



October 2021 Update

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

In this month's edition, we report on:

- Life after Furlough
 - When does an 'employment relationship' start?
 - One in four jobseekers received no response to applications during pandemic
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Life after Furlough

The Furlough Scheme was part of our working lives since March 2020. It cost over £70 billion and was the cornerstone of the Chancellor's intervention to prevent job losses, as the country effectively closed down in the face of the virus.

At its peak it supported over 11 million people and when it ended on 30 September, there were still around 1.5 million on either full, or partial, furlough.

But now with the scheme at an end, businesses are forced to take some tough decisions about their employees. If you've had your staff on furlough, you may be feeling understandably concerned about the cost overload of keeping employees on. You might also be worried about job losses.

However, many businesses have already taken the time in recent months to plan ahead and think carefully about their future. This has led to periods of reorganisation or restructuring,

together with active discussions/consultations with individuals about different ways of working including:

- Pay reductions
- Career breaks/compulsory sabbaticals
- Using up annual leave
- Changing hours – going part-time and/or embracing job shares
- Changing working location (to save money on premises)

Although having to make staff redundant is upsetting, the economy now has record levels of job vacancies and with plenty of skill shortages too in key industries. Retraining/reskilling is being actively offered, together with other incentives. This could mean that workers might be able to secure another job sooner than they thought.

Flexibility and encouragement

With furloughed employees being re-integrated back in the business, it's essential that business owners and senior managers maintain covid-safe measures and new working practices to keep the workplace and employees safe.

Offering people extra support, flexibility and encouragement is vital. Setting up regular one-to-ones will demonstrate your ability to listen and understand their needs, as well as learning how to manage their expectations in a positive way.

After all, workplaces are a very different place than they were in March 2020 and workers have also got very different attitudes to work which will need to be accommodated.

Fair and balanced

If, however pay cuts, reduced hours and different working arrangements are not enough and redundancies are on the cards, take the time to fully consult with staff and follow a fair and balanced process.

This means clear communication, appropriate notices and meaningful consultation. It's also important to be open, transparent and objective, with no bias, so staff feel informed and included.

Employers: Whatever route you choose, it's important to listen to your employees, especially when considering changing terms and conditions or commencing a redundancy process.

Contact us: We can assist with planning any restructures or changes to terms and conditions.

When does an 'employment relationship' start?

In light of a recent case, we examine if the National Minimum Wage applies when new recruits are required to undertake training before starting a job

The National Minimum Wage Act 1998 (NMWA 1998) requires that all workers are paid at least the set rate for each hour of work or training undertaken. Employees can claim for breach of the NMW provisions in the employment tribunal and HMRC may take enforcement action against an employer.

In the recent case of *Opalkova v Acquire Care Ltd*, the question was raised, whether the wage protection would also apply to job candidates where they are required to spend time undertaking compulsory training as a condition of being offered a job.

HMRC guidance on this, states: *"Care must be taken when training is undertaken prior to commencing work. In these cases, it is important to establish when a worker's contract is formed and distinguish between what is work and what is part of the employer's selection process."*

In this case the employee applied for a job as a carer, providing home care services for clients. Her job offer was conditional on her completion, prior to her start date, of an online training course.

The employee undertook the course, including taking an online test, at which she had to pass to obtain a Care Certificate. Only when she obtained this certificate, was she given a contract of employment and a start date. She was not paid for the time she took training and doing the test.

The case went to the Employment Appeals Tribunal, who found that consideration should have been given as to whether an employment relationship had been formed at an earlier date than that stated in her contract of employment.

The written terms of the contract, including the start date, were a factor to be taken into account, but the key point was whether she was undertaking work or training in such circumstances that an employment relationship could be implied.

The decision highlights that the written contract regarding the start date should not always be taken to be the determining factor. You also need to look at what happens on the ground.

Employers: If part of the recruitment process is described as a 'trial', 'test' or 'recruitment exercise' sometimes an individual will be a worker and entitled to the minimum wage for the time spent.

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

One in four jobseekers received no response to applications during pandemic

It seems almost a quarter of jobseekers have not heard back from applications submitted during the pandemic, new research has revealed. Businesses could be hurting their employer brand at a time when competition for staff is intense.

Nearly one in five applicants also said they were made to wait more than two weeks for feedback on an application, despite a rise in job vacancies when compared with a year ago.

A bad candidate experience made individuals less likely to apply for future roles in that company. In addition, candidates were unlikely to recommend a company to a friend after a negative application experience.

Recruitment practices have a significant impact on both hiring and business performance, with people unlikely to recommend the company to others after a negative experience. Many businesses are investing in appropriate automation technology to streamline much of the candidate response processes.

Even sending standard email responses to job applicants, just letting them know they weren't successful, went a long way to building a positive candidate experience.

While applicants may be disappointed, the contact means they will be more likely to apply for jobs with the same organisation again in the future and encourage their friends to do

so. It is also good practice to explain to applicants, in advance, what to expect of the application process, either through the job description or via email.

Employers: Bear in mind, by not replying to an application, there is no visible communication between the employer and the candidate outlining why their application has been unsuccessful.

Contact us: We can assist with the recruitment and onboarding process as well as drafting or reviewing employment contracts.

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



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