EMPLOYMENT NEWS HEADLINES MAY-JUN 2020 ISSUE 27

CORONAVIRUS (COVID-19) PANDEMIC- A FURTHER UPDATE FOR EMPLOYERS

In the last Maxlaw Global employment news (Issue 26) we reported on the initial Government plans for the easing of lockdown announced in mid-May 2020. Since then further developments continue on an almost weekly basis as we move through the Summer months. Below are some key highlights of recent developments for employers.

- From 8 June travellers in bound including UK nationals were required to self-quarantine for 14 days. A failure to complete the required form or to self-quarantine carries fines of £100 and £1000 respectively. Since this announcement, these rules were relaxed for specific countries on 29 June 2020. Employers should check the Government website for the latest exempt countries at https://www.gov.uk/government/publications/coronavirus-covid-19-travellers-exempt-from-uk-border-rules;
- On 10 June, the Government allowed what they called "support bubbles" where two households could support each other and meet, this marked a significant change to the previous lockdown arrangements on social distancing;
- On 15 June it became mandatory for all travelling on public transport of any kind to wear a face mask unless they were medically exempt from doing so;
- 1 July 2020 saw a significant change in the Coronavirus Job Retention Scheme (CJRS) with the introduction of a "flexible furlough" scheme. This permits employers to allow those employees previously on furlough to work for a period of time provided:
    - The employee was previously on furlough between March and June 2020;
    - The employee can work for any number of hours subject to their contract;
    - The work pattern can be a flexible work pattern;
    - There must be a new written agreement to the new arrangement, it is unclear whether the employee must expressly agree to it or whether notification of the change by the employer is sufficient. Where possible it is advisable for employers to seek acknowledgement from the employee;
    - Employers must pay the employee for the period worked and continue to claim the CJRS grant for the hours not worked. This will mean maintaining and keeping careful and detailed records for claims and future Government audits;
    - The furlough scheme itself had a cut off period of 10 June 2020 which means *no additional new employees* may be furloughed after this time and any furloughed

employees after 1 July 2020 would need to have been furloughed for a minimum of three weeks prior to 1 July;

- There is no obligation to offer "flexible furlough" but it is an option open for employers who want to gradually move to full time working again but may want to test the waters first.

- On 8 July 2020 the Government made a significant announcement to introduce a Job Retention Bonus for employers of £1000 per employee for employees who meet the eligibility criteria and are retained in continuous employment up to 31 January 2021. With redundancy now a reality for some businesses this is a new scheme to incentivise employers to look at ways to avoid redundancies at least through what remains of 2020;
- A significant financial change for employers will begin as of 1 August 2020 when employers are expected to share the cost with the Government of any continuing furlough arrangements. The Government has announced a graded shift over the coming four months with employers reverting fully to pay employers' national insurance and pension contributions and 20% of the up to 80% wage costs by October 2020;
- 1 August 2020 is also when employees will be able to return to work if they cannot work from home *provided* the work environment is Covid-19 secure in line with the Government's earlier guidance (see link in Maxlaw Global news Issue 26).

We will continue to keep readers updated of the high-level changes as they impact you and your business over the Summer and beyond.

WORKING TIME REGULATIONS 1998 AMENDED FOR PANDEMIC HOLIDAY CARRY OVER

With many workers either on furlough or working remotely, the Covid-19 pandemic has raised questions about annual leave and holidays as they relate to statutory holiday entitlement. To recap, the usual position is that employees are entitled under the Working Time Regulations 1998 (WTR) to 5.6 weeks of paid annual leave. The EU Working Time Directive provides for 4 weeks basic statutory leave which has been enhanced in the UK under the WTR by an additional 1.6 weeks. What this means is that the 4 weeks statutory leave under the directive must be taken in the leave year in which it accrues or will generally be lost with a few exceptions, such as for those on maternity leave. The other 1.6 weeks may be carried over subject to the employment terms agreed with the employer at the time of hire.

The UK Government has made an amendment to the WTR with the introduction of the *Working Time (Coronavirus) (Amendment) Regulations 2020* to account for the impact this will have, particularly, with key workers and front-line workers during this pandemic who are unlikely to take some or all their leave in the year it accrues. The change means that for workers for whom it was not "reasonably practicable" to take leave due to the Coronavirus, they will be able to carry over up to 4 weeks of their basic unused statutory leave which they can use within a period of two years following the carry over.

The Government has stressed that this does not mean that workers should not be permitted to take leave where possible and employers should be encouraging and accommodating leave requests if it is practicable to do so. The purpose of the statutory leave is for the health & safety and welfare of the worker and this should still be considered a priority.

ACAS GUIDELINES ON DISCIPLINARIES AND GRIEVANCES DURING COVID-19

Employers have been trying their best to carry on "business as usual" where this has been possible via technology during the extended lockdown period. This has not been without its challenges in the normal employee relations arena with disciplinaries and grievances being one such area.

The Arbitration Conciliation and Advisory Service (ACAS) has published new additional guidance on how employers can continue with fair and reasonable disciplinary and grievance processes when employees are largely working from home remote from the normal workplace. The starting position is that the formal ACAS code continues to apply and this should be followed, however, additional considerations for employers with the new situation are:

- The reasonableness and urgency of carrying out investigations and the disciplinary or grievance meeting itself. Some employers will wish to adhere to their own internal policy guidelines where this is possible. This is advisable as a delay may lead to allegations of unfairness;
- The employee is still legally entitled to be accompanied by a companion. This may require some flexibility with timing on the part of the employer where arrangements with the appropriate person may take longer than usual;
- As the meetings are likely to take place remotely, the wellbeing and ability of the employee to attend the meeting and use remote technology (e.g., video call) should be considered before arranging such meetings including any reasonable adjustments for those with an impairment or managing the employee's stress by taking a break during the call where necessary;
- Sharing the evidence and documents for consideration could potentially provide its own challenges if this is excessive. In this case, employers should consider whether to provide this by post well in advance or have the technology for on-line document sharing so that all parties can refer to the relevant data in an effective and secure manner;
- In general, such meeting are not recorded but this may be something employers wish to consider provided that advance notice and agreement of the employee is sought and a copy of the recording is provided to the employee afterwards. Alternatively, the employer should make it clear at the outset that no recordings by either party on company owned or personal devices are permitted.

IR35 FOR THE PRIVATE SECTOR - NO FURTHER DELAY

In Maxlaw Global employment news (Issue 25), we informed readers of the delay in April this year to the introduction of the IR35 tax changes for private sector contractors operating via a personal services company (PSC). The delay was announced by the Government due to the rapidly escalating situation with the Covid-19 pandemic at the time the change was due to take place. This lead many to speculate whether the introduction would happen at all or even be introduced in April 2021 given the severe economic impact the pandemic was likely to cause to the UK economy. It is now clear that with the Finance Bill passing its final reading in the House of Commons in early July it is likely that IR35 will *not* be delayed further and will come into effect for the private sector next April 2021 as originally

planned for April 2020. Employers should, therefore, continue their preparations in the way they operate in readiness for this change.

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