



July 2020

## EMPLOYMENT LAW UPDATE – WHAT'S NEW?

### Summer 2020 Economic Update: Key Employment Announcements

#### End of Furlough Scheme and Introduction of New Job Retention Bonus

On 8 July 2020, Chancellor Rishi Sunak announced a new Job Retention Bonus ("Bonus") that will be available to employers who bring employees back from furlough. The Bonus will consist of a one-off payment of £1,000 payable to employers for every employee they bring back from furlough, provided they are retained in employment until 31 January 2021 and earn an average of £520 per month over that period (the lower earnings limit). The bonus amount is the same for each employee irrespective of the employee's actual wages.

The key question is whether the Bonus is enough of a subsidy to make employers reconsider redundancies, or if it will only benefit employers who are planning to bring staff back anyway.

#### Kickstart Scheme

The Government are also investing £2 billion to create 6-month work placements for those aged 16 to 24 who are on Universal Credit and at risk of long-term unemployment. The fund will cover 100% of the National Minimum Wage for 25 hours a week, in addition to the National Insurance and minimum automatic enrolment contributions payable by the employer. There is no limit on the number of places available and employers can apply for funding from August 2020, provided they can prove that the work placements in question have been newly created.

#### Training and Apprenticeships

The Government will support training and apprenticeships by paying employers £1,000 for every new trainee aged 16 to 24 that they take on, although this funding is subject to a maximum of 10 trainees per firm. From 1 August 2020 to 31 January 2021, the Government will also pay employers £2,000 per apprentice aged 16 to 24 and £1,500 per apprentice aged 25 and over that they take on. This is on top of the £1,000 already offered by the Government for apprentices aged 16 to 18 and those under 25 who are subject to an Education, Health, and Care Plan.

## **HMRC confirms employers can claim under the CJRS in respect of contractual notice periods**

On 17 July 2020, HMRC updated its guidance for employers to confirm that an employer can continue to claim under the scheme for a furloughed employee who is serving statutory or contractual notice. Previously, the position had been unclear as the guidance had referred to statutory notice periods only.

## **New law on redundancy and notice pay for furloughed employees**

The Employment Rights Act 1996 (Coronavirus, Calculation of a Week's Pay) Regulations ("Regulations") were announced on 30 July and come into force today, 31 July. The Regulations are intended to ensure that furloughed employees who are made redundant receive statutory notice pay based on their pre-furlough rate.

For employees with normal working hours, if the calculation date for statutory redundancy pay or statutory notice pay falls before 31 October 2020, the amount which is payable should be calculated "disregarding any reduction in the amount payable as a result of [the employee] being furloughed". This also applies to contractual notice if it is not at least one week more than the statutory minimum notice.

For employees whose pay varies with the time or amount of work, or who have no normal working hours pay is normally averaged over the last 12 weeks. The Regulations ensure that the averaging is based on full rather than reduced pay.

The Regulations also protect employees' pre-furlough position in respect of certain other claims where the calculation of a weeks' pay is relevant, such as unfair dismissal basic awards and claims relating to a failure to provide a statement of employment particulars.

## **Professional cyclist dropped from olympic training programme was not employee or worker**

In *Varnish v British Cycling Federation*, the Employment Appeal Tribunal ("EAT") ruled that professional cyclist Jess Varnish was neither an employee nor a worker for British Cycling and therefore could not pursue her unfair dismissal claim against them for not selecting her to represent Great Britain in the Rio Olympics.

The EAT agreed with the Employment Tribunal ("ET") that the funding Varnish received from UK Sport to enable her to train competitively for British Cycling did not constitute a wage in return for the performance of work or services. This was supported by the Athletes Agreement entered into, which clearly stated that there was no intention to create an employment relationship between the parties. Instead, the Agreement reflected a contract whereby high-quality services were provided by British Cycling to Ms Varnish to help her achieve international cycling success, rather than the other way around.

As a result of the EAT finding that Varnish was self-employed, she cannot pursue her claim against British Cycling for unfair dismissal arising from sex discrimination, victimisation, and unfair detriment. To read more about this case and the importance of ensuring that athlete or any other employment contracts are carefully drafted to reflect the type of employment relationship in place, please click on Partner Edward Wheen's article [here](#).

## **Failure to address workload and mental health concerns could amount to breach of contract and discrimination claims in the future**

In *Mrs E Aylott v BPP University*, the ET found that Mrs Aylott had been constructively unfairly dismissed on the basis that BPP's failure to address her mental health issues arising from her heavy workload and difficulties in her personal life undermined her trust and confidence in them.

Mrs Aylott was a lecturer at BPP from 2013 to 2019 and had made them aware that she suffered from anxiety, depression, and chronic back pain. However, BPP failed on numerous occasions to take action in regard to her heavy workload and its impact on her mental health by not referring her to occupational health services when asked, and by immediately offering her a settlement agreement when she raised a grievance about the unfavorable treatment she was receiving as a result of her mental health.

The ET found that BPP's failure to refer Mrs Aylott to occupational health and the rush to remove her from her role without attempting to make reasonable adjustments in the workplace amounted to a fundamental breach of contract and discrimination arising from disability. This satisfied the grounds for constructive unfair dismissal and she was granted compensation for financial loss and injury to feelings.

This case shows the importance of managing mental health in the workplace, something made ever more difficult by the long term need for remote working which has arisen as a result of the coronavirus pandemic.

For more information on any of the items discussed in this article please contact either [Nick Hall](#) or a member of the [Employment Law team](#).

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