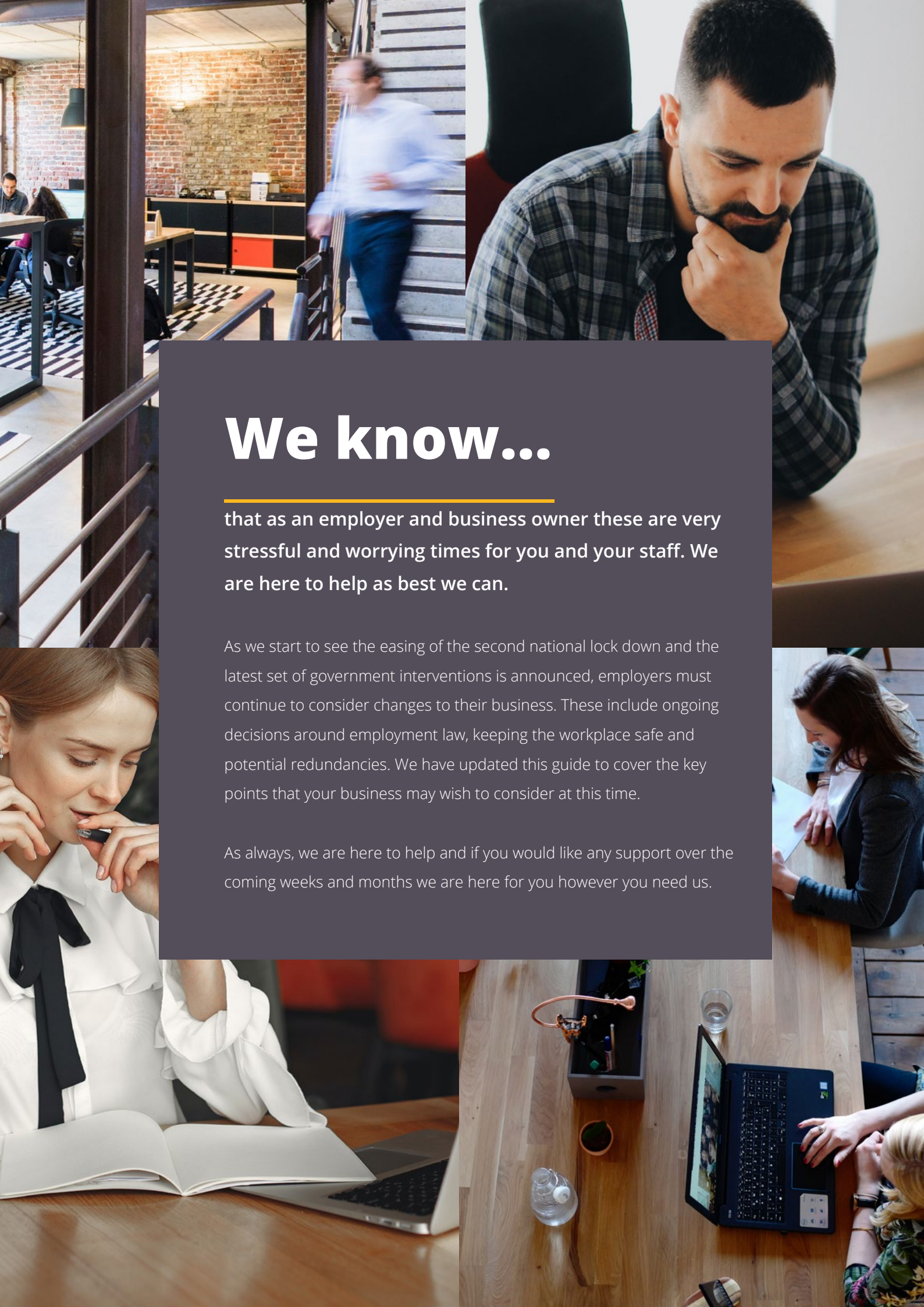


# Coronavirus

## **Extended Furlough**

UPDATED 5TH MARCH 2021





# 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.

As we start to see the easing of the second national lock down and the latest set of government interventions is announced, employers must continue to consider changes to their business. These include ongoing decisions around employment law, keeping the workplace safe and potential redundancies. We have updated this guide to cover the key points that your business may wish to consider at this time.

As always, we are here to help and if you would like any support over the coming weeks and months we are here for you however you need us.

# Contents

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- **Coronavirus Job Retention Scheme (CJRS)**
- **SSP and Self Isolation Support**
- **Redundancy advice**
- **Advice on returning to the workplace safely**



# Coronavirus Job Retention Scheme Update



This section includes information and advice on the latest changes to the 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 still exist.

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

The CJRS has been extended until 30th September 2021. This guide offers advice on your responsibilities as an employer during this process.

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

**Government Information on CJRS:**

**Policy paper:** <https://www.gov.uk/government/publications/extension-to-the-coronavirus-job-retention-scheme/extension-of-the-coronavirus-job-retention-scheme>

**Full guidance:**

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

## 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.

## The furlough scheme has been extended until 30th September 2021.

### Who is eligible?

To be eligible to be claimed for under this extension, employees must be on an employer's PAYE payroll by 23:59 30th October 2020. This means a Real Time Information (RTI) submission notifying payment for that employee to HMRC must have been made on or before 30th October 2020.

### As under the current CJRS rules:

- Employees can be on any type of contract. Employers will be able to agree any working arrangements with employees.
- Employers can claim the grant for the hours their employees are not working, calculated by reference to their usual hours worked in a claim period. Such calculations will broadly follow the same methodology as currently under the CJRS.
- When claiming the CJRS grant for furloughed hours, employers will need to report and claim for a minimum period of 7 consecutive calendar days.
- Employers will need to report hours worked and the usual hours an employee would be expected to work in a claim period.
- For worked hours, employees will be paid by their employer subject to their employment contract and employers will be responsible for paying the tax and National Insurance Contributions (NICs) due on those amounts.
- **Important:** To be eligible for the new 'extended furlough' a new arrangement must be agreed with the employee and confirmed in writing.

## What are the employer costs?

For hours not worked by the employee, the government will pay 80% of wages up to a cap of £2,500. The grant must be paid to the employee in full.

Employers will pay employer NICs and pension contributions, and should continue to pay the employee for hours worked in the normal way.

Employers will be required to pay 10% towards the hours their employees cannot work in July, increasing to 20% in August and September.

As with the current CJRS, employers are still able to choose to top up employee wages above the scheme grant at their own expense if they wish.

There will be no gap in eligibility for support between the previously announced end-date of CJRS and this extension.

## What are the differences with the 'extended' furlough scheme?

As an employer you can claim under the extended furlough scheme even if you haven't used it before. This includes claims for employees who have not previously been furloughed.

You will need to have a written agreement with your employees to either extend furlough or put new employees on furlough.

Employees who were on the payroll on 23 September 2020 who have since been made redundant or stopped working for the employer can be re-employed and put onto the furlough scheme. Employees on fixed-term contracts that have expired since 23 September can also be re-employed and claimed for.

The process for making a furlough claim is the same but, there is a shorter claim window. Claims now need to be submitted by the 14th of the following month. So, for example, claims relating to November 2020 will have to be made by 14th December 2020.

HMRC is now publishing the names of companies and Limited Liability Partnerships (LLPs) who have made claims under the scheme for the month of December onwards.

## The furlough scheme ends 30th September 2021.

To end furlough, you should give staff notice in writing. There isn't a minimum notice period for furlough, but you should: talk to staff about any plans to end furlough as early as possible (unless already stated in a furlough agreement with the employee) and encourage staff to raise any concerns or problems about returning to work.

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, and if you can make use of the Job Support Scheme 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.

## Changing an employment contract.

If you can't reach an agreement with an employee or worker, you may decide that you need to change the written terms in their contract.

If there are 20 or more people affected, you will need to consult staff representatives ('collectively consult').

## Can we introduce our own private furlough scheme?

Yes, when the CJRS ends in September 2021 you can introduce your own private furlough scheme. As with the CJRS, your contracts of employment must allow for this. If they don't, then you will need to negotiate a change to the contract and if this involves 20 or more members of staff you may have to also involve staff representative or the relevant union as well as obtaining individual agreement.

A private scheme could be based on the same conditions of the CJRS or could have different conditions and pay levels. As always, everything must be in accordance with employment law, your contracts of employment and agreed in writing. You will also need to ensure that employees chosen for private furlough are selected fairly and that there is no discrimination in terms of sex, race, age, disability etc.

## Correction of furlough payments

It is up to you as an employer to ensure that you, and your employees, are following the rules of the CJRS, and to make sure you have not been overpaid.

HMRC is encouraging those who have taken advantage of the system to disclose any information relating to furlough fraud within a 90-day 'correction window'. The tax authority says it will be lenient to any employer who uses this and returns the funds they claimed of their own accord – but those who don't will face hefty fines.

The Finance Act 2020 includes civil penalties, which can be charged in cases where an employer is found to have used money paid through the CJRS for anything other than employees' wages, NICs, or pension contributions. In the hope that employers will admit to overpayments rather than risk an investigation further down the line, HMRC says it has made the process of repaying the money 'as easy as possible'.

## What happened to the Job Retention Bonus?

The Job Retention Bonus was a proposed one-off payment of £1,000 to be paid for each previously furloughed employee who remained in continuous employment until 1st February 2021.

The Job Retention Bonus was put on hold in December and The Government said, "a retention incentive will be deployed at the appropriate time". There has been no subsequent update on this.



## Ensure that your claims are valid and documented

As the CJRS is extended, it is still 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 an employer 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 retain written records detailing your 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 placed 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.

# Self Isolation & SSP



What are my responsibilities as an employer?

The Health Protection (Coronavirus, Restrictions) (Self-Isolation) (England) Regulations 2020 came into force in England on 28th September.

These regulations make it an offence for an employer to knowingly allow a worker who is self-isolating to attend any place other than their self-isolation location, for any purpose related to the worker's employment.

The employer offence is set out in Regulation 7 and could mean that you are liable even if the employee voluntarily leaves their designated isolation location for any work related issue.

The initial penalty notice is £1,000 for the first offence and rises on a sliding scale to £10,000 for a fourth or subsequent offence.

We recommend that you update your relevant policies to explain the new self-isolation obligations and reporting requirements for employees and ensure that these are clearly communicated.

What are the responsibilities of my employees?

If a worker becomes aware that they need to be self-isolating and are "due to work or undertake any other activities related to [their] employment during the isolation period, other than at their designated place", they must inform you, as their employer, as soon as reasonably practicable.

The regulation does not specify that this notification needs to be in writing.

What support is available to employees who are self-isolating?

There is a government Test and Trace support payment scheme paying £500 for both employed and self-employed people on low incomes who are required to self-isolate.

To be eligible, an employee must:

- have been asked to self-isolate by NHS Test and Trace;
- cannot work from home and will lose income as a result;
- be claiming at least one of the following benefits: universal credit, working tax credit, income-related employment and support allowance, income-based jobseeker's allowance, income support, pension credit or housing benefit.

The terms of Statutory Sick Pay (SSP) have been updated for any workers who have had to self-isolate.



## 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 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 Coronavirus Statutory Sick Pay Rebate Scheme

Employers with 250 employees or less can recover two weeks of SSP paid to employees for absences due to coronavirus from 13th March 2020 onwards. The scheme applies to both employees with Coronavirus and those who cannot work because they are self-isolating. More information is available on the Government website.

Employers do not need to see an employee's fit note to reclaim the payments.

Employers who pay more than the current rate of SSP can only claim the current rate amount and 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/government/publications/covid-19-stay-at-home-guidance>

# 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 advice on the redundancy procedure in the current climate.

## How does the coronavirus pandemic 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 contract of employment, employees will 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.

Redundancy is a potentially fair reason for dismissal and can lead to a claim for unfair dismissal if an employer has not properly considered alternatives. Retaining an employee on furlough or on the Job Support Scheme could be considered an alternative.

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

## How does the Job Support Scheme impact redundancy procedures?

Employees cannot be made redundant or be notified of redundancy during the period that you are claiming for them through the Job Support Scheme.

## 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 etc. The decision needs to be based on evidence of conduct or capability / performance, 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 contract of employment, 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 to. 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 time consuming and extremely costly.



## The Redundancy Process

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### 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 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 reasons for your actions and the procedure you carried out.

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### 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 contract of employment 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 proposed redundancies, 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 show 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 of employment
- 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
- Not considering alternatives to redundancy

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 immediate and future loss of earnings. 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](http://www.bannerjones.co.uk)

**0330 108 0366**

# Advice on returning to the workplace safely





## Government guidance on working safely during the pandemic

On 22nd September 2020 the Government advice changed to recommend that employees work from home if possible and where homeworking is not possible, people should continue to attend their workplaces, as long as they comply with the COVID-secure workplace guidance.

In addition to this further local restrictions may be put in place for specific areas.

The Government has continued to update its guidance for specific types of workplace. There are currently 14 guides available here: <https://www.gov.uk/guidance/working-safely-during-coronavirus-covid-19>

## Local Restrictions

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Additionally, the latest advice on local restrictions is available here: <https://www.gov.uk/government/collections/local-restrictions-areas-with-an-outbreak-of-coronavirus-covid-19>

## HSE Guidance

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The HSE is also offering guidance to employers covering:

- risk assessments
- social distancing
- cleaning, hygiene and handwashing
- communicating with your workers
- working from home
- vulnerable workers

This guidance can be viewed here:  
<https://www.hse.gov.uk/coronavirus/working-safely/>

## Full Employment Contract and Policy Review

### Fixed Fee Support Package

We know that this is a tough time for business owners especially with the ongoing changes due to Coronavirus. By way of support, we have created a fixed fee package to help ensure that your employment contracts are fully compliant.

### Save time and ensure you are legally compliant

Our expert team will review all of your employment contracts and policies, with a view to highlighting any new policies, procedures and contractual terms you need, as a result of the Good Work Plan and Coronavirus.

#### Includes:

##### Expert consultation

- We will make sure that your contracts are compliant with the Good Work Plan which came into force April 2020.
- We will advise you on amendments you should make to deal with issues arising from Coronavirus.

##### Practical and tailored advice

Our review of your policies and contracts will include advising on the following:

- Homeworking - dealing with information security and data privacy, supervision, and management.
- Sickness - including permanent or temporary changes to deal with employees who are not sick, but are self-isolating or are quarantined after returning from abroad; and those who are clinically extremely vulnerable and the evidence needed from the employee.
- Disciplinary and grievance - revising procedures to accommodate for remote working, including holding meetings by video / phone, dealing with the right to be accompanied, and how investigations will be dealt with.
- Lay off / short term working.
- Returning to work - including data privacy issues and new conditions on processing health information.

If you are not sure as to whether your current employment contracts or policies deal with these issues or feel they need updating in light of Coronavirus, then let us help protect you from future claims.



**Our Fixed Fee Support Package is £525<sup>+VAT</sup>**

**Talk to our expert team today**

**Katie Ash**

Head of Employment Law

[www.bannerjones.co.uk](http://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



**Stephen Gordon**  
Head of Business Legal Services

BUSINESS SUPPORT SERVICES



**Rob Stubbs**  
Head of Dispute Resolution

DISPUTE RESOLUTION

**0330 108 0366**  
[www.bannerjones.co.uk](http://www.bannerjones.co.uk)

## 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.





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**Further information available on Page 21.**