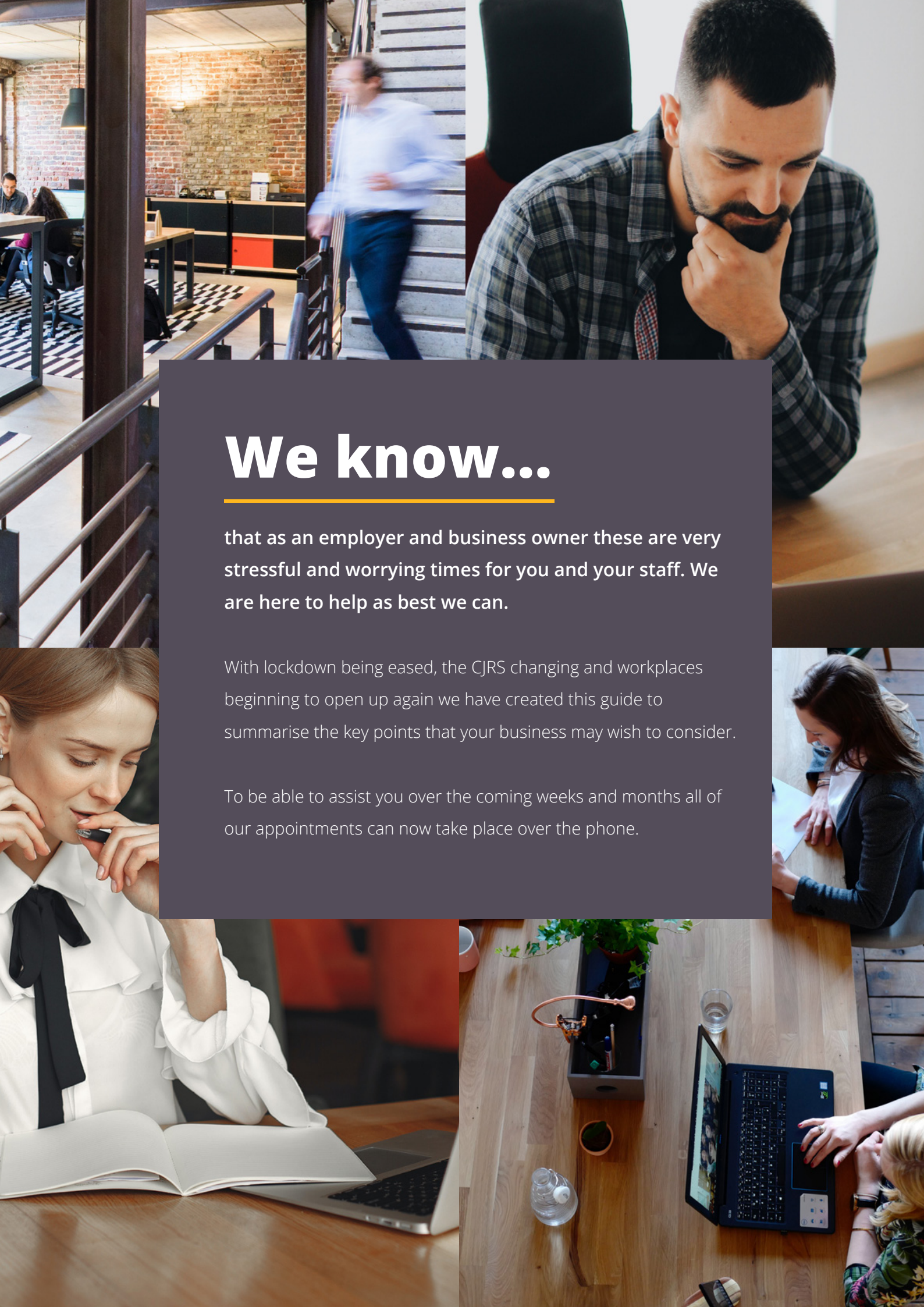




Coronavirus

Redundancy and Furlough

UPDATED 16TH JUNE 2020



We know...

that as an employer and business owner these are very stressful and worrying times for you and your staff. We are here to help as best we can.

With lockdown being eased, the CJRS changing and workplaces beginning to open up again we have created this guide to summarise the key points that your business may wish to consider.

To be able to assist you over the coming weeks and months all of our appointments can now take place over the phone.

Topics covered

- **Coronavirus Job Retention scheme** (CJRS)
- **Statutory Sick Pay** (SSP)
- **Redundancy Advice**
- **Advice on returning to the workplace safely**

Coronavirus Job Retention Scheme Update: **Flexible Furlough**



This section includes information and advice on the latest changes to Coronavirus Job Retention Scheme (CJRS) and is correct at the time of writing.

The most important thing to be aware of is that employment legislation has not been amended and that employment law rights all still exist.

So, as always, any decisions or actions need to be carefully considered and documented in writing.

The CJRS ends on 31st October 2020 and the scheme is changing during the months leading up to this date. This guide covers the main changes to the scheme and your responsibilities as an employer.

Our employment law team are available to offer further legal advice on your specific circumstances.

What is furlough leave?

Furlough leave is a government scheme that will allow businesses to continue paying a contribution to the salaries of employees who are not required to work “by reason of circumstances as a result of coronavirus or coronavirus disease”. The furlough scheme is known as the CJRS.

“Furloughed” means that an employee has been put on a period of leave during which they are not required to work. The scheme does not directly change the employment relationship between the employer and employee. Rather, it allows the employer to agree with employees that they will be put on temporary leave of absence and then recover a proportion of pay from HMRC in respect of employees on furlough leave.

Closed to New Entrants

The scheme is now closed to new entrants. An employee can now only be placed on furlough leave if they have previously completed at least one period of furlough.

The one exception to this is those employees returning from maternity or paternity leave. If an employer has previously furloughed employees any employee returning from maternity or paternity leave will be eligible for furlough.

Flexible Furlough

From 1st July 2020, ‘flexible furlough’ is being introduced. This means:

- The minimum three-week furlough period will no longer apply, although any claim through the CJRS portal must be in respect of a minimum one week period.
- Employers can bring employees, who have previously been furloughed, back to work for any amount of time and on any shift pattern.
- Employers will need to report actual hours worked by an employee and the usual hours an employee would be expected to work during any claim period
- **Important:** To be eligible for the new ‘flexible furlough’ an arrangement must be agreed with the employee and confirmed in writing.
- Employees must be paid at their full rate for hours worked and employers will need to pay tax and National Insurance Contributions (NICs) due on this amount.

Changes to Employer Costs

From the 1st August 2020 the level of support will be gradually reduced.

- **June and July 2020**
In June and July 2020, the support will stay at the current level of 80% of wages up to a cap of £2,500 and any employer national insurance contributions and pension contributions.
- **1st August 2020**
From 1st August 2020, employers will have to pay employee's national insurance contributions and pension contributions, and can no longer reclaim them through the CJRS.
- **1st September 2020**
From 1 September, the Government will only reimburse 70% of salary (up to a maximum of £2,190). Employers are required to top-up to 80% (or more, depending on what the employer agreed with the employee).
- **1st October 2020**
From 1 October, the Government will only reimburse 60% of salary (up to a maximum of £1,875), and employers will continue having to top up to 80% (or more).
- **31st October 2020**
The furlough scheme will close on 31 October 2020.

Ensure that your claims are valid and documented

As the CJRS comes to an end it is vitally important that you ensure that any claims are accurate and fully documented.

Inaccurate claims would be considered as CJRS fraud and companies should be prepared to have their claims inspected. If a HMRC investigation finds that a company has claimed money fraudulently, it could be required to repay any monies received and may also face further sanctions from HMRC.

We recommend that you maintain a set of information covering your actions and the basis of your claim that shows that:

- there is a commercial justification for the grant being claimed, and there is no evidence of exploiting the scheme
- there is documentation to support the rationale for people being put on and brought off furlough over the period the scheme is in operation
- key extracts from board minutes and partnership decisions are included on the file to show due process is being followed.

What happens when the furlough scheme ends?

You should use this time whilst employees are on furlough leave to prepare forecasts of what you need to save until you anticipate that business will return to normal. It may be prudent to start looking at how you might negotiate a reduction of hours or a reduction of salary with employees when they return from furlough leave, before considering whether you will need to make redundancies. If you are considering redundancies then please read our guidance on the process in the next section of this document.

Reference/More Information:

<https://www.gov.uk/guidance/claim-for-wage-costs-through-the-coronavirus-job-retention-scheme>



Coronavirus Job Retention Scheme (CJRS)

Fixed Fee Support Package £400^{+VAT}

We know that this is a tough time for business owners especially with the latest changes to the CJRS. By way of support, we have created a fixed fee package to help ensure that you are fully compliant with the rules of the scheme.

Further information available on Page 18.

Statutory Sick Pay (SSP)



Who is eligible for sick pay?

Those who follow the government's [stay at home guidance](https://www.gov.uk/government/publications/covid-19-stay-at-home-guidance) and who cannot work as a result will be eligible for statutory sick pay (SSP), even if they are not themselves sick. Please see <https://www.gov.uk/government/publications/covid-19-stay-at-home-guidance>

Employers should use their discretion and respect the medical need to self-isolate in making decisions about sick pay.

Workers are eligible for SSP from day one of their illness rather than day four.

The Government will underwrite the costs of SSP for up to two weeks for employees off work due to Coronavirus.

If you have enhanced sick pay, and the employee qualifies for this, then you should ensure that this is paid.

How should an employee certify their absence from work?

By law, medical evidence is not required for the first 7 days of sickness. After 7 days, employers may use their discretion around the need for medical evidence if an employee is staying at home.

The Government strongly suggests that employers use their discretion around the need for medical evidence for a period of absence where an employee is advised to stay at home either if they are unwell themselves, or live with someone who is, in accordance with the Public Health England advice, issued by the Government.

Reference/More Information:

<https://www.gov.uk/guidance/claim-back-statutory-sick-pay-paid-to-employees-due-to-coronavirus-covid-19>

Redundancy Advice



The Redundancy Procedure

The coronavirus pandemic has caused significant disruption to businesses and a drastic change in the economic climate. This has meant that a number of employers are finding that redundancies are unavoidable. In this section of the guide we offer guidance and advice on the redundancy procedure in the current climate.

How does the CJRS impact redundancy procedures?

The usual rules around redundancy have not changed but the current situation means that there are a number of additional considerations to be aware of.

The logistics of the procedures, including any consultation process must continue to be fair and non-discriminatory and reflect the stipulations in employment contracts.

Employers will have to be very careful with their pooling and selection criteria. In particular, if this results in only those employees on furlough being selected for redundancy.

Depending on the details of the employment contract, employees will probably be entitled to receive their full salary during any notice period and redundancy pay should also be calculated on an employees full rate of pay.

Redundancies can be an unfair dismissal if an employer has not properly considered alternatives. Retaining an employee on furlough could be considered an alternative.

The Government is continuing to update their guidance so it is vitally important that employees keep their procedures under continual review.

Selecting people for redundancy

Before considering making any employee redundant there must be a genuine reason for the redundancy. When selecting employees for redundancy you are required to use a method which is fair and does not discriminate against any employee for reasons like, age, sex or race. The decision needs to be based on evidence such as disciplinary records as opposed to making an employee redundant simply because they do not work as well as others perhaps.

In some cases a redundancy method may have been agreed with a trade union, or there may be a written procedure in the employee's employment contract, if so this procedure must still be followed.

There may be a redundancy procedure that you have used in the past which the workforce did not object against, this procedure should then be used if it is fair to all employees. If you do not use a fair selection procedure you could face claims for unfair dismissal. If you're unsure on the selection procedure we would advise you to speak with one of our team who can offer advice and guidance as employment tribunals can be extremely costly.

The Redundancy Process

Plan as much as possible

- The current situation may mean that the time to plan and implement the redundancy process is significantly reduced,. However it is vitally important that each step is completed correctly and that you follow the proceedings set out in your redundancy procedure if you have one.
- You should log every stage in writing. Not only will this help you keep track of the process it will also benefit you if you were to attend an employment tribunal as you may be asked to demonstrate the procedure you carried out.

Consult and notify employees in time:

- The usual obligations and timescales are still relevant even if the consultation has to be done remotely.
- There isn't a statutory fixed consultation period if there are less than 20 employees involved within the process. However within the employment contract it may specify a consultation period in which case you must follow this.
- For 20 or more proposed redundancies you are required to begin consultations with their elected representatives. You must then notify the Secretary of State no less than 30 days before the dismissal comes into effect.
- For 100 or more employees proposed redundancies within the redundancy process you are required to begin the consultations no less than 45 days before the first dismissal comes into effect.

** If you fail to consult employees or their representatives properly this could be potentially very costly. The employee has the right to ask an employment tribunal for a protective award, which gives all employees involved up to 90 days full pay.*

- As well as collective consultation, if this is appropriate, you must be able to illustrate that you have consulted each employee individually. This should involve an initial meeting to discuss the full process, timescales, any possibility of alternative work, as well as explaining redundancy pay calculations. Further meetings should then be arranged to discuss feedback and to explain the appeals procedure.

Decide the criteria from which employees will be selected for redundancy:

- Decide what selection criteria you will use, you should select a criteria that will suit your business needs though this should be objective and capable of being evidenced
- Ensure that throughout the procedure your criteria is applied fairly and consistently
- You should disclose the selection criteria to employees as part of their individual consultation
- You should not however share individual scores with other employees

Provide redundant employees with notice:

- The notice you provide redundant employees should be in line with their contract
- The notice should, at the very least, cover the statutory minimum notice period

Mishandling
Redundancies

Common mistakes made by employers:

- Not following the correct redundancy procedure
- Using selection criteria that is unfair
- Failing to consult employees properly

If you mishandle redundancies you could find yourself facing a costly unfair dismissal claim at an employment tribunal. Employment tribunals can make compensatory awards to individuals of anything up to £88,000. These awards are based on a calculation of the redundant employee's present and future loss. At Banner Jones our team of specialist employment lawyers can provide you with redundancy procedure advice and support to ensure that you are legally compliant.



Call us for a no-obligation chat

Talk to our expert team today

Katie Ash

Head of Employment Law

www.bannerjones.co.uk

0330 108 0366

Advice on returning to the workplace safely



Government guidance on working safely during the pandemic

The Government, in consultation with industry, has produced guidance to help employers understand how to work safely during the pandemic.

This consists of 5 practical actions that all businesses should take and 8 additional guides covering specific types of work.

5 steps to working safely

[Practical actions for businesses to take based on 5 main steps.](#)

Offices and contact centres

[Guidance for people who work in or run offices, contact centres and similar indoor environments.](#)

Construction and other outdoor work

[Guidance for people who work in or run outdoor working environments.](#)

Factories, plants and warehouses

[Guidance for people who work in or run factories, plants and warehouses.](#)

Labs and research facilities

[Guidance for people who work in or run indoor labs and research facilities and similar environments.](#)

Other people's homes

[Guidance for people working in, visiting or delivering to other people's homes.](#)

Restaurants offering takeaway or delivery

[Guidance for people who work in or run restaurants offering takeaway or delivery services.](#)

Shops and branches

[Guidance for people who work in or run shops, branches, stores or similar environments.](#)

Vehicles

[Guidance for people who work in or from vehicles, including couriers, mobile workers, lorry drivers, on-site transit and work vehicles, field forces and similar.](#)

Managing risks and risk assessment at work

Everyone needs to manage the risks of coronavirus.

If you are an employer you also have a legal responsibility to protect workers and others from risk to their health and safety.

A risk assessment involves identifying the relevant hazards or risks in your workplace and sensible measures to control these risks.

If you have fewer than 5 workers, or are self-employed, you don't have to write anything down as part of your risk assessment.

Employers have a duty to consult their people on health and safety: you must consult with the health and safety representative selected by a recognised trade union or a representative chosen by workers.

When considering risk, have particular regard to people who are vulnerable to coronavirus. There are interactive tools available from the Health and Safety Executive (HSE) to support you with your risk assessments. [View here](#)

How to do a coronavirus risk assessment on your small business premises

SmallBusiness.co.uk have guidance on what you should know about carrying out a coronavirus-specific risk assessment before your employees return to work. [View here](#)

5 steps to working safely

1. Carry out a COVID-19 risk assessment in line with the [HSE guidance](#)
2. Develop cleaning, handwashing and hygiene procedures follow the [guidance on hand washing and hygiene](#)
3. Help people to work from home
4. Maintain 2m social distancing, where possible
5. Where people cannot be 2m apart, manage transmission risk

Coronavirus Job Retention Scheme (CJRS)

Fixed Fee Support Package

We know that this is a tough time for business owners especially with the latest changes to the CJRS. By way of support, we have created a fixed fee package to help ensure that you are fully compliant with the rules of the scheme.

Save time and ensure you are legally compliant

Our Furlough Support Package will help save time, guide you step-by-step throughout the process and ensure that you are legally compliant with the rules of the CJRS. If you have already furloughed employees, we will review your process, discuss any concerns that you might have regarding the interpretation of the CJRS rules and ensure that you fully understand your current position.

Includes:

Expert consultation

- 1-hour consultation with an Employment Law expert

Practical and tailored advice

- How to implement furlough correctly
- Advice on selecting which employees to furlough
- Advice on keeping in contact with employees during periods of furlough
- Advice on terminating periods of furlough
- Advice on how to manage a return to the workplace
- Review of any furlough process to date and advice on how to ensure it is legally compliant

Ensuring your documentation is legally compliant

- A template furlough letter
- Review of your employment contracts to clarify your contractual position
- Review of any documentation relating to furlough that has been drafted and / or sent to date and advice on what to do if it is not legally compliant



Our Fixed Fee Support Package is £400^{+VAT}

Talk to our expert team today

Katie Ash

Head of Employment Law

www.bannerjones.co.uk

0330 108 0366



We know that as an employer and business owner trying to navigate this period there is a large amount of information to take in and a number of important decisions to make.

Contact our team to receive expert advice and assistance to help you understand the current situation and ensure that you take the appropriate / required action to protect your business now, and in the future.



Katie Ash
Head of Employment Law

EMPLOYMENT LAW



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BUSINESS SUPPORT SERVICES



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Disclaimer

The information contained in this update does not constitute legal advice. It's our best assessment of the current position and is in places based on opinion. In order to bring you a comprehensive guide we have included some financial information, but this does not constitute financial advice. If you want specific advice, please contact us.