

HR Case & Legislation Tracker

Recent Developments – COVID-19

Area	
Coronavirus Job Retention Scheme	<p>The Government's Coronavirus Job Retention Scheme (CJRS) allows employers to “furlough” their employees and apply to HMRC for a grant to cover a percentage of the furloughed employees' wages.</p> <p>The scheme was due to end on 31 October 2020. However, as the Government will be imposing a second lockdown in England from midnight on 5 November 2020, the CJRS has been extended.</p> <p>The CJRS will now come to an end on 31 March 2021.</p> <p>Coverage will return to the same level as it was in August 2020 - the Government will cover 80% of employees' wages for hours not worked, up to a cap of £2,500. Employers must pay NICs and pension contributions on the hours the employee does not work.</p> <p>The Government will review its contribution in January 2021, and it may be revised at this time if they feel employers are in a strong enough financial position to contribute more.</p> <p>Employers will continue to be able to agree flexible furlough arrangements and must pay the employee in full for any hours worked, as well as pay the appropriate tax and NICs on these amounts.</p> <p>Employers will be able to claim even if they have not previously used the scheme or did not use the scheme for those particular employees. The employee must have been on the employer's payroll on 30 October 2020 to be eligible.</p> <p>Employees who were on the employer's payroll on 23 September 2020 and were subsequently made redundant can be re-employed and claimed for under the scheme. Further details on this updated scheme will be published by HMRC on 10 November 2020.</p>
Job Retention Bonus	<p>Employers were set to receive a £1,000 bonus for each furloughed employee who was brought back to work and retained until at least 31 January 2021 (a “Job Retention Bonus”). As the CJRS has now been extended until 31 March 2021, the Chancellor has said this bonus will be put on hold and revisited at a more appropriate time.</p>

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Job Support Scheme	<p>The new Job Support Scheme ('JSS') was due to come into force on 1 November 2020, with the end of the CJRS.</p> <p>However, following the announcement by the Chancellor that the CJRS has been extended to 31 March 2021, the JSS has been put on hold until at least April 2021. There will be a further update with respect to the JSS in the new year.</p>
Family and Pay	<p>The Maternity Allowance, Statutory Maternity Pay, Statutory Paternity Pay, Statutory Adoption Pay, Statutory Shared Parental Pay and Statutory Parental Bereavement Pay (Normal Weekly Earnings etc.) (Coronavirus)(Amendment) Regulations 2020 came into force on 25 April 2020.</p> <p>For SMP, where the employee is on furlough for part or all of the relevant period (the period used in the calculation of normal weekly earnings) and her pay is reduced as a result, the rate payable for SMP will be calculated based on the pay she would have received had she not been placed on furlough. Similar amends have been made to the other statutory leave above. The Regulations apply where the first day of the period in which the relevant pay or allowance is payable is on or after 25 April 2020.</p>
Calculation of statutory payments	<p>New Regulations came into force on 31 July 2020 which require employers to refer to a furloughed employee's normal week's pay when calculating certain statutory payments, rather than their furloughed pay.</p> <p>Statutory payments covered in the Regulations include time off to look for work or to arrange training, redundancy pay, notice pay, compensation for failing to provide written reasons for dismissal and basic and additional awards for unfair dismissal.</p>
Recruitment	<p>In the Chancellor's Summer Statement, several recruitment schemes were announced:</p> <ul style="list-style-type: none"> • "Kickstart" scheme - the Government will directly pay employers to create new jobs, via a "job placement", for 16-24-year-olds at risk of long-term employment. The Government will pay the relevant NMW rate for these workers for 25 hours per week, plus the minimum automatic enrolment employer contributions and employer NICs, plus a small allowance for overheads. Applications for the scheme opened on 2 September 2020. • Apprenticeship bonus - for each apprentice a business hires under the age of 25, the Government will give them £2,000, and for each apprentice over the age of 25, they will pay a bonus of £1,500. • Trainee bonus - the Government announced they will pay employers £1,000 to take on trainees and tripling the number of placements available.

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Statutory Sick Pay and self-isolation	<p>Under the current legislation, employees and workers who self-isolate must receive SSP from the first day they are absent from work if:</p> <ul style="list-style-type: none"> • Either the employee or someone in their household has Covid-19 symptoms or a positive Covid-19 test; • The employee has been contacted by NHS Test and Trace and told to isolate for 14 days; • Someone in the employee's "support bubble" has symptoms; or • The employee has been notified in writing by a registered medical practitioner that they need to self-isolate for up to 14 days before their admission date for an operation and are unable to work from home for this period. <p>Current guidelines require those with either Covid-19 symptoms or a positive Covid-19 test to self-isolate for a minimum of 10 days.</p>
Coronavirus Statutory Sick Pay Rebate Scheme	<p>Employers who have fewer than 250 employees are able to reclaim SSP paid for the first 14 days of Covid-19 related sickness absence. These employers will be able to backdate their claims to 14 March 2020 and will be able to claim for multiple employees and pay periods at a time. HMRC will require employers to retain key information for three years following receipt of the payment, including the dates the employee was off sick, which of those were qualifying days, the reason for their absence and their NI number.</p>
Coronavirus Travel from Overseas Quarantine Period	<p>From 8 June 2020, people arriving from certain overseas destinations will be required to undergo a 14-day quarantine period, which will include not attending schools or the workplace, not using public transport or taxis or using public areas. Those travelling to the UK, including UK residents, will need to provide their journey and contact details via an online form before they travel, which may be checked at the border. Such destinations are being continually updated.</p> <p>The Government have provided an extensive list of those who do not need to quarantine for 14 days on their arrival back in the UK, which includes road haulage and freight workers and medical professionals. Those who are travelling from Ireland, the Channel Islands or the Isle of Man also do not need to undergo a quarantine period.</p>
Tier 2/4 – Sponsor duties (Coronavirus guidance)	<p>UK Visas & Immigration (UKVI) have created a separate Coronavirus guidance page for Tier 2/4 Sponsors. They key points of this guidance are:</p> <ul style="list-style-type: none"> • No enforcement action against sponsors who continue to sponsor students or employees despite absences due to coronavirus. • Sponsors are not required to report any absences of employees/students if due to the coronavirus outbreak • Sponsors not required to withdraw sponsorship if employee absent for more than 4 weeks without pay, or students absent for more than 60 days • Tier 4 students allowed to do distance learning • Sponsors are not required to report that sponsored employees are working from home

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	<ul style="list-style-type: none"> The validity of Certificates of Sponsorship (CoS) and Certificate of Acceptance of Studies (CAS) will not result in visa refusals, if employee/student unable to travel because of Coronavirus. <p>Employers/students can start working/studying for their employer/education institute from the start date on the CoS/CAS, even if visa application is pending.</p>
<p>Frontline worker visa extensions</p>	<p>The Home Secretary has expanded on the announcement that frontline health staff will have their visas extended for free. Earlier this year, a visa extension was announced between 31 March 2020 and 1 October 2020, and the Home Secretary has now confirmed a further extension until 31 March 2021.</p> <p>This will benefit a further 6,000 health professionals.</p>
<p>Tier 1 Entrepreneur visas</p>	<p>The Guidance on Tier 1 Entrepreneur visas has been updated in light of the Coronavirus. The latest guidance states that if the business has been disrupted, the applicant is no longer required to employ 2 employees for a consecutive period of 12 months, and multiple employees across the 12-month period will count. However, employee time spent on furlough will not count towards the 12-month period.</p>

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Recent developments: Employment

ACAS Early Conciliation	<p>The ACAS Early Conciliation period has been extended by new Regulations from one month to six weeks, with the change taking effect from 1 December 2020. ACAS will also no longer be able to extend the EC period by 14 days.</p> <p>The same Regulations have also made amends to the Employment Tribunal procedure, including allowing the ET greater discretion to accept claims that contain errors relating to the ACAS EC Certificate number and the names or addresses of parties.</p>
Restrictive Covenants	<p>In <i>Allen v Dodd & Co Ltd</i>, the employers took legal advice on whether a candidate's restrictive covenants would be enforceable and were advised they would not be. The High Court later found the covenants were enforceable (with some words removed) but that the new employer had not induced the candidate to breach the covenants. This was upheld in the Court of Appeal, who took into account that the employer had sought advice and had genuinely believed the covenants were unenforceable.</p>
Health and Safety	<p>The High Court has confirmed that both the right not to be subjected to health and safety detriments (such as being dismissed if they refuse to work due to their belief the workplace is not safe), and the right to be provided with PPE if an activity cannot be avoided, apply to workers as well as employees in <i>IWUGB v Secretary of State for Work and Pensions</i> (13 November 2020)</p>
Redundancy	<p>The EAT has handed down a £35,000 penalty to an employer who failed to inform and consult with the workforce before making redundancies. In <i>Verizon Works Council v Verizon Group</i>, the employer was required to inform and consult with the EWC in advance of making decisions on redundancy, but it failed to do so and the EAT held they had acted unlawfully by not giving the EWC the required information or the chance to give any meaningful input.</p>
Age discrimination	<p>An Oxford professor who was forced to retire at 68 was found by the ET to have been unlawfully discriminated against on the grounds of age. The remedy judgment in <i>Ewart v Chancellor, Master and Scholars of the University of Oxford</i> ordered the University to pay nearly £30,000 in compensation and to reinstate him for a fixed period of time.</p>
Discrimination and Philosophical Belief	<p>The Claimant in <i>Higgs v Farmor's School</i> (6 October 2020), who was a teacher, shared Facebook posts that expressed concern about teaching LGBTQ+ relationships in schools. While the ET found her belief that gender cannot be fluid and that people cannot change their biological sex qualified as a protected belief, they also held that she had not been dismissed, and therefore discriminated against, on this basis. They found instead that she was dismissed for posting comments on social media that could lead people to believe she was homophobic or transphobic.</p>
Retirement	<p>In <i>R (Delve and another) v Secretary of State for Work and Pensions</i> (15 September 2020), the Court of Appeal have confirmed</p>

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	the Government's decision to raise the state pension age for women to match that for men did not amount to unlawful discrimination. The Court dismissed the Claimants' argument that a higher percentage of women needed the state pension to assist with living at an earlier age, saying there was no causal link between this disadvantage and their age or gender.
Gender Reassignment Discrimination	The ET have confirmed in <i>Taylor v Jaguar Land Rover Ltd</i> (14 September 2020) that the definition of gender reassignment in the Equality Act does cover individuals who identify as non-binary. This landmark finding meant the Claimant could successfully bring their claims for discrimination and was awarded £130,000 in compensation.

Current Government Consultations

Call for evidence and good practice on in-work progression Closes: 18 December 2020	The Government is calling for views on what the challenges are to progression in low-paid sectors, including retail, leisure and hospitality. They are seeking views on what the specific barriers to progression are, whether there are existing good practices in terms of progression pathways and other initiatives, and examples of how to embed a culture of "lifelong learning" in the workplace.
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Immigration

Tier 2 Sponsor guidance updated	The Tier 2 & 5 Sponsor guidance has been updated to include Annex 9. In the updated guidance, the government encourages employers, who do not currently have a licence, but anticipate that they will need one from 1 January 2021, to apply early.
The new Immigration System	<p>The Government's new Immigration System will come into force from 1 January 2021 and will mark significant changes from the previous system. Some key points to note:</p> <ul style="list-style-type: none"> • The EU Settlement Scheme closes to new entrants on 1 January 2021. Those who are already in the UK may continue to apply up to June 2021. • All EU nationals who enter the UK after 1 January 2021 who have not previously lived in the UK will now require a visa to live, work, and study in the UK. • A new Immigration system will also launch on 1 January 2021, which among other changes will see the replacement of the Tier 2 visa category with the Skilled Worker route. • There will also be changes to the Visitor route to allow for greater simplification, including to allow study for up to six months and removing the requirement for volunteering to be incidental to the main reason for the visit. • The right of Irish citizens to live, work and travel in the UK will remain unchanged.

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Future Developments

Workers (Definition and Rights) Bill	The first reading took place on 26 February 2020. The Bill is seeking to amend what a “worker” is defined as and will set out the rights a worker is entitled to. Due to the ongoing coronavirus crisis, the second reading for this Bill is due to take place on 27 November 2020.
Equal Pay (Information and Claims) Bill	A new Equal Pay Bill has been proposed that would give employees the right to request the pay data of their comparator, and requires employers with 100 or more employees to publish both their gender pay gap data and their ethnicity pay gap data. The second reading is due to take place on 15 January 2020.
Employment (Dismissal and Re-employment) (No. 2) Bill 2019-21	A Bill that would prohibit the firing and rehiring of employees for the purpose of diminishing their terms and conditions is set to have its Second Reading on 29 January 2021.
Pregnancy and Maternity (Redundancy Protection) Bill 2019-21	This Bill is due for its Second Reading on 12 March 2021 and would prohibit redundancy during pregnancy and maternity leave and for six months after the end of pregnancy or maternity leave, except in specified circumstances.
Changes to length of working week	A group of cross-party MPs have written to the Chancellor to ask him to consider a move to a 4-day working week. Those who have supported the move include the former Shadow Chancellor John McDonnell and Green MP Caroline Lucas, who cite benefits including higher productivity and better health and wellbeing. The group also note that other countries such as New Zealand are examining the possibility following the pandemic.
Employment Tribunal Fees	The Government have asked the Law Commission to design a new system of tribunal fees. The previous regime was found to be unlawful in 2017 by the Supreme Court. No timeframe has currently been given.
Neo-natal leave	The Government announced in the Spring 2020 Budget that it was creating a new statutory entitlement to neonatal leave and pay. This will entitle employees to up to 12 weeks of paid leave for babies who require neonatal care. The provisions for this type of leave will be included in the Government’s upcoming Employment Bill, though a timeline for this Bill is uncertain given the ongoing pandemic.

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