

From Furlough to Un-Furloughand beyond! 11 June 2020

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The logo for Machins Solicitors LLP is located in the bottom right corner. It consists of a light green square border. Inside the square, the word "MACHINS" is written in a bold, white, sans-serif font, and the words "SOLICITORS LLP" are written in a smaller, white, sans-serif font directly below it.

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Intro

- Furlough “Waiting room for unemployment?”.
- According to recent survey of 512 HR Professionals by People Management : ***“42% of employers expect to make more employees redundant when the furlough scheme ends in October. 59% of employers would have made up to a quarter of staff, who are currently furloughed, redundant if the scheme had not been introduced.”***
- Focus for employers now to plan for and safeguard future business viability.

Furlough

- Access to CJRS closed on **10 June**
- New scheme is only available to employees who have previously been furloughed
- The number of employees claimed for cannot exceed the number claimed for on any previous occasion
- Flexi-furlough available from **1 July**
- Employers can still choose to top-up employee wages
- No work permitted during furlough save for training and volunteering
- CJRS will taper out and close by 31 October.

Furlough – Tapered contributions

	July	August	September	October
Government Contribution: employers NICs and pension contributions	Yes	No	No	No
Government contribution: wages	80% up to £2,500	80% up to £2,500	70% up to £2,187.50	60% up to £1,785
Employer contribution: employer NICs and pension contributions	No	Yes	Yes	Yes
Employer contributions: wages	0%	0%	10% up to £312.50	20% up to £625
Employee receives	80% up to £2,500	80% up to £2,500	80% up to £2,500	80% up to £2,500

Un-furlough

- Planning? –Short and long-term.
- Communication? – Individual and collective
- Timing?– CJRS 3 week minimum
- What will this look like? - Same job/ hours?
- Workplace? – home, phased/return to workplace
- Health and safety? Risk Govt. and HSE industry specific guidance - risk assessment

Un-furlough

- Who to un-furlough? Fair and objective selection criteria
- How do you un-furlough? Process? Notice-reasonable notice?
- What if employees refuse to return to work?

“Vulnerable” employees

- What about “vulnerable” employees?
- Carers
- Shielding employees
- Protected categories of employee:
 - Disabled (mental or physical)
 - Pregnant
- Bereaved
- **NB** don’t forget the non-furloughed

Flexi-furlough

- Available from **1 July** for previously furloughed employees.
- Any amount of time and any shift pattern.
- Must agree the flexible furloughing arrangement and confirm it in writing.
- Employers can claim for the hours their employees are not working calculated by reference to their usual hours.
- For worked hours, employees will be paid in accordance with their employment contract and employers will be responsible for paying the tax and NICs.
- **NB** Scheme details to be issued on 12 June.

...And beyond?

- Alternatives outside the CJRS:-
 - Paid or unpaid leave
 - Contract variation/ Reorganisation
 - Redundancies and dismissals
- NB. There may be some benefit in exercising these options during the CJRS

Paid or unpaid leave

- Holiday – Consider instructing employees to take it
- Statutory leave (unpaid parental leave)
- Sick leave (company and SSP)
- Sabbaticals
- May help with childcare or to overcome issues for vulnerable employees
- Alternative to redundancies
- Consider timing (some costs could be covered by CJRS)
- Breach of trust and confidence – forced to take holiday
- Terms of sabbatical – will there be a job at the end?

Reorganisations/ variations to contract

- Can we vary our employees' contracts? Hours/ days/ salary, role – re-training /up-skilling/ secondment ?
- How?
 - By consent
 - Express contractual right
 - Dismiss and re-engage
- 20+ Collective redundancy consultation
- Unfair Dismissal – SOSR

Dismissals/ Redundancies

- Timing - During or after CJRS?
- Can we make redundancies/ give notice during furlough?
- Practicalities and challenges:-
- Process – individual/ collective redundancies
- Selection and pools –NB discrimination
- Suitable alternatives? - avoid redundancies

Potential Claims

- Unfair dismissal / constructive dismissal breach of trust and confidence
- Automatic unfair dismissal - Health and safety/ whistleblowing
- Discrimination – NB disabled and working women disprop. Impacted?
- Breach of contract/ unlawful deductions
- Redundancy payments, protective awards – collective consultation



Any questions?

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