



WHAT MIGHT 'WORK' LOOK LIKE?

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Agenda

- What might “work” look like post lockdown?
- What are the key considerations?
- Options and solutions
- Practicalities
- Whistleblowing risks
- Route map

Post Lock Down

- Challenges of initial phase of pandemic recovery obvious
- A lot for employers to decide
 - When?
 - Who?
 - How?
 - Changes?

Coronavirus Job Retention Scheme

- Coronavirus Job Retention Scheme (CJRS)
- Extended to October 2020
- ‘Flexible Furlough’ from August 2020
- Limited availability to public sector organisations
 - Procurement Policy Notice 02/22
 - Cabinet Office Guidance on Contingent Workers

What might “work” look like?

- Ensure continuity and service delivery
- “Mothballed” services coming back on stream
- Continued working from home where possible
- Roles that cannot be done from home?
 - Practical considerations
 - Flexibility
 - Volunteers
 - Change of function/method of work

What might “work” look like?

- Employees who are otherwise well but cannot attend work
 - Shielding
 - Carers

- NJC Circular March 2020

“employers will have no option other than to accept that some employees can neither work at home nor be redeployed/seconded etc and will therefore be staying at home on full pay for the duration of this emergency”

- Sustainable?

What might “work” look like?

- Ongoing Social distancing obligations
 - Regulation 7A Health Protection (Coronavirus Restrictions) (Wales) Regulations 2020
 - “Blue print” from working safely during coronavirus guidance
<https://www.gov.uk/guidance/working-safely-during-coronavirus-covid-19>

Identifying options and solutions

- Not one size fits all
- Lockdown exit adjustments will vary across Public Sector organisations and workplaces
 - Increased demand/ activity
 - Decreased demand/ activity short-term & longer term
 - Decreased demand/activity initially but with recovery to “normal” expected
- Understanding the options is key to finding the best solution
- Explore opportunities to limit adverse impact

Restructure

- Know your organisation
 - What resources do you expect to need and when
 - Changes to terms and conditions
 - Redeployment
 - Changing work patters
 - Changing places of work
- Know your contracts of employment
 - What have you got versus what you need in future

Restructuring terms and conditions

- How can employers make the best of what they have?
- How should employers go about making changes to terms and conditions?
- Can employers introduce changes by simply notifying employees?

Restructuring terms and conditions

- What are the options for achieving effective contractual change?
- Must agreement be in writing?
- What can employers do if (some) employees won't agree?
- Must employers comply with collective consultation rules?

Consultation

- When do the collective consultation rules apply?
 - When are employees employed at the same establishment?
 - What information must be provided?
- HR1 Form
- What triggers the need to start consultation?
- Can notice of termination be served before the minimum consultation period ends?

Consultation

- How can employers consult during lockdown?
 - Must representatives be elected?
 - What about the practicalities?
 - Does the “special circumstances” exception apply?
 - Individual consultation

Risks

- Unfair dismissal considerations
 - Fair reason
 - Fair process
 - Automatic Unfair Dismissal
 - Whistleblowing/Health & Safety
 - Discrimination
 - Shielding employees

Whistleblowing and COVID

- Who is covered
 - Employees
 - Workers S230(3) ERA 1996 and 43K ERA 1996
- What are they protected against
 - Employees - dismissal and detriment
 - Workers - detriment
- Making Protected Disclosures

Protected Disclosures

- Means a **qualifying disclosure** (43(b) ERA) made to the employer or specified others(43(c) to (h) ERA)
- COVID implications
 - Criminal offence
 - Failing to comply with legal duty (duty of good faith; contract of employment)
 - Endangering H&S
 - Information re concealing any of the above

Qualifying Disclosure

- Disclosure of information
- Which in the reasonable belief of the worker
- Is made in the public interest; and
- Tends to show
- BREACH of duty
- Automatic protection is made to employer but more remote recipient have more onerous conditions (S 43C to 43H ERA)

Liabilities

- Auto Unfair dismissal- if reason/ principal reason-made P.D.
 - uncapped Compensatory Award
 - Interim relief
- Detriment- on grounds made P. D.
 - Injury to feelings
 - Employer Vicariously liable for co workers
 - Co-worker liability (inc. dismissal)(2018)

The Route Map

- Consider & evaluate a broad range of potential options
- Identify the pitfalls and the risks
- Select potential solutions
- Develop implementation plans (and contingency plans)
- Present your proposals
- Consult (in a timely manner!) and reappraise options
- Implement decisions

Any questions



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