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During the Pandemic these Updates continue to focus on COVID Impact. The regular monthly update has been superseded by these more regular Updates. It is intended for Clients on Retained contracts and advises on recent issues which may affect the employment terms for, or relationship with, staff. Get in touch if it raises any issues for you and your team.

NEWS HEADLINES:

EMPLOYMENT LAW

ITEM 1: FAQs ON COLLECTIVE CONSULTATION

As the furlough scheme begins to wind down, many businesses will be contemplating large-scale redundancies. Sarah Austin an Employment lawyer offers answers to some key queries around this issue

When must an employer collectively consult?

When the employer is proposing to dismiss as redundant 20 or more employees at one establishment, within 90 days or less.

How long must collective consultation last?

The minimum period, from the date consultation starts to the date the first dismissal takes effect, depends on the number of employees the employer is proposing to make redundant. For 100 or more employees to be made redundant, this period is 45 days and, for 20-99 employees to be made redundant, 30 days. However, consultation must take place in 'good time' before the redundancies take effect.

Who should employers consult with?

Appropriate representatives of the affected employees. If no trade union is recognised by the employer, it can consult with elected employee representatives, or any pre-existing standing body of employee representatives, provided it has authority from the affected workers to be consulted regarding the proposed redundancies.

What do they need to consult on?

As a minimum, employers are obliged to consult on ways of avoiding the dismissals, reducing the number of redundancies and mitigating the consequences of the dismissals. To avoid claims of unfair dismissal, businesses should also consult on the information that should be included in a section 188 letter.

How does the furlough scheme affect the process?

Nothing specifically stops employers from collectively consulting during furlough, and employee representatives can take on duties for collective redundancies during the furlough period.

Employees can be made redundant while they are on furlough but, to avoid a dismissal being unfair, companies should be able to demonstrate that furlough has been considered as an alternative to redundancy for each relevant role, and why it is not a suitable alternative.

Employers cannot use money received under the furlough scheme to make statutory or enhanced redundancy payments, or to pay employees in lieu of notice, once employment has ended.

Do proposed redundancies have to be notified to the government?

Employers must notify the secretary of state for business, innovation and skills where they are proposing to dismiss as redundant 20 or more employees at one establishment within a 90-day period (by using a HR1 form) or risk a fine of up to £5,000.

Do employers have to reach an agreement with the representatives?

Not necessarily but, if they can't reach an agreement, they must show they have exhausted all possibility of reaching one – or risk breaching their duty to inform and consult.

Do businesses that collectively consult also need to consult employees individually?

Yes. However, the individual consultation process is likely to be streamlined, as many of the issues that would otherwise be individually consulted on will have been dealt with through collective consultation.

How can employers ensure good communication with all employees, including furloughed staff?

It is likely that consultation meetings will take place virtually and that communication outside of those meetings will be by email. Employers should make sure that representatives and all affected employees have access to the relevant technology. Putting in place Q&A documents that are accessible to employees and updated throughout the consultation process can help to ease the pressure on representatives. Employers may also want to consider translating communications for staff whose first language isn't English.

What are the consequences of failing to consult collectively?

If businesses fail to collectively consult where the duty applies, any resulting dismissals will almost certainly be considered unfair by the employment tribunal, meaning employees will be entitled to financial compensation. An employment tribunal is also entitled to award a protective award, which can be up to 90 days' gross pay for each employee.

FEATURES OF INTEREST

ITEM 1: HALF OF MANAGERS FEAR STAFF ARE BURNING OUT BECAUSE OF COVID-19, REPORT FINDS

Experts say change in working patterns and rise of e-presenteeism brought on by the pandemic is leading to increased risk of employee mental health issues

Half of managers in the UK believe workers may be at an increased risk of burnout following a change in working patterns and behaviours caused by the global pandemic, a report has found.

A poll of 2,000 workers and 500 managers, conducted by Robert Walters, found nearly half (47 per cent) of managers thought their employees could be at risk of burnout because of this.

Similarly, in [the report](#), the majority (87 per cent) of workers who had started working remotely during the crisis said they felt pressured to be more productive to “prove the case for working from home post Covid”, while 36 per cent of employees reported their mental health and wellbeing had suffered as a result of working longer hours during lockdown.

A fifth (21 per cent) of workers said the pressure to deliver results had negatively affected their mental health and wellbeing. The report argued this pressure could result in burnout as staff “simply have too much to do, or lack the resources, skill or ability to do what’s required of them in the time allotted”.

Sam Walters, director of professional services at Robert Walters, said while mental health and wellbeing had been on most employers’ agendas before the outbreak, it had become a more urgent focus now. Before the pandemic businesses were increasingly offering policies geared towards “personal mental health issues” – including depression and anxiety – but Walters warned employers could see a rise in staff reporting they were burning out because of increased work pressures.

“Burnout is an entirely different and recently recognised condition which, unlike other mental health issues, can be directly linked to work,” Walters said. “As a result, employers have a crucial and central role to play to ensure their staff do not reach the point of burnout.”

Last year, the World Health Organization [officially recognised burnout as an occupational phenomenon](#), describing it as a “syndrome conceptualised as resulting from chronic workplace stress that has not been successfully managed”. Recognised symptoms included feelings of energy depletion or exhaustion; increased mental distance from one’s job, or feelings of negativism or cynicism related to one’s job; and reduced professional efficacy.

The Robert Walters survey found a major cause of burnout for many employees was a perceived lack of control and autonomy in the workplace. This included in relation to how they did their work while working from home, and in terms of their future career prospects.

Rachel Suff, senior policy adviser for the CIPD, warned new work demands and working arrangements, including working from home, could put staff at risk from stress and burnout. She said employers needed to be alert to signs of unhealthy working practices such as “digital

presenteeism”, and ensure employees took breaks and maintained boundaries between their work and home lives.

“Employees should be encouraged to take their annual leave and discuss any concerns about their role or workload, or how they are feeling, with their line manager,” Suff said. “Organisations should regularly assess the main risks to people’s mental health and carry out stress risk assessments to help gauge the state of people’s mental health and any areas for concern.”

Managers also played a crucial role in spotting the early warning signs of distress or poor mental health among their teams, and needed to be supported to keep in touch and check on everyone’s wellbeing, Suff said: “Support pathways like counselling should be in place so they can signpost to expert sources of help if needed.”

In previous [research by Canada Life](#), almost half (46 per cent) of Brits carrying out their jobs remotely during lockdown reported feeling more pressure to be ‘present’ for their employer and colleagues, with more than a third (35 per cent) saying they had continued to work despite feeling unwell.

Of those who had worked through illness, 40 per cent said this was because they didn’t feel they were sick enough to warrant a day off. However, more than a quarter (26 per cent) also reported workload as a reason for not taking a day off, and 16 per cent cited fear of redundancy.

Separately, in a [survey by Perkbox](#), more than half (58 per cent) of employees said changes to the furlough scheme and future uncertainty over the world of work had negatively affected their mental health, leaving them with rising levels of stress and anxiety. Meanwhile, 46 per cent said they had felt disconnected from their team and business over the past month.

Only 15 per cent of the 6,273 UK employees surveyed by Perkbox had experienced no negative effects on their wellbeing in the past month.

ITEM2 :AS REMOTE WORKING CONTINUES, TRUST IS KEY TO MAINTAINING MOMENTUM

With working from home looking more like a long-term reality than a short-term solution, Jenny Perkins explains how employers can keep workers engaged.

The UK government is now letting employers decide if the time is right to bring office-based staff back to work. So far, many have decided not to. In fact, [British Chamber of Commerce research](#) found that 62 per cent of employers expect some or all of their staff to remain working remotely at least for the next 12 months. Health secretary Matt Hancock has suggested that [the right to work from home could be more strongly enshrined in law](#) as it becomes “the norm”. Twitter CEO Jack Dorsey has also said employees can carry on working from home “forever”.

When it comes to the future of work, there is no shortage of views on what the ‘new normal’ will entail. But one thing that researchers and commentators everywhere agree on is that remote working will become a lot more prevalent.

So, what have we learned since we went into lockdown in March that could help us make remote working work well for employers and employees alike?

Although working from home has become increasingly widespread in recent years, not every employer actively supported it. Many felt that for employees to be really productive, they needed to be in the office. All too often, this stemmed from a lack of trust. Many managers like to see where their teams are and what they're doing. Lockdown forced a sudden and seismic change as more managers had to let go and become more flexible.

Trust and flexibility are key as we take tentative steps back towards the office. It looks like many organisations will adopt a hybrid model, combining that time in the office with more remote working. As we enter this period of transition, leaders and managers have a critical role to play.

When planning for the future, we need to ask employees what they want. We are going to see an increase in formal requests for flexible working, so be proactive about offering flexibility and choice. We can keep this conversation alive as guidelines and circumstances change. The future is uncertain, but if employees feel they are listened to, they are more likely to feel an active part of that future.

Every manager is now faced with challenges they have never had to deal with before. Many who have previously had a strong preference for sitting in a shared office space with their teams have had to make changes to their leadership style. This isn't always easy, and organisations can provide valuable support. Virtual learning offers opportunities for development that can be implemented quickly. You may benefit from building skills such as virtual leadership and managing remote workers across your organisation. **This learning can cover specific areas such as listening skills to help managers build that all-important trust. Coaching can also be invaluable during periods of transition, helping managers to reflect on their behaviour and find new ways to deal with issues.**

A positive and supportive culture is of course key to building trust and keeping people engaged in our virtual world. And often getting together face-to-face helps us to build that company culture. Again, managers have a critical role to play in building this culture. Virtual coffees, quizzes and online events all help. However, ultimately great cultures come from employees feeling valued and trusted. Informal conversations, support networks, and a focus on wellbeing and work/life balance are important. Rewards and recognition help, too. Some big corporates, such as Citigroup and RB, have given all employees a day off as a thank you for going the extra mile during the Covid crisis.

The role of manager as coach has really come to the fore in recent months. Many have found new ways of building relationships of trust as we support employees to adopt healthy and productive new ways of working. As 'new' becomes 'normal' we all need to keep building that trust and create the future of work together.

ITEM3: HALF OF UK EMPLOYEES ADMIT TO LYING AT WORK, POLL SHOWS

Covid has made culture and authenticity even more vital, experts say, with staff worried about their jobs particularly prone to hiding mistakes or trying to keep bosses happy

Nearly half of UK employees have lied at work, a poll has revealed, with many doing so to hide mistakes or avoid getting into trouble.

A survey of over 1,000 workers by Glassdoor found 49 per cent admitted to lying at work. Of these, 44 per cent said they did so to avoid getting into trouble, while over a third (34 per cent) lied to hide mistakes.

The survey also found many employees lied so as not to “stand out” in the office. Two in five (40 per cent) who lied at work did so because it was “easier to agree with the majority,” and almost a quarter (24 per cent) said they lied because their boss or colleagues did not “like to hear diverse opinions”.

Nearly a fifth (17 per cent) said they lied at work because they did not like giving honest feedback to colleagues.

Joe Wiggins, director of corporate communications at Glassdoor, said it was concerning so many admitted to lying at work – especially to cover up mistakes – noting that trustworthiness, integrity and good judgment were attributes an employer would “naturally look for in its employees”.

“It also begs the question: are enough employers encouraging an environment where people feel comfortable with transparency?” Wiggins said. “If there is a culture of peer pressure or an environment where diversity of thought is not valued and nurtured, this leads to people masking their true feelings, which could lead to more systemic deceptions as well as bias.”

The poll found 22 per cent of employees thought lying at work was acceptable, while nearly two in five (39 per cent) felt lying was commonplace where they worked. Three-quarters (75 per cent) believed that saying what they really thought could get them in trouble, and 56 per cent admitted to hiding their true feelings at work.

Jonny Gifford, senior adviser on organisational behaviour at the CIPD, cited previous CIPD research that found people were more likely to behave unethically at work if faced with unrealistic goals, time pressures or other work pressures.

He explained employers could combat such behaviour by holding workers and leaders to account as well as being clear about acceptable practices. “We can understand where the pressure points are within people’s working lives,” Gifford said. “So we can identify when people are more likely to behave unethically, and we can target communications to remind people that it is really important that their work is accurate during those critical points.”

It was also important to consider the “norms of behaviours” within an organisation, Gifford said. “When there is a lot of organisational politics or managers or leaders who clearly don’t care about being ethical, that has a big influence on individual employees and how they behave,” he said.

According to the survey, three-quarters (75 per cent) of employees valued authenticity at work, but only half (54 per cent) felt their employer valued this attribute among workers. Similarly, 72 per cent said authenticity at work created a strong culture, and 77 per cent said it built better relationships with colleagues and customers.

Paul Holcroft, associate director at Croner, said authenticity and organisational culture had become “arguably all the more crucial” since the coronavirus outbreak had shaken the world of work “to its core”. He warned staff could now be even more inclined to lie in some circumstances because of fears about losing their jobs.

“These figures are therefore likely to be concerning for employers. After all, if the first instinct of an employee is to lie about an issue or mistake, this problem doesn’t just vanish,” Holcroft said. “It is therefore crucial for employers to consider why this may be. Do staff feel they will be unfairly

penalised or even ignored if they are truthful with management and, if so, is there an overall issue that needs to be addressed?”

Holcroft added that lying at work could have serious repercussions for employees, including the individual being dismissed. But this would depend on the lie in question, and simply talking to someone instead of resorting to disciplinary action could solve the problem, he said.

“Employers are more likely to want to take serious action if an employee lies about taking a day off work, but could consider a less formal response if an employee has, for example, forgotten to action a small task allocated to them and tries to hide this,” Holcroft said.

PLEASE DO GET IN TOUCH IF THIS RAISES ANY ISSUES FOR YOU AND YOUR TEAMS.

NB Please note that the LRA are running a series of webinars on contract variations and redundancy which may be of value to you. These can be viewed at any time.