

SUPPORTING WORKFORCE CHANGE SERVICES

SUPPORTING EMPLOYERS MAKING WORKFORCE STRUCTURE CHANGES WITH OR AFTER CJRS GRANT FUNDING



Challenges of making workforce structure changes during or after CJRS support

- Furlough agreement documents not being fit for purpose – hurried communications as staff were furloughed before the Scheme formalities were known may either be unenforceable or need to be re-modelled to fit flexible furloughing
- Knowing whether notice pay rates are at furlough rates (whilst it's at a reduced rate) or pre furlough reference salary rates
 - Notice pay rights differ dependant on contractual termination period, continuous employment length and the type of contract, making underpayments or over payment risk a real and expensive possibility.
 - Misunderstanding the elements of redundancy pay that can be covered under CJRS can throw workforce cost planning well off course.
 - Understanding the relative cost and reclaim value of notice served on furlough leave rather than making a payment in lieu of notice
- Ensuring your communications won't put your CJRS claim in jeopardy or risk a reclaim audit: We have seen employers reusing pre CJRS template redundancy termination material requiring furloughed staff to work their notice, risking a breach of the CJRS, potential employee whistleblowing to the HMRC hotline and resulting in an HMRC CJRS claim audit and reclaim demand.
- Understanding which staff roles are classified as redundant if there is no permanent workplace closure and the business is reopening shortly is challenging. If there is no redundancy situation, you risk substantial claims for unfair dismissal and discrimination and may be overpaying staff wages and termination payments

- Strategies to use up holiday on subsidised furlough leave can save substantial accrued leave costs on termination but need careful handling in view of complex statutory rights protections
- Selecting those for redundancy from different vulnerable categories or those on maternity leave rather than the healthy or COVID immune is fraught with claim risk.
- Failing to pay National Minimum Wage or National Living Wage for flexible furlough working hours after 1 July 2020 or for training or study during furlough could trigger a NMW audit, interest and penalties involving naming and shaming.

Does CJRS support change how workforce structure changes work?

The Coronavirus Job Retention Scheme (CJRS) is a novel and highly dynamic scheme which has been supporting the workforce cost of employers whose operations have been severely affected during the COVID19 pandemic. As lockdown eases gradually and businesses are being encouraged to reopen on a phased basis, its support is being reduced. All sectors expect to reopen in summer 2020, subject to future targeted geographical closures in regional virus hotspots.

The scheme will be closed to new entrants on 10 June and from 1 July a new stage of the scheme will allow flexible furloughing. From 1 August the financial support to organisations for those furloughed will taper off, requiring by October the employer to pay both 20% of the reference salary and employer's NIC and automatic enrolment minimum pension contributions, until the scheme ends on 31 October 2020.

This has enabled workforces to remain static and even allowed employers to shelter financially those who had planned to leave the organisation.

The issue

Employers are now facing the choice of maintaining workforces pending full reopening and utilisation of their available workforce with CJRS support where available or making terminations of all save those whose cost they can cover from 1 August either through turnover or CJRS support.

Do employers need to consult with their employees to agree workforce structure changes with them?

There are two ways in which employees' consent is needed.

The impact of any furlough changes (including flexible working) on an employee should be agreed with the employee in writing. The furlough scheme legislation makes this clear.

Separately, where redundancy is considered and more than 20 redundancy terminations are proposed over a 90-day period, there is a requirement for prior collective consultation with elected workforce representatives. This is to be completed at least 30 days and, if 100 or more redundancies are proposed, 45 days ahead of the first redundancy taking effect.



Failure to complete this properly risks an award of 90 days' gross pay per affected employee (on top of other termination costs) and potential criminal prosecution for the company and its directors, in addition to unfair dismissal, discrimination or whistleblowing claims from individual employees adversely impacted.



Grafting a novel grant payment scheme onto an already complex framework of legal and statutory employment rights which are part UK and part EU driven, has never been done before. Employers need to be careful that the life support on which they rely will be there when they need it and that unseen employment claims risk will not undermine their business as it reactivates when it is at its most vulnerable.

Solution

Making the workforce structure changes that may be vital to an organisation's survival with confidence at this time is critical. We are offering support services with all of these areas:

What solutions we offer

Real time advisory guidance and costings review on workforce structure change options with an options-based comparative cost and risk benefit analysis

This service reviews applicability for your organisation of the:

- Use of the CJRS until 31 October 2020
- Flexible furloughing strategies from 1 July 2020 and how to achieve them
- Requirements for large scale redundancies and creative alternatives to maintain your workforce pending reopening

Design support for your workforce changes in your organisation's position supporting both closure and/or reopening strategies including options for support, where possible, by the CJRS including via flexible furloughing

Support for implementation of

- Flexible furloughing
- Updating furlough agreements
- Redundancy programmes including those requiring collective consultation
- Contract change strategies including through dismissal and re-engagement of workforce groups
- Individual redundancy selection processes
- Employee claims resolution support and defence representation

These services are aligned with our services supporting:

- CJRS reclaim services which are recommended now the complexity of reclaim will increase with flexible furloughing and tapered CJRS contributions; and
- our post CJRS claim assurance and audit support services.

For more information email your enquiries to covid19enquiries@rsmuk.com

