

# Furlough may be ending just when it was starting

A guide for employers to prepare their next steps in response to Covid-19

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## What is the Coronavirus Job Retention Scheme and what issues arise when ‘furloughing’ staff?

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- Emergency UK Government intervention aimed at safeguarding jobs
- Designate employees or PAYE workers as “*furloughed*” – a temporary period when they do no work for their employer
- Government subsidy for wage costs: -
  - up to 80% of salary but capped at a maximum of £2,500 gross per month;
  - plus mandatory employer National Insurance Contributions and minimum automatic enrolment pension contributions
- Scheme runs from 1 March – 31 May
- Open to all UK employers for employees already on their PAYE payroll scheme as of 19 March
- Process / key requirements: -
  - Consent/agreement from employees
  - No work activity for employer
- Holiday leave and re-instatement – examples that there is still lots of uncertainty!



# How can employers deal with the longer-term economic impact of Coronavirus?

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- Will the furlough scheme be extended past 31 May?
- Other interim finance options (increasing credit facilities, loans etc)
- Methods of reducing payroll costs without reducing headcount:
  - Suspend/cancel salary increases, hold/cut back discretionary bonuses, review contingent staff, non-renewal of fixed term contracts
  - Extend furlough/lay off period (on same or revised terms) but without the financial assistance of the Government subsidy
  - End furlough and bring employees back on reduced hours (and pay)
  - End furlough and bring employees back on reduced pay but same hours
  - Offer unpaid (or part paid) leave or sabbaticals
- Effective management of holiday accrual balances – although not a direct / immediate payroll cost saving but may still help



# How can employers deal with the longer-term economic impact of Coronavirus?

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- Reducing headcount – this will be almost inevitable for many employers if there is a longer term economic downturn
- Redundancy consultation
  - Starting consultation *during* the furlough period
  - Starting consultation *after* the furlough period
- Collective consultation obligations are triggered if 20+ redundancies are proposed at one establishment in a 90 day period
  - 20-99 redundancies – minimum 30 day consultation period
  - 100+ redundancies – minimum 45 day consultation period
  - Protective award risk and criminal penalties for failing to notify the Government
- Multi-jurisdictional approach & impact on timetable?
- ‘Normal’ selection issues and unfair dismissal risks will still apply



# How do employers inform and consult with employees' representatives in a virtual workplace?

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## Triggers

- Collective redundancies (20 or more dismissals at an establishment), TUPE (transfer of a business, including in the context of a “pre-pack” administration) and European Works Councils (transnational proposals affecting employees' interests)
- Penalty of 90 days' pay for collective redundancies / 13 weeks' uncapped pay for TUPE
- Special defence of what was “reasonably practicable in the circumstances”

## Are we all seafarers?

- Directive 2015/1794/EC – virtual EWC I&C for seafarers and collective redundancies
- *Oracle [EWC/17/2017] – “taking into account the context and characteristics of the parties in this case and their established pattern of interaction, among other factors, we consider the use of modern technology to hold a virtual meeting was acceptable”*

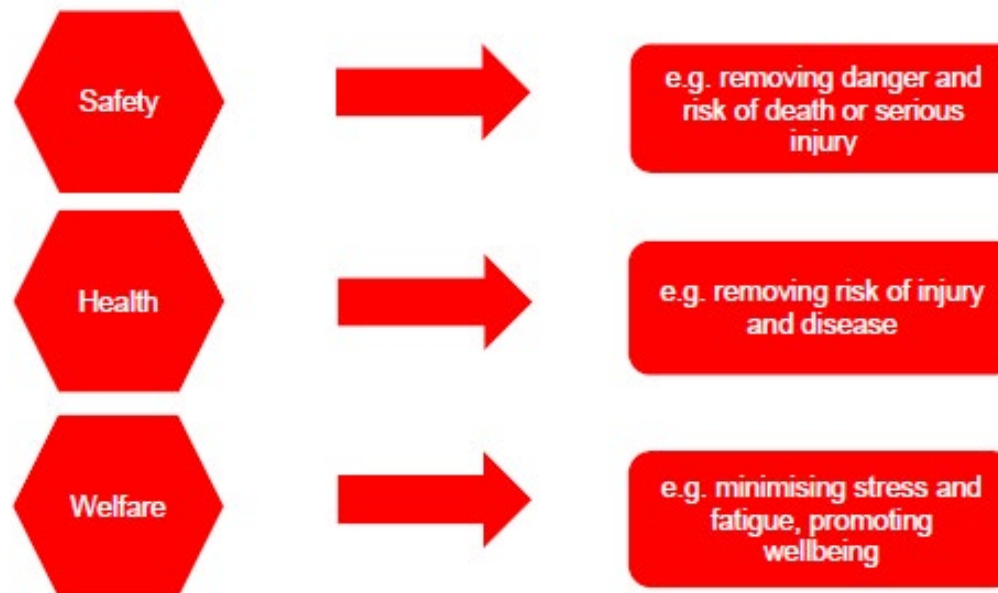
## What if your employees' representatives are furloughed?

- Unions' positions – volunteering so as not treated better than members
- HMRC's position – employees' representative analogous to statutory directors?

# Health & Safety in the Global Market

What is the purpose of health and safety legislation?

- To ensure the health, safety and welfare of people at work
- To protect others from risks in connection with the activities of persons at work



The aim is not to eliminate **all risks** but to ensure risks are managed and controlled effectively to prevent harm!



# Travel restrictions and quarantine

## Contractual consequences

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### Assessing homeworking risks

Employers have a general duty to conduct a risk assessment of all the work activities carried out by their employees and to take measures to reduce any associated risk. Health and Safety (Display Screen Equipment) Regulations 1992 include the obligation to:

- identify risks for individuals who regularly use display screen equipment (DSE), including laptops used for prolonged periods, as a significant part of their usual work
- reduce the risks identified to the lowest extent reasonably practicable
- provide adequate training and information to employees
- Employers are not excused from health and safety requirements just because employees are working temporarily from home

Guidance from the Health and Safety Executive (HSE) on **regulating occupational health during the coronavirus outbreak** is available.



# Absenteeism and Disciplinary Action

## Dealing with Sickness Absence

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### **Mental health issues**

- Taking steps to protect wellbeing and mental health.
- Employers owe a duty to protect their employees' mental health, as well as physical health. Homeworking can present risks, including feelings of isolation and inability to disconnect.
- Steps to protect employees' wellbeing could include, for instance, advising them to create a routine, going for morning walk, taking defined lunch breaks and mid-morning/afternoon coffee breaks – and so on.
- In addition, employees could be encouraged to have regular video calls with colleagues, rather than relying entirely on email, and to remain physically active.





## Communication with employees

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- It is important that an employer explains the reasons for its decisions and it is necessary to ensure that the message is simple and easy accessible.
- Educate staff without causing panic. For example, send emails or display posters outlining the current situation and any government advice.
- It is important that businesses get ahead with their information disclosure, otherwise social media will simply fill in the blanks.

**For further information, visit:**

**<https://www.lewissilkin.com/en/insights/enforced-homeworking-during-the-coronavirus-crisis-employers-health-and-safety-obligations>**



# How are your immigration duties affected?

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## **Compliance for sponsored workers**

- Do you have any reporting duties for working from home employees?
- What about reduced salary payments and paid/unpaid leave?
- Monitoring duties whilst less visible

## **Compliance for all employees**

- Right to work checks for all new employees and follow up checks
- Right to work checks for existing employees with temporary right to work

## **Employees with visa applications in process and expiring**

- Employees stuck abroad with visa application in limbo and 30 day vignettes expiring
- Employees inside the UK with visas expiring and applications in process
- Settled status applications, sponsor licence applications, CoS allocations



## Is Brexit ending just when it was starting?

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### “Taxation without Representation”

- The UK ceased to be a member state of the EU on 31 January 2020
- It is in “transition” until 31 December 2020 so the full economic impact remains unclear
- The Supreme Court has confirmed that EU law remains supreme - despite no UK representation on the CJEU, the European Commission or in the European Parliament

### Where are we going?

- The UK and EU may extend transition by one year or two years by 1 July 2020
  - Immigration, data transfers and European Works Councils
- Trade talks with the United States have been postponed indefinitely
- Increased importance of European integration and the end of globalisation?
- UK Prime Minister’s spokesman said the UK didn’t want to take part in a European scheme to purchase ventilators as “*we are no longer members of the EU*”

# Thank you!



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