- 1st grant worth 80% of average monthly trading profits, capped at £7,500

Second Grant

- Businesses 'Adversely Affected' on or after 14 July 2020 can claim 2nd grant in August 2020
- Those able to return to work in June will not be eligible for the 2nd grant
- 2nd grant worth 70% of average monthly trading profits capped at £6,750
- Can claim 2nd grant if didn't claim 1st as long as affected by Covid-19



'Adversely Affected' = No specific measurements but the owner is unable to work because of shielding, self-isolating, sick leave or caring responsibilities or the business had to scale down or temporarily cease trading due to supply chain issues, fewer customers or insufficient staff.

SPP Update

- The SSP (General) (Coronavirus Amendment) (No. 4) Regulations 2020 extended eligibility to those instructed to isolate under 'test & trace' and the 'track & trace' app yet to be introduced.

Back to Work - School's Still Out

The majority of children look set to be off school until September, so what if you want staff back in but they have children to look after?

- Remember employees have no control over the situation - be understanding!
- The Guidance still asks those who can work from home to continue to do so. If your employees have shown they can efficiently work from home, it would be unreasonable for you to demand they return without good reason.
- You can furlough staff (if they have already been furloughed). The Scheme is expressly intended to cover this situation & the Guidance states "*Employees who are unable to work because they have caring responsibilities resulting from coronavirus (COVID-19) can be furloughed.*"
- Employees can put in formal flexible working requests which you must take seriously or risk discrimination claims.
- Employees are entitled to up to 4 weeks unpaid 'dependant leave' to care for children (up to 18 years old) without risk of losing their job. You can agree to more.
- You can allow employees to use holidays or consider allowing 'holidays in lieu'.

"It is clearly an impediment and a barrier to people's ability to go back to work if they do not have childcare"

(Boris Johnson, 13 May)

If you refuse any of the above options, you risk breaching the trust & confidence you owe your employees and expose yourself to a Tribunal claim if they feel they have no choice but to resign.

Coronavirus: The impact on Landlords

Whether a result of being laid off or furloughed, a downturn in business or forced closure, residential and commercial tenants alike have struggled to pay rent leading the Government to introduce emergency legislation:

Commercial Leases

Forfeiture

- The Coronavirus Act 2020 initially put a 3-month hold on a landlord's ability to forfeit commercial leases for non-payment of rent or other sums.
- This period has been extended to 30 September 2020.
- Forfeiture by peaceable re-entry is still available to a landlord for breaches unrelated to non-payment of rent or other sums due.

Commercial Rent Arrears

- The new legislation initially prevented landlords serving enforcement notices unless the rent arrears was equal to 90 days.
- This has been extended to 189 days and is effective until 30 September 2020.
- After 30 September 2020, enforcement agents will be able to enter premises to seize goods if a commercial tenant is in arrears for 7 days or more.

Code of Practice

- On 19 June the Government published a Code of Practice for commercial property relationships to assist discussions between high street businesses and landlords over rental payments.
- The Code is voluntary and applies to all commercial leases held by businesses that have been seriously negatively impacted by the COVID-19.

Residential Tenancies

- The Coronavirus Act 2020 initially suspended evictions on social or privately rented accommodation until 30 June 2020.
- On 5 June 2020 this period was extended to 23 August 2020.
- Landlords cannot issue possession proceedings and any on-going possession proceedings are currently stayed.

Other options

You can't issue possession proceedings for rent arrears so what about a debt recovery options?

Sorry, the ban on Statutory Demands has also been extended until 30 September 2020 (assuming the debt is unpaid due to the impact of the pandemic) unless you believe Covid-19 is not the reason the rent is unpaid (See 'Corporate Insolvency and Governance Bill' below) but, the Courts are open so you could issue proceedings, claiming interest on the amount owed.

Practical Considerations

- The restrictions allow tenants temporary breathing space but the rent will still be payable with accrued interest.
- The importance of communicating & maintain good landlord & tenant relationship cannot be downplayed.



Corporate Insolvency & Governance Act (CIGA 2020)

The Background

On 20 May 2020, some 8 weeks into lockdown the Government unveiled the draft CIG Bill, aimed at alleviating the pressure on Companies to ensure they can keep trading in the face of the pandemic whilst also complying with their legal obligations.

The Government expedited the Bill through Parliament and it gained Royal Assent on 25 June 2020 thereby becoming law. Almost all its provisions came into force on that date albeit the temporary protection measures have retrospective effect from 1 March 2020.

The Law

The Government has published detailed guidance on the changes but here's an overview of the new measures:

Temporary Measures

Relief from debt action

Creditors will be unable to present Winding Up Petitions:

1. On the back of Statutory Demands served between 1 March and 26 July 2020, or
2. Between 27 April 2020 and 30 September 2020 unless the Creditor can show that Covid-19 has not had an impact on the finances of the debtor company

Wrongful Trading

Relaxation of the rules on personal liabilities for Directors for wrongful trading - if claims are made the Court is to assume that a Director is not responsible for the worsening of the Company's financial position during the lockdown period.

This is not a blanket defence and Director's general duties will continue to apply.

Extension of deadlines

The Act introduces temporary relaxation of the deadline for Companies to hold AGMs and file public accounts at Companies House.

Corporate
Insolvency and
Governance Act



Permanent Measures

Corporate Moratorium

A corporate moratorium for businesses on the edge of insolvency, giving it space from creditors for 20 days but extendable.

Directors will remain in control of the day to day running of the Company (with restrictions) overseen by a monitor appointed by the court and a licenced Insolvency Practitioner.

The measure is effectively a 'payment holiday' for earlier debts excluding payments for goods or services, wages, the monitor's remuneration, redundancy payments and rent during the moratorium.

Suspension of termination clauses

For Company's in an insolvency process, suppliers will be unable to rely on contractual terms to cease a supply chain or amend terms based on non-payment; such clauses will be invalid.

Even if the right to terminate kicked in before the Company went into insolvency, a supplier cannot exercise that right once they are in an insolvency process.

Restructuring plan

A new insolvency process allowing more debt to be restructured & all creditors to be bound if 75% of creditors approve or with the Court's sanction.

Other news

Self employed or Worker with rights? (*B v Yodel, 2020, European Court of Justice*)

- The ECJ recently gave its opinion on whether a parcel delivery courier engaged by Yodel was a self-employed contractor or a worker with rights under the Working Time Directive.
- The ECJ found he was self employed as he had flexibility over hours, was able to work for competitors & could provide a substitute, even though he argued that he had never actually subcontracted his work out or delivered for other companies.
- Regardless of this decision, businesses need to be careful of falsely 'labelling' people as self-employed & denying them rights without considering the truth of the situation .

Vicarious Liability for Employers (*Barclays Bank Plc v various Claimants, 2020, SC*)

- 126 claimant's sued Barclays for sexual assaults committed by a self-employed 'Company' doctor during work related medical examinations.
- Barclays denied liability as the doctor was not employed by them.
- In the High Court, vicarious liability was established but Barclays appealed on the basis that the relationship was not 'akin to employment'.
- The Court of Appeal agreed with the Claimants finding Barclays had control over the examinations & the 'health check' was an integral part of Barclays' business and interests.
- Barclays appealed again & won - The Supreme Court found the doctor was not an employee but was an independent contractor who was free to refuse work & had his own insurance in place.

Gender Pay Gap reporting fail

- In midst of the other challenges presented by the pandemic, the compulsory pay gap reporting deadline of April 2020 was suspended for this year.
- Figures reveal just under half of organisations required to do so voluntarily reported .
- Figures from those who reported show an extremely small decrease in the gap.
- A report from the 'The Equality Trust charity' marking 50 fifty years since the Equal Pay Act 1970 shows that at the current rate, it will take almost 200 years to close the gender pay gap.



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Dispute Resolution

Employment Law Advice
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*Advice correct as of 1 July 2020

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