

Lay Offs and Short-Time Working

During the unprecedented times that we face due to coronavirus, many businesses have been adversely effected and have had their work and business severely disrupted. They may need to either temporarily reduce their workforce or reduce or halt work within the business.

In some circumstances a redundancy is appropriate but this is a permanent decision, and coronavirus is, hopefully, a temporary situation. An alternative for an employer is to consider the use of layoff or short time working provision in a contract of employment. This allows for temporary measures to be put in place to allow the business to survive a difficult period.

Lay offs and short-time working

A layoff is when an employee is temporarily asked to stay off work their employer for at least one working day. Short-time working is when an employer decides to cut down the hours of their workforce. There is no limit for how long layoff or short-time working can occur.

The Government guidance on support for employers is developing fast and changing day to day. Recent guidance introduced include the job retention scheme and further support for self-employed persons.

Layoffs and short time working are potentially less beneficial to an employee than other forms of support available that have been introduced during the Coronavirus pandemic. For example, an employee placed on 'furlough leave' under the job retention scheme may be entitled to be paid 80% of their wages up to £2,500 a month, whereas under a lay off or short time working, the payment entitlement of the employee is minimal.

Accordingly, an employer should ensure they make themselves aware of all options before determining that a layoff of their staff or implementation of short time working is necessary.

When can they be implemented?

Lay offs and short time working can generally only be implemented if you have a clause in the contract of employment or a collective agreement giving you the express right to lay off employees without pay or with statutory guarantee pay and to require short-time working with a proportionate reduction in pay.

Where possible, the clause or agreement should include details of the circumstances in which it will be used, the amount of pay (if any) the employees will receive during the layoff or short-time working and the maximum duration of the layoff or short-time working period. The amount of flexibility available to the employer as to how hours are reduced and the extent of the reductions, how long the arrangements can last for, or who is selected may depend on how the contract or agreement is drafted.

What if there is no clause or agreement outlined in the employment contract?

In the absence of such a clause or agreement, compulsory layoff or short-time working would amount to a fundamental breach of the employment contract. A tribunal would normally take into consideration what is expressly agreed between the parties but the safest route is to agree to review the position after a specified period.

Without this power, employers who have insufficient work for their employees to do as a result of the coronavirus pandemic and who send them home may not be breaching contracts, provided they continue to pay the employees the wages or salary that they would normally receive. This of course does not support a situation where the aim of laying off or reducing hours is to save costs in a time of crisis for the business such as that which may be arising due to the coronavirus.

Further information about layoffs, short time working and coronavirus is available on the radar Coronavirus portal.



Written by:

Tom Bernard, Employment Solicitor at radar

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