

# HR HELP AND INSIGHTS

## FOCUS ON REDUNDANCY

### WELCOME

Welcome to the 3rd issue of *The People Factor*.

As great as it is to see businesses open again, it's come at a cost for some.

For those where this has meant a restructure or downsizing to survive, many are also facing the difficult decision of making some staff redundant. Although it's never something that anyone ever wants to do or hear, there are still ways to ensure that it's handled properly, sensitively and smoothly for everyone involved.

So, this month's newsletter focuses on redundancy and the different challenges

it brings: how to get your head around the legal stuff, how to do right by your employees and, most importantly, how to come out the other side with your reputation intact.

We hope you find it useful.

Until next time.



**Karen Davies**  
CEO - The People Factor

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## > LATEST NEWS

### End of furlough scheme to cause job losses

According to the Institute for Public Policy Research thinktank, an additional 2 million jobs will be lost as a result of the Coronavirus Job Retention Scheme stopping at the end of October. Up to 3 million jobs are still expected to be reliant on it by then, and whilst it's accepted that the impact of the pandemic will cause 1 million permanent losses, continuing the scheme or introducing a successor could save the remainder of those at risk, albeit at a greater financial cost.

### Furlough fraud under scrutiny

Following the first arrest for furlough fraud back in July, abuse of the CJRS appears to be more prevalent than previously thought with HMRC receiving thousands of reports of companies breaking the rules. Research carried out by Crossland Employment Solicitors found that prior to flexible furlough being introduced (when UK employees were not permitted to work for their employer whilst furloughed), 34% had still been asked to do so.

Although the scheme is due to end soon, HMRC will continue to investigate for any improper usage; so employers are advised to check that any use of the scheme was financially justified and that all funds can be accounted for. [Heads-up: if HMRC inspectors visit your business, their review of just one aspect of it can quickly turn into widespread

checks of all other areas, including how you manage employee costs.]

### Take care reintegrating furloughed staff

Experts have recommended that employers be patient and understanding when bringing staff back to work to allow them time to return to pre-furlough levels of productivity and efficiency. As such, performance may be sub-par until they're back into the swing of things, especially if they work remotely and are resuming full-time (as opposed to easing back in through flexible furlough). Communicate expectations and allowances and, if things aren't improving, consider additional training and development needs before going down the line of performance management or disciplinary procedures.

### Redundancy pay protected for furloughed workers

A recent strengthening in the law means that furloughed workers losing their jobs are now eligible for redundancy pay based on their normal wages – and not the furlough rate. It will ensure that employees don't end up short-changed and receive all their redundancy pay entitlement in a full pay-off. (Those with more than two years' continuous service who are made redundant are usually

entitled to a statutory redundancy payment based on length of service, age and pay up to a statutory maximum; but many of the UK's 9.5 million furloughed workers are being paid at only 70% or 60% of their normal wage.) The legislation will ensure that notice pay in lieu is based on normal wages rather than the lower wages they may have been paid under the CJRS.

Other changes ensure that basic awards for unfair dismissal cases are also based on full pay rather than wages under the furlough scheme.

### Have offices had their day?

Now that remote working has been seen to work, the future of the traditional workplace looks uncertain as the need for large office spaces diminishes; and moreover should the need for social distancing remain. More space would be needed to accommodate the same number of workers and, as agile working takes over, meetings are likely to become virtual rather than face-to-face; no more conference table huddles and, very probably, a drop in business travel too.

Not having a physical company base from which everyone works could also lead to more outsourced services, as well as presenting an opportunity to recruit staff globally, unrestricted by location and travel logistics.

## > HR HEADACHES

### Redundancy Reminders for Employers

#### If you're an employer, remember that:

- *Statutory redundancy pay kicks in once employees have been with you for 2 years.*
  - *Some employees may have enhanced redundancy pay (ERP) in their Ts & Cs, so check for this.*
  - *You may need to hold the selection pool process before any redundancy decisions are made.*
- 
- *There are different minimum consultation periods depending on the no. of redundancies involved, so be sure to honour these before you dismiss anyone:*
    - o *At least 45 days for 100+ employees.*
    - o *At least 30 days for 20-99 employees.*
    - o *No statutory minimum but no less than 14 days if fewer than 20 employees.*
- 
- *Employee length of service is capped at 20 years.*
  - *Since 6th April, weekly pay is capped at £538.00 and the maximum statutory pay is £16,140.00.*
    - o *For employees under 22 years old, each year of service equates to half a week's pay.*
    - o *For employees aged 22-40, each year of service equates to 1 week's pay.*
    - o *For employees aged 41 years and older, each year of service equates to 1.5 weeks' pay.*

### Redundancy Reminders for Employees

#### If you're an employee, it's worth knowing that:

- *To qualify for statutory redundancy, you must have at least 2 years' continuous employment with that employer/within that business.*
- *As well as a redundancy payment, you're still entitled to claim Jobseekers' Allowance (JSA).*
- *If, during the consultation, you 'unreasonably' refuse an offer of suitable alternative employment within the organisation which then leads to you leaving, you're no longer entitled to a redundancy payment.*

#### What guidelines should your employer observe?

- *They need to follow proper selection procedures and ensure that you've not been selected for any discriminatory reasons (e.g. due to age, disability, ethnicity, gender, health, pregnancy, maternity leave, parental leave or time off to care for dependants).*
- *They have to hold a group consultation if there's a collective redundancy (i.e. where you're one of 20 or more people being made redundant).*
- *They should openly consult with you and disclose in writing their reasons for selecting you and the criteria used, as well as the intended timescales and proposed methods for calculating any redundancy payment.*
- *If possible, they should consider alternatives that avoid redundancy (such as restricting recruitment, reducing overtime, introducing work-sharing and short-time working, and exploring whether you can be absorbed elsewhere within the business).*



## > GET REDUNDANCY RIGHT

Depending on who you get to help you, the redundancy process can be as easy or as difficult as you want. Here's the right way of doing it.

### Your step-by-step redundancy roadmap...

Following the right steps means getting the right outcomes

#### 1. Find Your Why

Establish the legal reason for making employees redundant as this is the rationale you'll need to use when first alerting people and in all follow-up letters and correspondence.

- ✓ You've ceased or intend to cease the business for the purposes for which the employee was employed.
- ✓ You've ceased or intend to cease the business in the place where the employee was employed.
- ✓ The business requirements for which the employee carries out work of a particular kind has ceased or diminished or is expected to cease or diminish.



#### 2. Pick Positions...

Identify all the positions that may go into the selection pools, then define the pool process and selection criteria.

#### 3. Send the HR1

If planning a collective redundancy of 20+ people, prepare and send the HR1 form to give the Redundancy Payments Service (RPS) advance notification of potential redundancies. This must be done before you issue any 'warning of redundancy' communications.

#### 4. Notify Employees

Issue a 'Warning of Possible Redundancies' letter to all employees, including information on how employee reps will be appointed and how collective consultation and individual consultation will happen.

#### 5. Nominate Employee Reps

Carry out the nomination process for appointing employee reps – either by department or job categories.

#### 6. Appoint Employee Reps

Issue elected employee reps with their appointment letter and inform them of how to carry out their duties. (NB. If this is during furlough, they are effectively working so ensure they're paid correctly – i.e. top up for hours worked and don't go below NMW.)

#### 7. Collective Consultations

Begin collective consultation meetings with employee reps.

#### 8. Prepare FAQs

Draw up and collate a list of FAQs for use during the collective and individual consultations.

#### 9. Send Provisional Selection Letters

Issue Provisional Selection for Redundancy letters to those potentially affected, outlining the selection pool criteria and process, and including invitations to attend individual consultation meetings

#### 10. Individual Consultations

Carry out the **first round** of individual consultation with all affected employees.

#### 11. Send Selection Pool Letters

Issue 'Inclusion in Selection Pool' letters to affected employees, detailing when and how the selection pool assessment will be carried out.

#### 12. Run Selection Pool Assessment

Carry out the selection pool assessment. (NB. Be mindful that, if during furlough, involvement may be classed as work and so ought to be paid. However, there tends to be little risk of complaint to HMRC as, ultimately, it's being done for employees' benefit and to help future employment prospects.)

#### 13. Individual Consultations Letter

Issue the 'Invitation to the 2nd Individual Consultation' letter.

#### 14. Individual Consultations

Carry out the **second round** of individual consultation meetings, including giving the employees feedback from their first-round meetings, responding to individual questions, notifying them of the outcomes of the selection pool assessment and making any offers of alternative employment.

#### 15. Update Employee Reps

Continue collective consultation meetings to keep employee reps in the loop.

#### 16. Review, Reshuffle, Reoffer

Await replies from any alternative employment offers made, and make secondary offers if positions are refused.

#### 17. The Final Cut

Make final decisions as to who will be continuing and in which job.

#### 20. Restructure & Retrain

Reorganise the working environment and carry out retraining where necessary to implement the new organisational changes and job roles.



#### 18. Time To Say Goodbye

Carry out the final individual consultation meetings and issue 'Notice of Termination' letters, including details of notice worked or in lieu, redundancy payments, handover requirements and outplacement services.

#### 19. A New Start

Inform remaining employees of their new positions, department, reporting line and salaries.





> IN FOCUS: REDUNDANCY

## Balancing furlough, RTW & redundancy

As the UK enters the worst recession in its history, as much as a quarter of England's workforce are reliant upon the government's furlough scheme and unemployment is on the rise. According to The Bank of England, UK unemployment will almost double by the end of the year. The big question is: will those employees currently on furlough become part of that statistic or will they have jobs to return to? The answer: that partly depends on employers.

There's a lot of uncertainty around how best to play this. On the one hand, the furlough scheme is there to help prevent job losses, give companies time to plan and turn things around and, ultimately, get the economy going again. On the other, it's only postponing the inevitable for some – redundancy. In reality, mounting business costs and loss of custom are forcing many employers to keep staff laid-off or on furlough, reduce hours and cut pay.

And for those businesses restructuring to survive, many are resigned to making redundancies, albeit as a last resort. In which case, should those employees

even still be on furlough? So, what's the answer?

### Stick or twist?

The practical view is that if you know you have a good chance of pulling through, then keep going and ride it out. If redundancies are possible, try and hold off until the scheme finishes at the end of October – just in case the economic situation has improved. And remember, if you manage to keep employees beyond January 2021, there is a silver lining: a 1k business bonus per employee as an incentive not to bail out.

However, if you know for certain that keeping the business going (either in its current state or a reduced one) is unfeasible, the stark option is to pull the plug now. Otherwise, furlough scheme money is being wasted. Although it will invariably mean letting people go, there are benefits to doing it sooner rather than later.

As well as giving employees time to search for a new job before the mad rush begins in November, doing the redundancy process now when employees are furloughed means that

they can work their notice whilst on furlough, allowing a top-up to normal pay levels. Just be sure of being 100% transparent when making a CJRS claim to avoid furlough fraud.

### How furlough complicates redundancy

Either way, if you're needing to consider redundancies, be careful not to automatically select employees just because they've already been furloughed (cf. versus any employees who remained working). If you do, then you need to be sure that they were selected fairly for furlough in the first place and that using the same rationale for redundancy selection now is still valid (e.g. if staff were selected for furlough due to caring responsibilities or shielding reasons, then applying these reasons for redundancy would be discriminatory).

Redundancy is never pleasant. But handled properly, fairly and openly, it is possible for everyone to come out the other side with their heads held high.

## Meet the Team: 60 seconds with Gail Selby *Senior HR Consultant*

### Describe yourself!

Um, okay... How about a straight-talking, dedicated and obsessive technical expert and fact-checker who loves the legal side of employment relations and helping clients tackle the tricky stuff.

### Keep going... What else?

Because I have front-line management and operations experience from working in hospitality and retail pre-HR, clients are pleasantly surprised at how familiar I am with the sorts of challenges business owners face and how quickly circumstances can change.

### That's got to help in your HR role...

Oh it does. That mix of being commercially astute and knowing what's legally viable is a huge benefit when providing clients with realistic and workable options. They see me as more of a HR business consultant; and one who's respectful of both employee needs and company cashflow/results.

### So what sort of work/projects are you involved in?

Most of my time is spent managing employee relations and helping with crisis management, much of which is taken up with redundancies and restructures at the moment. It's tough for everyone, but as long as you stick to the process and treat others fairly and compassionately, you'll end up with a good outcome. I always say you can manage some really difficult situations with kindness and understanding; after all, we are dealing with people.

### What are the biggest challenges employers face right now?

It's got to be balancing the needs of the business: working out how many jobs to retain, getting people back to work and how to maintain a sense of culture and engagement. That, along with generating enough custom and providing a safe environment for customers and staff to return to.

### Finally, what's the best general advice you'd offer in the current climate?

No one's experienced any of this before so don't put undue pressure on yourself to know all the answers and get everything right over the next 6 months. Quite simply, there is no rule book or blueprint available.

Conversely, don't stick your head in the sand – be open and honest and treat people like grown-ups. It's always the best way, no matter how hard things may seem.



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Handled properly, it is possible to come out the other side

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