

Employment Tribunal claims arising from COVID-19

From the onset of the COVID-19 pandemic in March 2020, there has been a raft of changes to employment law in the form of legislation, guidance, Treasury directions and more.

Initially, the effect of these changes was felt directly by businesses, HR departments and HR advisors - in reacting to ever-changing guidance and learning new laws, rules and principles of employment law, sometimes overnight to implement the next day. However, the judicial system is now increasingly becoming familiar with these employment law changes. Timescales for raising employment disputes are short - 3 months from the act complained of - so naturally, disputes from the first lockdown and beyond have already started reaching ACAS Early Conciliation and the Employment Tribunal.

COVID-19 disputes in the Employment Tribunal are wide and varied in nature - demonstrating that not only should businesses be alert to the risk of standard claims such as Unfair Dismissal or unpaid wages – but they need to be mindful that their actions in implementing the guidance on furlough, face coverings and return to work practices may all be open to challenge.

The Employment team at rradar have seen a wide range of claims and we wanted to take the opportunity to highlight some of these, so that businesses can appreciate the possible challenges that may arise:

- **Disputes about being placed on furlough leave** - our team have seen challenges from a part-time worker disputing the fact that they were not furloughed while a full-time colleague was. Find out which employees you can put on furlough and claim for through the Coronavirus Job Retention Scheme [here](#).
- **Working while on furlough** - we have seen allegations raised by employees about being forced to work while placed on furlough. This obviously has employment implications but also implications with HMRC if proven. Help and advice for workers and employers on rights and obligations at work can be found [here](#).

The [HMRC](#)-administered coronavirus relief schemes are the Job Retention Scheme, Self-Employment Income Support Scheme, Statutory Sick Pay support for employers and the Eat Out To Help Out Scheme.

Guidance is available if you believe you have claimed too much from a scheme [here](#).

- **Furlough pay** - these challenges are varied. In one case, an employee alleges they should have been paid 100% salary until they signed a furlough agreement. In a separate case, an employee alleged that a colleague had been paid 100% salary rather than the 80% salary they had been paid, arguing this to be discriminatory.

Guidance is available to help you calculate your employee's wages, National Insurance contributions and pension contributions if you're claiming through the Coronavirus Job Retention Scheme [here](#). Remember, after you have claimed you must keep a copy of all records for 6 years – find out more [here](#).

- **Redundancies due to COVID-19** - we have seen a slew of redundancy Unfair Dismissal claims, where COVID-19 has affected the business to the extent that a reduction in the workforce or closure of a workplace is required. These are only likely to increase as the Coronavirus Job Retention Scheme is closed down later this year.

Your procedure should follow the advice set out in the Acas (Advisory, Conciliation and Arbitration Service) code of practice, or the Labour Relations Agency (LRA) code of practice for Northern Ireland. If you do not follow the code and are taken to an employment or industrial tribunal, you may have to pay compensation. Check your dismissal/ redundancy processes [here](#).

Disclaimer:

This article has been provided as an informational resource for rradar clients and business partners. It is intended to provide general information only to employers in the current exceptional circumstances arising as a consequence of the Covid-19 pandemic and is not intended to provide legal, taxation or commercial advice or address legal taxation or commercial concerns or specific risk circumstances of any particular individual or entity which should not be relied upon. No one should act on such information without appropriate professional advice after a thorough examination of the particular situation. Due to the dynamic nature of infectious diseases, circumstances may change and rradar cannot be held liable for the guidance provided. We strongly encourage readers to seek additional medical information from sources such as the World Health Organisation, Public Health England and NHS.



- **Face coverings** – we have seen disability discrimination claims arising from mandates for employees to wear a face mask or covering while at work. The government doesn't require medical evidence for individuals to claim they are exempt, but the challenge for employers is how to balance protecting all their staff and customers.

Read guidance on [face coverings](#). You can find out more about the different rules across the UK on the relevant regional websites: [Northern Ireland](#), [Scotland](#), [Wales](#).

- **Whistleblowing** – we are starting to see claims from individuals claiming to be whistleblowers having raised concerns with workplace risk assessments relating to COVID-19 - arguing that they have resigned, been dismissed, or subjected to detriment because of raising their concerns.

Guidance and further clarification on making a disclosure can be found [here](#), these could include disclosing information regarding unlawful activities in the workplace, failure to comply with legal / regulatory obligations, danger to someone's health and safety, risk or damage to the environment or a belief that someone is covering up a wrongdoing. The disclosure must be in the public interest. This means it must affect others, for example the general public. Personal grievances (for example bullying, harassment, discrimination) are not covered by whistleblowing law, unless it is in the public interest. Personal grievances can be raised under an [employer's grievance policy](#).

- **Health and safety cases** - employees are protected from detriment or dismissal in circumstances where they have identified a health and safety risk or refused to return to a workplace because of a perceived serious risk to their health. This has been seen to arise where employers are requesting physical attendance at workplaces.

Currently there are [14 business support guides](#) produced that cover a range of different workplaces and businesses in England that provide priority actions outlined at the top of each guide. You may need to use more than one of these guides as you think through what you need to do to keep people safe. There is different guidance for: schools, further education and childcare providers, weddings and civil partnership ceremonies, receptions and celebrations and public transport operators.

- **COVID-19 testing** - since the government ramped up their testing regime, we have seen employers requiring their employees to undergo weekly COVID testing and employees raising disputes or claims relating to poor treatment for refusing this. It's likely that similar disputes will arise as the vaccination roll-out continues.

We fully expect that as the pandemic continues, vaccinations increase, lockdowns end and workplaces adapt to the new reality, more claims will be pursued of varying nature.

Given that many disputes relate to novel areas of law or guidance, introduced as emergency measures at the onset of the pandemic, it is not clear how the Employment Tribunal will react when making determinations of these type of claims.

The advice remains the same as ever; we always recommend that you take proactive advice to inform yourself and your business of the risks before taking action that could potentially lead to a dispute arising.

Additional links to Coronavirus (COVID-19) advice and guidance:

[Coronavirus Guidance on GOV.UK \(England\)](#)
[Coronavirus Guidance \(Scotland\)](#)
[Coronavirus Guidance \(Wales\)](#)
[Coronavirus Guidance \(Northern Ireland\)](#)
[Courts and Employment Tribunals](#)
[HSE Health and Safety Information and Guidance](#)



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