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COVID 19 – HR Issues

With Donna Obstfeld

About Donna Obstfeld

- Joint honours degree in Business and Psychology from the University of Hertfordshire. Chartered Fellow of the Chartered Institute of Personnel and Development (FCIPD) and an accredited mediator.
- Voted among the top 100 business mums in the ‘Expert in their field’ category in 2012. Voted onto the top 100 Sage Global Business Influencers List in 2017.
- Over 25 years’ experience in Human Resources (HR) and management.
- Writes on Human Resources issues for several publications.

HR Issues

- The government encourages employers to retain employees.
- Employers may obtain a loan for salaries of retained employees/staff.
- Business owners do not want to be burdened with loans long-term. Several businesses opted instead to completely shut down.

Contracts

- Some contracts have layoff and short-time working clauses. If otherwise indicated, employers need to secure employee agreement for either short-term work, unpaid leave, or any contractual change.

- No legislation gives employers the statutory right to enforce short-time working or layoffs when not indicated in the existing contracts of their employees.
- From 6th April 2020 employers are obliged to provide a written statement of particulars to workers/employees on the date on which their employment starts.
- Specify in the contract any custom and practice (E.g. one-hour lunch break) – whether the working hours or days may be variable and how they may vary. Also include the days of the week the staff is required to work.

Statutory redundancy pay for employees who have been working for their current employer for 2 years or more is –

- Half a week's pay for each full year they were under 22
- One week's pay for each full year they were 22 or older, but under 41
- one and half week's pay for each full year they were 41 or older

Employees that are made redundant on or after 6 April 2020, their weekly pay is capped at £538.

Probationary period

- This can vary from 3 to 6 months (standard probationary period) before the appointment is confirmed to allow both the employee and employer to determine the suitability of the position.
- If the probationary period is extended, the specific reasons for the extension should be given in a meeting with the employee which should then be confirmed in writing.
- If the employment is not going to be confirmed, the employee should be invited in writing to meet with the employer where the latter outlines the reasons for failing their probation. This should also be confirmed in writing.
- Redundancy pay is not applicable if people are made redundant during a probationary period and within the first two years of employment.

Lay-offs and short-term working

- By definition, short-term working means anything less than 50% of their normal contracted hours and lay-off is where they are not provided with any work for a certain amount of time.
- Employees can apply for redundancy and claim redundancy pay if they were officially laid-off for 4 weeks in a row.
- There is a form for employees who are made redundant to fill out which enables them to claim their redundancy pay and any outstanding salary and holiday from the government.
- It is better when employees opt for a leave of absence than when employers lay them off or make them redundant as this means they get statutory redundancy pay (if eligible).

- When employers enforce unpaid leave, employees cannot claim guarantee payments nor can they apply for redundancy.
- Reasons why employers do not make people redundant:
 - a) Cost – they have to pay compensation for the loss of work; and
 - b) Lose skilled workers - it is impractical to recruit new people upon business resumption and pay for new recruitment costs.

50% cut in pay

- Employees do not normally take a 50% pay cut for a month or two. However, they can give consent to this to keep their jobs and help their employers continue the business.
- Employers instead tend to reduce their employees' number of working hours (with their consent) than reduce their pay rates below the national minimum wage.
- The agreement for contractual changes must cover the following –
 - a) Details of the work arrangement (i.e. either short-term work, 50% cut in working time, layoff, or paid leave);
 - b) Confirmation that a consultation with the employee has been conducted;
 - c) The period when it will be reviewed (i.e. current advice is to agree on something for the next month and review it in three weeks);
 - d) Signature of employer and employee to show that a proper consultation has taken place.

Statutory sick pay (SSP)

- Employees can get £95.85 per week SSP for up to 28 weeks. If they are self-isolating because they are ill with COVID-19 they are entitled SSP, if they are self-isolating because someone in their house is ill

Grants, etc.

- Universal Credit is a payment to help people on a low income or out of work with living costs. This is difficult to access – the government intends to reduce the waiting period.

- It remains unclear whether there will be facilities for people to take advantage of a mortgage holiday or potentially not to have to pay their rent.
- Small-business grant runs weeks behind to get cash to the target businesses. The procedure to access it remains unclear.
- The government has provided facilities (grants, loans, etc.) as the first port of call for small businesses to avoid having to close down abruptly.

Rentals

- It remains unclear whether grants (for people paying business rates) cover rentals. It is recommended that business owners talk to their landlords about adjustments to agreements/contracts.
- Self-employed individuals are not eligible to access grants.

Case scenario

<p>Description:</p> <p>A practice company with three part-time receptionists covering 5.5 days a week in total, paid monthly – calculated by hours worked.</p>	<p>Question: As the practice needs to be closed, will the employer be liable if the receptionists is laid-off indefinitely?</p> <p>Answer: They can be laid off if it is stipulated in their contract and they are entitled to a guaranteed payments at £29 a day (goes up to £30 a day from April 6th) for 5 days in any 3-month period. They are entitled to one week as long as they earn above £118 a week.</p> <ul style="list-style-type: none"> • Part-time workers' entitlement is worked out proportionally (e.g. If they work two days in a week then they are entitled to two days of guarantee pay in a rolling 13-week period). • If they are made redundant then they are entitled to statutory redundancy pay.
<p>Description:</p> <p>Clinic staff able to work from home but doing different administrative tasks from those in the clinic.</p>	<p>Question: What else can staff do at that time?</p> <p>Answer: They can take up online training -</p> <ul style="list-style-type: none"> • IT skills • Marketing • Writing blogs, etc. <p>Note: Employers should know how to effectively communicate with their workforce when they are diversely spread. Internal communication is essential (i.e. what the staff needs to hear? What they need to understand amid the uncertainty?)</p>

	Zoom call is an efficient way to keep the communication going with the staff. Other communication platforms include WebEx, Skype, Slack, WhatsApp, FB, Google Hangouts, etc.
Description: A practice company treats the practitioners as associates rather than employees.	Question: Could the company get them to do admin work and pay them as such even though they are associates? Answer: It should be done in writing and they give consent to the work arrangement and pay rate. Do not do anything that makes it look like an employment contract.

Other relevant notes

- The implementation of the IR35 tax reforms is postponed in wake of COVID-19 crisis. The new regulations only affect organisations with more than 250 employees.
- Employers are encouraged to categorise their staff as employees or self-employed regardless of what happens with the IR35 legislation.
- Whether or not employers can stop employing at any point individuals categorised as self-employed depends on what is indicated in their contract. Often, osteopaths work in a clinic as associates through verbal agreement – no contract as a basis to claim their employment rights.
- Think differently how to manage the practice during the lockdown period as patients still need treatments (e.g. Possibility of doing home visits; patients visit the clinic for emergency treatment).
- When laying off or terminating contracts with employees is necessary, make sure that it is done legally (i.e. correct communication, correct process) and have a meaningful conversation with the individuals.