

# Academy of PHYSICAL MEDICINE Transcript

## COVID-19: HR and Staff Issues with

Donna Obstfeld (DOHR)

*([dohr.co.uk/covid-19](https://dohr.co.uk/covid-19))*

### **Steven:**

Today I have joining me via zoom by remote link Donna Obstfeld, who has 25 years' experience in the HR world.

She's appeared on the show before to talk about HR issues. And Donna, it's great to have you with us again, a bit more distance between us this time, but I'm sure that won't affect the conversation. As you can see, Donna's working from home. Her husband's also having to work from home, but he's left the room so that we can crack on with this. But I'm warned that there is a cat in the building which might appear from time to time.

Obviously, your main business concerns probably companies and employers with larger staffs than the average chiropractor or osteopath. But we do employee staff, sometimes those staff are the practitioners themselves. Sometimes they might be the cleaning staff, sometimes they might be receptionists.

What sort of problems have you seen so far from any business that you might have which are comparable to ours?

### **Donna:**

Yep. So our phones have been ringing almost off the hook since last week. And certainly Monday, Tuesday of this week, it's been a little bit crazy. The main reason for that is the uncertainty and the government haven't yet given some of the certainty.

They, they've certainly made some money available and said, look, please don't fire your staff. There is money available to pay them, but a lot of that money is being made available through loans and they don't want to burden their businesses with loans long-term.

So what a lot of people are doing is taking very quick decisions either to shut down if they can't work from home, if their staff can't work from home or to lay them off or

to put them on short term working. There's lots of different options. And that will depend on the nature of the organization and the staff within that organization.

So we've had a couple of clients who literally just shut up shop completely. A removal company business owner and two permanent staff. He specializes in office moves. Nobody's moving offices right now. He has just mothballed the company overnight.

**Steven:**

How does, how does that affect staff though? If you've got employed staff then almost by definition you should have a contract and most of us would have a contract for them. Or can we get out of any clauses that are in those contracts because of the virus?

**Donna:**

So not as a direct result of the virus. As with any contract, there is an opportunity to renegotiate it. So some contracts will have layoff clauses, called lay off and short term working. And some contracts will have that in. But most won't.

**Steven:**

I bet lots of them do from now on!

**Donna:**

They may well do, although really, really interestingly, we've been having daily zoom calls within my own team and we've actually pushed this idea around quite a lot and decided that it may be better off not to lay off staff, but actually to ask them or hopefully they asked you if they can take on paid leave. And the reason for that is that if you lay off staff, after four weeks of layoff they have the opportunity to come to you and say, we haven't given any work for 4 weeks. You're not going to give me any work for the next four weeks. Therefore I want you to make me redundant. In which case they have to pay notice. That could be anything from a week to 12 weeks depending on length of service. And they would have to pay redundancy, pay at statutory rates unless there's something over and above that in the contract of employment.

So really there's a lot of clients at the moment who don't want to make people redundant for a number of reasons. The first being financial because there is a cost to making people redundant. The second is that you're losing those skills from your organization. So when things do pick up, you actually need those staff back in, even if it's not a hundred percent capacity from day one, you're still going to need them quickly as you need them to ramp up your business again. You don't want to have to go and pay new recruitment costs. You don't want to be having to look for new people at that time.

So actually making people redundant isn't necessarily the pill that some business owners at the moment seem to think it is. It may be better to look at other options.

**Steven:**

Is there a statutory requirement for redundancy pay? I forget this.

**Donna:**

Yes there is. So if somebody has more than two years, it's continuous service, then they are entitled to a redundancy payment. At the moment the rate is £525, that goes up on the 6th of April to £538 or if that's more than they earn on a normal week, then it's actually kept at their normal salary.

**Steven:**

Hang on. So £530 doesn't sound a great deal of money.

**Donna:**

So it's £538. If somebody is 35 years old and they've been working for four years, then they would be entitled to four weeks worth of redundancy pay. And that pay is paid an actual salary or the statutory redundancy rate, if the statutory redundancy rate is less than they would normally get paid.

**Steven:**

You, when we sort of got together just before we started the zoom call, you said you'd been hoping for a bit of legislation to go through in the last day and it hasn't.

**Donna:**

So as I said before, there's sometimes in a contract, a layoff and short term working clause that means that without needing to consult and without needing to get the employees consent, an employer is able to put their staff on short term working or to lay them off. Short term working - the definition is anything less than 50% of their normal contracted hours and lay off where they're not provided with any work at all for a certain amount of time. We were hoping and we really thought it was coming, but it hasn't, the government we're going to do something that meant that even if you didn't have that clause in your contract, you could still have a statutory right to enforce short term working or layoffs. The fact that they haven't done that means that you have to consult, you have to get employee agreement to either short term layoff sorry, layoffs, short term working or unpaid leave or some other contractual change. It could be that you ask your staff to take a 50% pay cut, but you still need them to do the work. And they'll just take a 50% pay cut for a month or two months. Under any normal circumstances, an employee would normally say no.

However, people are keen to keep their jobs and to help their employers to keep going. So if that getting something rather than nothing there, they are more willing to accept that. And that's what we're hearing. But that may be why the government didn't bring forth the legislation, but it just means that employers have to go through consultation and get written consent, agreeing to it.

**Steven:**

If staff agreed to a 50% cut in pay or anything like that, does that have to be written down in some formal agreement?

**Donna:**

Now is there a statutory form of words which, so there's nothing statutory about it, but it must cover off a certain number of things:

- it needs to say exactly what the arrangement is.

- It needs to confirm that you've had a conversation and that the employee has agreed to it

- Then get them to sign at the bottom.

- But you confirmed that you've had the conversation that this is what's been agreed that this is how long it's going to be in place for.

- And when you're going to review it.

Now, at the moment, what we're advising people to do is to agree something for the next month and review it in three weeks' time. Because if you agree something for three months, that's a huge amount of time. And a lot's changed even between last Thursday and today. So much has changed that to make big decisions, long term decisions is actually quite dangerous.

So if you're going to put somebody on short term working or lay off or awesome to take on paid leave or 50% of their working time, then agree with them for a month. That gives you clarity. It gives them clarity and if you know that you're going to review it in three weeks time and then you will write to them at the time and update them. That's really important.

Couple of things to remember. Make sure you know how to get hold of your staff when they are working from home or if they're just not working. If you haven't got the facility for them to be on work email when they're working from home, make sure you've got their personal email. Make sure you've got personal mobile phone numbers.

We've had somebody today say, "Oh, that's okay. We'll send them emails". But actually they don't necessarily have their company computers working or so just, just think about how you're going to communicate if your workforce are diversly spread.

**Steven:**

It's perverse, isn't it? That for frankly, for many of us the income is dropping but the workload is going up. I suspect that's very much the case for you because people, people like me are asking you to give lots of advice. So your time is being taken up more and more, but I suspect at the same time paid contracts are thinner on the ground than they were before.

**Donna:**

A little bit of the case. Yeah. I mean we have a lot of retained clients so obviously the support that they're able to access is no different. Normal. We have ad hoc clients and then we've built a website and we're just giving away as much information that is generic as possible and it's really important. I've put everything, you know, this is generic information:

You need to check what your contracts actually say.

What you mustn't do is take action that puts you in breach of your own contract of employment.

So it's really important. I've provided loads of free information, there's an hour's webinar on there as well. It's really important that you check what's in your contract of employment before you take any steps because otherwise you're in breach of your contract unknowingly potentially. And that then gives employees rise to a claim against you for breach of contract in the future.

**Steven:**

And we'll, we'll obviously, we'll put a link to your website,

**Donna:**

It's ***dohr.co.uk*** and on that front page there's a big red button which says Corona virus. If you hit that, it will take you to all the free resources.

**Steven:**

Okay, fine. And I, you know, again, we were discussing this before how this isn't a marketing exercise, it's just a,

**Donna:**

It's just for free information. I'm not asking for email addresses, I'm not asking for phone numbers. That information is just there and available on the website.

**Steven:**

What's the advice for the self employed. I know that's not quite your area of business, but so what's happening to help them?

**Donna:**

We don't know yet. I mean, what we're, what we're hearing is that obviously the governments are making money and funds available. We're hearing that they will be able to claim universal credit. Although that system doesn't work particularly well at the best of times.

**Steven:**

We had someone from the FSB on the other day and we talked about universal credit and I said, well, isn't this extraordinarily difficult to access? And he said yes, but they're making changes, which mean it will be slightly less than extraordinarily difficult to access. I think he said it's something like £59 a week, which is not going to pay the rent.

**Donna:**

It's not very much at all. And they are going to get rid of the waiting period. And the government have said that, you know, they're going to ask the banks, yeah. There will be facilities for people not to have to pay their mortgage, potentially not to have to pay their rent. So I'm not sure whether they're going to try and get more money into the pockets of those people and give them more spending power or whether they're going to try and reduce that expenditure requirements. Can't quite figure out which way it's going, but it's not a good situation. And the one thing, and I know this is really hard and I'm really sorry if any of you are self employed that are listening to this, but the one thing employers must not do is to pay contractors or self employed people any sick pay or any normal payments that would normally be paid.

So anything that would make it look like an employment relationship you must, must, must avoid because otherwise you're setting up for somebody less scrupulous than all of your listeners to actually come back and say, well, actually, you know, I got sick pay and I'm now entitled to holiday pay. Oh, I'm now entitled to, to normal guaranteed work payments.

So although it's actually really hard, you've got to maintain the employment status of your staffs. If you've got contractors, they are contractors. If you've got employees, they are employees. But it is hard obviously for the medical practitioners who are self employed.

**Steven:**

It is a, it is a constant debate about the status of what we call associates who are not employed. They effectively, they rent rooms from us as I discussed with you earlier on. And then, we take the money and then give them their money back at the end of the month. So it looks as though they're being paid a commission, but actually

they're paying a room rent, which depends on the number of patients. That's legally how it is. But also we've tried to emphasize in the past, and we might've done it when you came on last time, the fact that if you've got an employment contract, it is important to stick to the terms of that even if you think you're being nice to your associates or employees because there's, as soon as you step outside the contract, they can say, well, that contract's no longer valid because you didn't follow the terms.

**Steven:**

Yeah. So there's a blog article on the website, which I did a little while ago and it was actually in the Hertfordshire Chamber of Commerce magazine as well, when actually trying to be nice and do the right thing puts your business at more risks than if you'd not been nice and not done the right thing. And that's something that we're seeing quite a lot with our clients at the moment is that some of them are having real moral issues. They want to do what's morally right and they feel really, really bad.

So one of the things that we're seeing is where somebody has made a recruitment offer to somebody, that person has resigned from their old job is about to start their new job obviously can't start the new job because they're working from home or the office is closed or it's not appropriate. And that person is now left in limbo having left their old job not having an income from their new job. Some companies are saying we're withdrawing all offers. Other clients are saying we're postponing start dates and others are actually going, well actually, you know, they are technically an employee of ours from this date, therefore I'm going to treat them the same way as I would treat all my other staff who I'm paying 50% of salary to or whatever. And they'll put things in place to support those new staff. But you do then start accruing length of service and employment rights from day one.

**Steven:**

Well, I imagine all those people who have just joined your organization or are about to, will have a an initial trial period in their contract, so they're very easy to get rid of. So they must be feeling very vulnerable.

I've had quite a few questions coming in. Mary says they run a practice as a company and they have three part-time receptionist covering five and a half days a week in total. They're paid monthly, calculated by the hours done. If they have to close, what liabilities do they have if they have to lay them off work for an indefinite period.

**Donna:**

So just give me the last, what are the liabilities...?

Steven:



Part-Time receptionist, if they have to close the practice, what liabilities do they have if they have to lay them off work for an indefinite period, Because if we are told to close on practices then we have nothing for our receptionists to do.

**Donna:**

Absolutely. So if you are making somebody redundant, are you getting rid of them completely then? It was, as I said earlier, it is redundancy pay. It is notice pay, etc. If you are laying them off and you have a layoff clause in your contract of employment, then you can lay them off and there is something called guaranteed payments.

Guaranteed payments at the moment are £29 per day. From the 6th of April they go up to £30 a day. So they are really not a lot of money. And in effect, your staff are entitled to one week as long as they earn above £118 a week. So that's the lower earnings threshold limit and you can check with your payroll

**Steven:**

Is that a pro rata thing because they're part time staff then,

**Donna:**

Right. So as long as they're earning over the lower earnings threshold limit, which is £118, double check that with your payroll provider then they are entitled to their guaranteed payments. Now if somebody only works two days in a week, then they are only entitled to two days of guarantee payments in a rolling 13 week period.

**Steven:**

So, in the whole 13 weeks they get two days guaranteed payment?

**Donna:**

Right. If they, if they work normally two days a week, if they normally work full time and they work five days a week, then they're entitled to five days of guaranteed payments. But this is where we were talking about layoffs before. Potentially anybody who is being officially laid off could come and claim that they want to be made redundant because you haven't given them work for, for the last four weeks. You're not going to give them work for the next four weeks. Therefore they want their redundancy pay notice, etc. Whereas if you use unpaid leave, then they don't get the guarantee payments. They don't get the £29, £30 up to £150, but they then don't have the right to come and ask you to make them redundant. So there is an argument for saying unpaid leave is better than layoffs if you're using the official terminology.



**Steven:**

Yes, I have to say that I've learned that layoffs doesn't mean what I thought it meant since we spoke. I thought layoff meant redundancy, but it doesn't, it just means you don't get any work for a period of time and you can't just that on people unless it's in their contract.

**Donna:**

Correct. and that's the bit that we thought was going to change, but it hasn't.

**Steven:**

Joanne has asked a very interesting question. If people agree to a pay cuts while they are being effectively laid off or being asked to work from home or whatever, what happens if that pay cut takes them below the national minimum wage?

**Donna:**

That's a really interesting question. I would suspect because there is nothing saying to the contrary that you can't drop salary below the national minimum wage even with somebody's consent to do so. So you would have to reduce the hours that they are working rather than reducing their pay rates.

**Steven:**

But you could do that by consent instead of cutting the hourly rate,

**Donna:**

The rate of pay yet. So if you need 20 hours, for example, you might have to employ two people to do 10 hours each. Yeah, yeah. Rather than cutting pay rates.

**Steven:**

Well, one thing I'd like to say on this is that we have employed staff in my own clinic and Claire, my wife, fellow osteopath, clinic director and so on, has been doing a lot of work to try and manage the clinic in such an uncertain time. And she's making contingency plans for the potential closure of the clinic at the end of this week because that is possible. And she's kind of taken the other view. She said, okay, we've, we've got these staff. And normally they spend all their time opening doors, doing appointments, taking money, all that sort of stuff. Well from now on, they'll just be doing different administrative tasks. So they'll actually be, they will be working, they'll be working from home and if necessary we'll give them a computer to take home with them to do that. But they will still be doing clinic work.

Now, I know we still have to pay them, but at least at least we've got something for them to do. And if we turn it around and say, well they won't be doing the same job they'll just be doing something slightly different.

**Donna:**

Yeah. So one of the things that I've talked about is what else can they do in that time? So if you have no option but to close your doors and you're still wanting to pay your staff, or at least give them something to keep their brains active, what training can you give them to do, you know, do they need to brush up on their CPD, for example? Do they need to brush up on their Excel and Word skills because there are such lots and lots of online courses.

There's a lovely company called Mi Crow ([mi-crow.com](http://mi-crow.com)). And they have lots and lots and lots of material for IT skills. Link 10 have got loads of training material online. Udemy is another one, so it may be an opportunity to people to get some training done. Asking people to do marketing, asking people to write blogs that you can put out once you come back. There's all sorts of things that you can ask people to do from home, but it is limited and you may not be filling 35 hours a week for the next three months, that's for sure.

**Steven:**

And yeah, and hopefully the government grants will come through in the not too distant future. So we can expect to see some some money in to help us cope with the bills for those people. Even though,

**Donna:**

Yeah, and I would just say speak to your accountants, find out how that money is available. We don't, I don't personally know how we're supposed to access it at the moment. As far as I understand there are two different types of grant. So there is the loan, which people, everyone I've spoken to is very, very resistant to take any of the loans because they don't know the certainty of their business. But then there's also supposed to be a cash grant as well. So it's a case of looking at what's available.

**Steven:**

I'd refer people back to the discussion we had a few days ago with Michael Weeden and as you said, he's made clear that the, there are those two options. The government's increased the £3000 grant to businesses to £10,000, but they haven't yet made clear how it's going to happen.

They have said, and this is on their website, on the government website today, and it's being constantly updated as you can imagine, that it will happen automatically. You don't need to apply for it. But that applies to businesses which are paying reduced rates or new rates, business rates. So as long as you're in that category, then that money should be available. And there's a bigger, bigger grant for hospitality industries and people like that.

There's an observation sent in by somebody here and he hasn't, he or she hasn't given their name. It says that they were thinking about doing a zoom call with their employed staff everyday to keep the feeling of togetherness as receptionists usually have a lot of contact with other people. So working from home could be difficult and it might be a good way of keeping motivation. And actually I recommend that. I think, I can't say for sure but I think there is a free option with zoom isn't there?

**Donna:**

There's a, there's a free option which will give you up to 40 minutes per zoom call where you don't need to have a paid option. I am doing daily zoom calls with all of my staff, a to make sure that they're okay and b, because we need to be giving out consistent information. And that information is, as you guys are hearing, it is changing daily. So we're using it to keep our skills up to date, to keep communication going and we're using it with a lot of other platforms as well.

I belong to networking groups. Our meetings have all gone online. There's WebEx, there's zoom, there's Skype calls, there's all sorts of media out there for the audio visual.

Having something like Slack or WhatsApp groups is also really, really important. It's important just for that point of contact and we use it when one person goes for lunch. They, everybody else that they're going for lunch, others know then that they need to cover the phones just like you would if you were sitting next to somebody. And even one of my team tells us every time she takes a comfort break again because just so that we know that she's not answering the phone and if the phone rings, we need to answer it.

**Steven:**

I get my team to ask permission if they need a comfort break!

**Donna:**

That's not nice. Do you want an hour's notice before they go?

**Steven:**

Yes, they book it through Google calendar.

**Donna:**

And get it signed off and authorized in advance. So yeah, we're, we're using Slack (slack.com). We have always used Slack. And that really has come into its own. We have different groups. I can talk to them on a one to one basis or we talk as a group. We've even got a COVID channel on there where we're putting in Q and A's and information that we're gathering as we go. Just so that it's,

**Steven:**

Well actually, you know, putting that in perspective of the clinics that are listening in to this, that's a really useful thought because actually what we want is for all our receptionists, if they're answering phones and they might have phones diverted to their own homes or whatever, if they're answering phones, we want them to get to get out a consistent message about what's happening, not just with regard to their virus generally, but to the clinic specifically. So yeah, as you say I get a bit of a nervous Twitch where people talk about WhatsApp and Facebook, but you know those groups are great for communicating.

**Donna:**

Yeah. And communication is going to be essential at this time. And don't just think about your marketing and external communication. Think about your internal communication. What's your staff need to hear? What do they need to understand? Because they've got huge uncertainty as well.

**Steven:**

I don't know if you are expert in this particular aspect of HR because as I said to you earlier on, we tend to regard our practitioners as associates rather than employee. So it's a slightly different relationship, but somebody has asked, could we get them to do some admin work and pay them to do that even though their associates,

**Donna:**

If you offer the work and they accept the work, then that's absolutely fine. I would just confirm everything that you do in writing, agree the rate of pay that you're going to pay for it. And make sure that if you're going to need possibly in the future to put somebody on notice or to take that work away, that you have the ability to do that. But again, don't do anything that makes it look like an employment contract. So if you're going to ask someone to do admin work, you give it to them, but you don't tell them that you want them at the desk, Monday to Friday, nine to five. They use their own computer. They work from their own home and they give it back to you when it's done as opposed to, yeah. Yeah.

**Steven:**

I've been told courtesy or one of my staff who's monitoring the the feed of the moment that we're actually looking at getting an accountant to come in and take part in one of these discussions next week. And of course some of these questions are a bit more accountancy related.

But that could be very useful for everybody. I suspect that the accountants will have an inside knowledge on the latest regard to grants and so on. So look forward to that one.

We've also had some questions about the ethics of keeping a clinic open because there are people who have on principle closed their clinics and they feel that other people should have done the same. I think there are people in other countries who are surprised that we in this country haven't. The guidance from our general councils yesterday was that it's okay to keep our clinics open. Provided we follow reasonable procedures. I'm not going to go into those now. I only mentioned it just to say this today is not the forum for us to debate that but we are aware of the concern that people have.

**Donna:**

Things to be aware of there is just if your staff are going down or not coming into work because they are self isolating. Just remember that they are entitled to statutory sick pay from day one. So you may still have the business open, you may still be seeing clients but the government guidelines changed earlier in this week cause earlier in the week so that if one person in the household is unwell or has any symptoms, then everybody in that house how hold has to self isolate. If they can't come to work and they have been told to self isolate, then that is an argument for saying they're entitled to statutory sick pay up to £94 a week. It goes up 1st of April, but again, speak to your payroll person about that.

**Steven:**

Is there another government element of statutory sick pay as well?

**Donna:**

So statutory, sick pay used to be reimbursed by the government, they stopped that a number of years ago. It used to be done by an offset on your national insurance. They've said that they will pay for up to two weeks. They've said 14 days, but actually it's not 14 days. It's two weeks of a person's normal working week. And they've said that they will pay for each employee to have up to two weeks of statutory sick leave.

So if the person is off sick because they are sick, they are entitled to statutory sick leave. There is still some clarity needed about what happens if they are told to isolate because a family member is sick, especially because they're not testing. So we don't actually know whether they're sick or whether they're able to work from home. I would say in all instances, if someone is self isolating but they're able to work from home then pay them full pay; if they're not able to work from home then you're looking at statutory sick pay

**Steven**

And Sue Brown's asked how you calculate statutory sick pay.

**Donna:**

Definitely speak to your payroll provider about that. But basically it's a figure of about £94 and that is divided by the number of days that they normally work in a week. So if somebody only works three days, then they're only entitled to three fifths of that.

**Steven:**

And that's per week?

**Donna:**

That's per week. And then they can, the, the government has said they'll pay for two weeks. So if somebody is off the two weeks and the employer will be able to claim it all back if they were sick for more than the company is going to have to pay that.

**Steven:**

Okay. Kate has asked about monthly rentals, which I suspect may be one for the accountant. She says she pays for room use at 2 establishments, but has no income coming in. What's the best course of action? Offer a retainer or will grants cover that?

**Donna:**

It's, we don't know what the grants are going to cover. But I would just say talk, just have the conversation with your landlord. I guess that's technically what they are. Have the conversation. If they've got no money coming in, either they're going to understand the situation you're in, it's going to depend on what's written in your agreement with them in the first place. Do you have to pay it regardless of whether or not you use the room? Do you only pay it if you have patients and all those sorts of questions are in your particular arrangement. So you check what's in your contract.

**Steven:**

I suspect from that that Kate is probably self employed and therefore the, the arrangements, the grants are going to be somewhat different because the grants at the moment, affect people paying business rates. We don't know what's happening about the self employed and there's a very strong petition online to get the government to do something for the self employed.

Kate, we will keep you up to date as best we can with the answers to that. Somebody unknown has sent in a question asking has IR-35 been delayed?

**Donna:**

Yes. it has been delayed. But it only actually affects, so the new regulations that were coming in only affects organizations with more than 250 employees. I don't know how big clients are. But that legislation for large companies with more than 250 employees has been delayed. It doesn't mean, it's a strange piece of legislation... You still have to check whether somebody's working in your practice should be an employee or can be self-employed. It doesn't take that away. Everyone's thinking that this IR35 is, is the, you know, the solution to all of these tax issues that we've been having. And it really isn't because it's only aimed at people with more than 250. You still have to look at the way in which the working relationship sits and there is a checker on the HMRC website that you can go through and answer a whole load of questions and it will say you should be an employee or you can be freelance. So it is worth doing that regardless of what happens with the IR35 legislation.

**Steven:**

Okay, thank you. One of my team and the cheeky bugger has stayed anonymous has sent in a comment saying that the whole team has gone on a comfort break in the local pub. Thanks to what I said earlier on...

**Donna:**

Might find that the pub could be closed

**Steven:**

Not here. No, they were closed on Monday and then they reopened again. I know that because I take my guests to the pub when they come to visit here and I think we did the same with you after we finished. We had a meal in there and we were able to do it on Tuesday.

Craig Woods says what's, if there's no contract in place with PAYE staff who've been working for more than 10 years? I know what you're going to say about the idea of not having a contract...

**Donna:**

Yeah. So first of all, there is new legislation coming in on the 1st of April. That means: everybody has to have a written contract by the first day of employment. So up until now, you've had the first two months in which to give them their written statement of terms and conditions. That changes on the 1st of April so that you have to give an employment contract slash statement of terms and conditions by day one of employment. So that's the first thing to note.

The second thing to note is that if you have nothing in writing, you are illegal. And it only becomes a problem if the employees make it a problem. So it's only a problem if you get caught.



The third thing to think about is that you do actually have custom and practice in place. So you may not have a one hour written lunch break in your contracts because you don't have contracts. But if somebody has always had a one hour lunch break, then you can't suddenly change it to half an hour just like that.

Because custom and practice exists, I would say this is a really good opportunity with the new law coming in on the 1st of April to get your contracts of employment done and up to date. And I would also say that what you need to do in that contract is document everything that you do now as a reality. So if you give a one hour lunch break that needs to be documented, if you have a working hours of Monday to Friday nine to five, then that's what needs to be documented. So don't try and put a new contract in place that changes your customer practice. Just try and document what they're doing and what their reality is.

**Steven:**

Helen was also asked to go back and look at the probation period thing again. She says what if this staff were on their three month probation period? And they've also, they've been asked to take unpaid leave. And also what happens if the employer extends that probation period for another three months?

**Donna:**

Okay. So we always say put somebody on probation period for six months because they can in effect take three months to learn the job and then three months to prove that they can do it. So anyone can fake it for three months. So, so six months should be your standard probation anyway. Anybody who is in their probation period now you're going to need to take a decision. Your decision is either that you confirm them in role or that you extend their probation period and that's absolutely fine to do.

**Steven:**

And you can extend that probation period because you're not sure of your own businesses future, not because you're not sure their quality?

**Donna:**

Can extend to probation period for any reason that you want. As long as you confirm it in a meeting like you, you discuss it in a meeting, that meeting can be done, but actually given everything that's going on and that you then confirm it in writing. And the notice period is quite often one week during probation period. And that's why I would say given everything that's going on extend the probation and confirmed that they will still have one week's notice during this time. If you decide that you're not going to confirm somebody's employment because of the uncertain times, then you have two choices. You can either fail their probation, in which case you need to have

the conversation with them. I was going to say the meeting, but obviously it's a conversation. Tell them that you're not going... that you're going to fail their probation and confirm that in writing. Or you could make them redundant because then you would just pay them their notice, which is the same either way. But there's no redundancy pay to, to be made. So it depends. Sometimes people would rather be able to say that they were made redundant rather than that they were terminated due to failing their probation. Again, it's doing the right thing, but they manage for your business.

**Steven:**

And of course there's no redundancy pay. If people are made redundant during a probationary period,

**Donna:**

There's no redundancy pay if they're made redundant within their first two years of employment, it's only once they've got two years that they would be entitled to it. But everybody, if you're making them redundant, is entitled to notice or pay in lieu of notice.

**Steven:**

Donna, I've had loads of people sending messages saying how helpful this all is. I'm conscious we're getting close to two o'clock. Can we, can we keep you on a bit longer?

**Donna:**

Yeah, I'm fine.

**Steven:**

I'll try not to run on too long, but I've got a question. An observation here from Zara who says they're using Google Hangouts to run Pilates classes and that's free. They don't have payroll providers. What about a self employed staff and practitioners? Well, I guess everybody's concern is what happens to the self employed and someone else has said if all their staff are on a subcontracted or self employed basis, what do they do? They're down to a quarter of what they usually see and wondering what the next step should realistically be. Well of course, if they're self employed, I guess you can stop employing them at any point. Can you not?

**Donna:**

It depends. What you've got in a written contract between you and them. So quite often even self employed people will have given you terms of business and you,

you either give them an associate agreement or they give you terms of business or there is something, even if it's just an email in writing that says we're going to provide you with this service at this time and this is the cost.

**Steven:**

You don't know osteopaths and chiropractors very well, do you! I can't speak for chiropractors, but so often these things are just done on a basis of, "Oh, come and work in my clinic and you can work this day..."

**Donna:**

Do you know, we actually find that not just in your sector, but in every sector and we will always try and find the best solution to make it as legal as possible. That's the one thing I would say. You know, a lot of people don't have stuff documented. That's what I was saying before. When your guys said you know, he's had someone working for 10 years with no contract, it's only a problem when there's a problem. Unfortunately with situation like this, people are likely to make it a bit more this year because they're panicking about their health and their wealth and their welfare. So, you know, some people may just go, look, we understand your situation. It's not an issue. Other people will say, well actually I've always run these courses for you. I'm no different to a part time worker. I just happen to only do three hours a week. Therefore I should be an employee. I'm going to claim my employment rights. Everybody's different and you've just got to protect your business as much as you possibly can. And even if you haven't done stuff legally in the past, any steps that you take now try and do as if you had got all that legal framework in place in the past.

**Steven:**

I think a lot of, particularly small businesses like ours are going to find this quite a shock because many of us in my own clinic, actually we've made a big move over the last few years to make sure everybody's got their appropriate contracts, including the associates. But up until then we had treated it fairly lightheartedly and I suspect a lot of clinics are like that because we're a very friendly organization. We don't expect it ever to be a problem. And on the, on the counter side to that I suspect that if we are having to put people on reduced time, we'll say, well, there aren't any patients for you to treat. There's no money coming in. They will understand that because they know we can't just magic up the money from, from nowhere, but yet they'll still want to have that relationship after the crisis.

**Donna:**

Yeah, absolutely. And I mean, just as a slight aside, my mum who should be self isolating, she's over 70, she said to me the other day, Oh yes. But I have to go and see my therapist, to see someone for her back, an osteopath. She said, "But I have to

go". And I was like, you're supposed to be self isolating. And she said, "Oh well I washed my hands and I'm just like, I can't go for 12 weeks and not be treated."

And for a lot of your clients, you may have the same sorts of things where people absolutely are in crisis if they're not treated. I'm quite fortunate. I saw my chiropractor on Saturday, I'm four weeks before my next appointment. Hopefully I'll still be able to get treated, but I know that I lock up. A lot of your clients will also be locking up and need some kind of relief.

So it may be an opportunity depending on how they lock down you to think differently about how you manage your business. Are you able to do home visits? Are you able to have people come to the clinic for emergency treatments? Is there something that you can still do because those people are still in need. The other thought that I had, and actually Steve, Steven, you'll be able to guide a bit on this. So we've got a number of friends who are doctors or nurses or trained medics in some way, and they're hearing that they may well be asked to get involved and help with medical care. If there is a major crisis. And that may be a way that some of your practitioners are able to continue to earn something because they would in effect be called up even if it's just as healthcare assistants because they've got that medical training. And I don't know if that's something that's been discussed at all.

**Steven:**

We discussed it yesterday. In fact, the Institute of Osteopathy I'm speaking from the osteopathic profession's perspective is looking into how we might be able to help other allied health care organizations. I imagine that the chiropractic equivalent, probably the Royal College of Chiropractors is doing the same thing. And it's partly because we want to help out at a time of crisis. And also it's partly because we need to find a way of actually still earning a living.

Another question, an anonymous question has come in "Is the £3000 a year grant for businesses who don't pay rates?" For example, this person says they're in a clinic just too small for rates. Would they be able to access the grant? A slightly confused wording. I know my take on that is first of all, it's a £10,000 grant.

**Donna:**

It's been increased to 10,000. Yeah.

**Steven:**

But it is a grant, it's not, not for any particular purpose. It's straight to the business. It happens automatically, but it will happen to you if you're on business rates relief. And if you're an organization which is too small for business rates, that should mean that you count as business rates relief. I think. Does it not Donna?

**Donna:**

I think so, but that is an accountant question, not an HR question. I'm really sorry. As a business owner it's something that I'm looking at as well. So yeah, I get small business rates relief. So I'm trying to find out what I'm entitled to.

**Steven:**

Yeah. what's the situation if an inability to control fixed costs with no income causes a company to fold?

**Donna:**

Well, that's where the government is saying really, you know, there are loans, grants and facilities available to you that you should be accessing as a first port of call. And if you have to fold and your staff, I'm just going to talk about it from a staff perspective, and you need to make the staff a redundant there is a form that you can give them which enables them to go and get their redundancy pay and any outstanding salary and holiday from the government.

So that's in place normally anyway that that covers off your people side of things. That's what liquidators would normally get involved. There is that money in that funding. There is a form that gets filled in, given to you by the liquid data. And staff would be able to claim less statutory and contractual benefits to do that.

**Steven:**

Okay. I'm just trying to see what else we've got coming in here.

Claire said that our websites and our library of social media posts is going to be phenomenal by the end of this crisis because of the the things our staff will be doing. Apparently Claire is also going to be running a comedy lunch next week, which I'm quite sure how that's going to work and whether I'm involved in it or not.

Donna, that's been really, really helpful of you. Thank you very much for that. And and I know it will only have really applied to a small proportion of the osteopathic and chiropractic professions. But I think it's the sort of thing that we need on a regular basis. This reassurance that first of all, the government will do everything it can to stop us having to lay off staff. Because of course we've got loyalty to our staffs and we mentioned someone who's been with them for 10 years without a contract. You know, you don't lay people off like labour. You don't make people like that redundant to use the correct terminology easily do you?

One thing I might ask, you mentioned before we went on air about running something to do with how you handle those difficult conversations. If you do have to sack, make redundant staff. any guidance?

**Donna:**

So I would always say treat others as you would wish to be treated yourself. People know that these are difficult conversations that were happening. But if you are

laying people off and telling them they're not going to have any income for the next four weeks, eight weeks, 12 weeks, or if you're making them redundant and telling them that's it, you're not going to have a job anymore. So even when this crisis is over, you are going to be unemployed. That's highly, highly emotional. So have the courtesy to have a face to face conversation with them. Even if you have to use video acknowledge the fact that you know, it's a difficult conversation.

Explain all the things that you've already taken into consideration to avoid the situation that you are in. So were there other things that could be cut back or other costs savings that could be made that you've already done ahead of taking the decisions to lay people off or make people redundant?

And be honest and clear and consistent in your message. Don't expose your business to any more risk than is necessary. So if you're deciding to lay off three members of staff and not all six, why you chose choosing those three, what are the selection criteria? And make sure that it's legal in making those decisions. Make sure you have the correct letters, the correct process, and that you do have a meaningful consultation.

**Steven:**

Well, thank you so much for your time. We've had some lovely feedback about how useful this has been and it's great of you to come in, in a relatively short notice to, to help us out with those HR concerns.