



July 2021 Update

Welcome to this month's update - where we discuss the latest legislation and guidance.

In this month's edition, we report on:

- Can (and should) Employers enforce mask wearing as restrictions are lifted?
 - Is furlough an option for self-isolating staff?
 - How Human Resources can re-motivate staff after Covid
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Can (and should) Employers enforce mask wearing as restrictions are lifted?

Many employers face dilemmas on 19 July as coronavirus restrictions are lifted – one of which is whether employees and customers still need to wear face coverings indoors. The government now suggests individuals decide for themselves when it's appropriate to use masks.

For businesses, the key issue will always be to protect the health and safety of staff and this means following applicable guidance. The firms who plan to impose masks at work after 19 July will need to have a "good reason" for the requirement.

Businesses are being urged to encourage staff to return to the office, with many firms implementing hybrid working. The "good reason" to keep mask wearing at work is fact specific and so thought needs to be given to why.

Factors you can take into account would include the views of staff and customers or service users and may be applicable to businesses which are customer facing such as retail and the hospitality sector.

We advise businesses undertake a genuine dialogue with staff about what measures to keep or change, including keeping mask wearing. The difficulty will be that employers cannot require workers to wear masks after the legal obligation is lifted. If it was an item of personal protective equipment the employer could require employees to wear as part of their risk assessment, but masks are not PPE.

But if employees want to continue the use of masks in the office then a “reasonable employer” would support that decision. It's all about the consultation process with staff and having been told for the last 12 months to wear them there may be some unease when the practice is lifted.

Although employers may be able to leave some matters to individual employees’ discretion, they may still want some protective measures such as ventilation, social distancing and use of hand sanitisers. The key thing is that whatever decision is taken they should be able to clearly explain how this decision has been reached and how safety is still of primary concern.

If someone objects to wearing a mask, employers should manage it on individual basis and take into consideration the specific position of the employee involved.

Employers: it is advisable to have a policy covering the wearing of face masks if they are to be kept or amend an existing policy as the context has changed.

Contact us: for specialist HR advice and guidance, including contracts of employment and policies.

Is furlough an option for self-isolating staff?

It's clear from the HMRC guidance on the coronavirus job retention scheme (CJRS) that if an employee is sick while on furlough, they can remain on furlough pay. An employer can move an employee to Statutory Sick Pay (SSP) from furlough pay but in practice this rarely happens.

However, where the contractual SSP is for full pay, there may be a claim from the employee that the employer should top up the payment to the full amount rather than furlough pay. The question of whether a self-isolating employee who would otherwise be working could be placed on furlough is much more uncertain.

HMRC's guidance online states that the scheme "*is not intended for short-term absences from work due to sickness*". It goes on to say that "*short-term illness or self-isolation should not be a consideration when deciding if you should furlough an employee. If, however, employers want to furlough employees for business reasons and they are currently off sick, they are eligible to do so*".

The guidance state that "*If your employer wants to furlough you for business reasons and you are currently off sick, they are eligible to do so as with other employees.*"

The specific reference to furlough being used only if there are 'business reasons' will have deterred many employers from using the scheme for staff who are self-isolating due to Covid.

There is no definition of what 'business reasons' meant and cautious employers would not have wanted to risk a claim for furlough that may later seen by HMRC as an abuse of the scheme, which could lead to a possible HMRC sanctions being imposed.

However, recent reports have suggested that the guidance was deliberately written in such a way to be unclear to deter businesses from putting self-isolating employees on furlough substantially increasing the cost.

Employers: if an employee is self-isolating you are able to consider whether to put the employee on furlough pay depending upon the business reason.

Contact us: we can assist with furlough pay questions and employee management.

How Human Resources can remotivate workforces after Covid

The emergence of a new hybrid workplace means that managers will face challenges around employee motivation among a tired and disparate workforce.

The need for improved communication with employees is already well understood with ongoing remote working. How better communication translates into best practice engagement will be crucial.

Employers with motivated workers have initiated a bigger push towards personalisation of the employee experience, especially where employees are brought on to work remotely. Nearly 30 percent of new employees decide to leave the business because of a lack of good processes at onboarding, induction and training in the first 3 months.

About half of Top Employers (49 per cent) give access to virtual pre-boarding platforms which involves sending out contract documents, policies and training information before an employee joins to make the process more streamlined.

Involving new starters at an early stage with internal social media groups and finding out a little about them in terms of their hobbies and what other skills they may have to bring to the business, allows them to feel part of the team from an early stage.

In addition to the commonplace annual engagement survey, we are finding that businesses who make an effort through their management team to keep in touch with and talk properly to their employees to understand how they are feeling and involve them in consultations have higher employee retention and motivation.

Employee involvement in action plans for business improvement and the regular use of employee focus groups in decision making increases employee engagement and so translates into a happier workforce.

When employees were asked to name the chief areas for improvement in engagement surveys, the need for more “development opportunities” came out top. This is certainly an area for improvement in terms of using career development opportunities to motivate employees, which has suffered during the pandemic.

However, by finding out about the skillset of your employees, particularly those people who have been here for one to two years to enable them to acquire the skills they need, as well as skills they have to bring to the business is key.

Employers: as businesses recover from the Covid-19 pandemic, there is a need to work hard to retain the interest, engagement, and loyalty of their employees.

Contact us: we can help your business with reviews of staff structures and your onboarding process

For more information or assistance Email: caroline@employmentlawsupport.co.uk



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