



May 2020

### EMPLOYMENT LAW AND COVID-19 – WHAT'S NEW?

#### **SSP now available to those self-isolating under the new NHS Test and Trace system**

The Statutory Sick Pay (General) (Coronavirus Amendment) (No. 4) Regulations 2020 (the Regulations) came into force on 28 May 2020 and extend SSP to those told to self-isolate under the new NHS Test and Trace service. The Regulations provide that a person will be deemed incapable of work when they:

- have been advised by a relevant notification that they have had contact with a person who at the time of the contact was infected with the coronavirus, and
- are staying at home until the end of the period of 14 days beginning with the latest date on which that contact occurred, or (if sooner) until the date specified in the latest relevant notification.

This only applies to those who cannot work because of self-isolation, so employees who can continue to work from home will not be entitled to SSP. If an employee is able to work remotely, they will be entitled to their normal pay. However, if remote working is not possible, the particular employee(s) will be entitled to SSP. Employers also need to consider whether to apply the new SSP rules to company sick pay as well. This may depend on the wording of the rules: some schemes may be linked to SSP, while others may require an employee to actually be ill.

#### **Government confirms that employers can compel employees to take holiday whilst on furlough**

Government [guidance](#) published on 13 May 2020 has confirmed, among other things, that employers can compel employees to take holiday whilst they are on furlough. If an employer requires an employee to take holiday on specified dates then the notice given must be at least twice the length of the period of leave that the individual is being ordered to take, unless the contract of employment stipulates otherwise. There are no explicit requirements about the form that the notice must take.

The guidance suggests that before requiring an employee to take holiday whilst on furlough, the employer should consider whether any restrictions, such as the need to maintain social distancing or self-isolate, would prevent them from enjoying the fundamental purpose of a holiday, which is to rest, relax, and enjoy leisure time.

## **Latest developments to the Coronavirus Job Retention Scheme (CJRS)**

### Further Treasury Direction

A second Treasury Direction (Second TD) was issued by the Chancellor on 22 May 2020. It amends and effectively replaces the first Treasury Direction (Original TD) in respect of CJRS claims made on or after that date, or in relation to earlier claims that would have been compliant with the second Treasury Direction in any event.

The Second TD resolves some concerns which arose from inconsistencies between the Original TD and HMRC guidance. It removes the explicit requirement that agreement to furlough must be in writing, stating that it must be in writing or confirmed in writing (which includes electronic means such as email). It also provides that the agreement may be express or implied, reflecting the position in the guidance. This is helpful clarification: although there needs to be a written record, the employee does not need to provide a written response.

The Second TD also confirms that an instruction which puts an employee who is receiving (or due to be paid) SSP on furlough does not take effect until the SSP period has ended, provided that “the time of the end of that period of incapacity for work it determined by an agreement between the employer and employee”. This suggests that an employee who is eligible for SSP can be put on furlough provided that the employer and employee agree to end SSP and move to furlough instead. More detail is also provided on the duties that company directors can perform whilst furloughed. Permitted duties include fulfilling statutory duties such as filing accounts, making claims under the CJRS and paying staff salaries.

### Extension of the CJRS until October

Earlier in May, Chancellor Rishi Sunak announced that the CJRS will be extended until 31 October 2020.

On 29 May the government elaborated on changes to the furlough scheme it had previously sketched out, accompanying the announcement was a [factsheet](#) with more details. Some of the key changes are as follows:

- The CJRS will close to new entrants from 30 June. This means the final date that an employee can be furloughed for the first time is 10 June, in order for the minimum three-week furlough period to be completed by 30 June.
- From 1 July, employers can bring back to work employees that have previously been furloughed for any amount of time and any shift pattern, while still being able to claim a grant for their normal hours not worked.
- Employers will need to agree any new flexible furloughing arrangement with employees and confirm that agreement in writing.
- For hours worked, 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.
- The level of grant available will be slowly tapered:
  - from 1 August, employers will have to pay NICs and pension contributions, and can no longer reclaim them;
  - from 1 September, the government will only reimburse 70% of wages up to a cap of £2,187.50 for the hours the employee does not work. Employers will be required to top-up by 10%.

- from 1 October, the government will only reimburse 60% of wages up to a cap of £1,875 and employers will have to top-up by 20%.

Further guidance regarding flexible furloughing is expected on 12th June, and in particular how claims should be calculated by employers. For further details on the furlough extension please [click here](#).

For more information on any of the items raised in this update please contact Nicholas Hall by [clicking here](#).

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