

Short Time Working and Lay Off

In the current economic climate many employers are seeking to cut costs due to a decrease in business and as such may not require all of their employees. However, given it is forecast that the economic crisis will improve in due course, making employees redundant may not be the solution. This being the case, employers need to find a way to reduce the staffing levels on a temporary basis. This can be achieved through “short time working” and “lay offs”, although this concept is not without its difficulties.

Although “lay off” is often used as an expression to describe redundancy, it actually means something quite different. The term lay off can be used to describe a situation where an employer is temporarily unable to provide work to employees, although this is a situation which must be handled correctly to avoid a claim for unfair dismissal.

“Short time working” on the other hand provides for the situation where an employee is required to work less than half of their normal contractual hours per week and their wages are reduced accordingly.

An employer is only permitted to lay off employees or to propose short time working if the contract of employment allows for the same. There may also be an agreement between the employer and a recognised trade union or a national agreement which permits lay off and short time working.

In the absence of a contractual right it would be advisable for an employer to speak with the workforce and to explain the economic situation. If the “lay off” or “short time working” is a strategy to avoid compulsory redundancies employees may be more amenable to a reduction in salary or temporary lay-off, given that in the long term their jobs will be secure.

If an employer imposes short time working or lay-offs without the right to do so an employee could bring the following claims for:

- Unlawful deduction from wages;
- Unfair dismissal;
- Breach of contract;
- Redundancy payment; and
- Protective award.

This is a high risk approach to take and employers should make every effort to agree the position with the workforce prior to implementing new working practices.

An employee who is laid off or put on short time working will be entitled to receive a statutory guarantee payment unless the contract of employment provides the employer with the right to lay off without pay. This payment is provided for a maximum period of five days in a three month period. The current statutory guarantee payment is £21.50 per day (i.e. £107.50 for 5 days). It may also be possible for an employee to claim Job Seekers Allowance on those days on which a guarantee payment is not available.

One issue to watch out for is the fact a redundancy payment can be claimed if a lay off and short time working period lasts for either four weeks in a row or for a total of six weeks (no more than three being consecutive) in any period of 13 weeks. The claim must be made in writing although the employer can refuse to pay if he or she believes that normal working hours will resume within four weeks. It is not clear how long a lay off or short time working period can last but employers should be fair to their employees and keep the situation under continuous review.

“During the current economic climate it may be necessary to cut costs, however if you can avoid making employees redundant now this will avoid the costs involved with redundancy and may also reduce the potential costs of recruiting when business picks up again in due course.”

If you are considering implementing lay offs or short time working in your business and want to be sure that you are acting lawfully, then please contact Ruth Coleridge of Hawkins Hatton LLP on 01384 216840 or rcoleridge@hawkinshatton.co.uk for more information.