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2020 POST
MEETING NOTES

**THE FURLOUGH –
WHAT DOES IT MEAN FOR
EMPLOYEE RELATIONS?**

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THE FURLOUGH – WHAT DOES IT MEAN FOR EMPLOYEE RELATIONS?

This webinar was run in response to member queries about the Coronavirus Job Retention Scheme (CJRS). Employment lawyer **Martin Warren** took us through the background to CJRS and explained the major implications and potential pitfalls.

As Martin explained, the CJRS is an emergency measure to prevent a collapse in employment during the coronavirus outbreak. It has been brought in at speed to mitigate what would otherwise be severe damage to the economy. It should be seen in this context. Usually, any change to employment law would be months, if not years, in the making, with detailed scrutiny by legal experts and members of parliament. The CJRS was designed, enacted and implemented in a matter of weeks. It has not been subjected to the usual degree of scrutiny and all the angles have not been tested. Inevitably, therefore, there will be areas on ambiguity which will not be clear until the government issues further guidelines or they are tested at tribunals. The purpose of this session was to clarify as much as possible and draw attention to some of the areas where the lack of clarity might cause problems for employers.

THE NEW LEGISLATION DOES NOT CHANGE EXISTING EMPLOYMENT LAW

Martin's key message, which is critical to the understanding of this new legislation: It does not change existing employment law. CJRS sits on top of existing law but all existing law continues to apply. Furthermore, existing employment law principles apply to the CJRS. For example, discrimination law applies as much to selection for furlough as it does for selection for redundancy.

WHAT IS THE CJRS?

It is a scheme to furlough employees, thereby allowing employers to keep people employed and avoid making them redundant. Its key features are:

- It is applicable only where employers operations are 'severely affected by coronavirus' to the point where 'you cannot maintain your current workforce';
- The government provides 80% of usual monthly wage costs up to £2,500 per month per employee;
- Those on payroll on or before 28th February are covered;
- All or any employees can be furloughed;
- Furlough must be by mutual agreement – an employer cannot furlough employees unilaterally and employees cannot furlough themselves;
- The minimum furlough period is 3 weeks;
- A furloughed employee cannot work for their employer but potentially can for a different employer;
- Furloughed employees can undertake voluntary work;
- Sick or self isolating employees are entitled to SSP;
- Shielding employees (those deemed to be at high risk from coronavirus) can be furloughed;



- The scheme runs for initial 3 month period from 1st March to 31st May 2020;
- The scheme may be extended but they government has yet to announce a decision.

TERMS OF EXISTING CONTRACTS ARE KEY

Just as the CJRS doesn't change existing employment law, it doesn't change existing contract terms either. Some examples of how that might affect the furlough terms are:

- If an employee's contractual terms can usually be changed by contractual agreement, the consent to a furlough can also be given through a collective agreement. Nevertheless, it is advisable to secure the employees written consent as well;
- An employee is allowed to work for another employer during the furlough unless their contracts contain express restrictions on taking additional employment.

HOLIDAYS AND THE CJRS

This is one of the main areas of ambiguity. For example:

- Do holidays break a period of furlough?
- Do employees accrue holiday during a furlough?
- Do employers have to pay full pay for holidays and bank holidays during the furlough?
- If so, can they claim the cost back?

Martin's advice was to avoid holidays during the furlough period and wait for the government to issue guidelines on bank holidays.

TOPPING UP FURLOUGH PAY

Some trade unions, such as Unite, have called for employers to make up the remaining 20% of furlough pay. Some high-profile firms, such as Rolls Royce, have committed to do so. According to research by Mercer, of the firms it surveyed, 75% are already topping up furlough pay. There is, however, no obligation on employers to top up pay and the decision to do so will inevitably depend on specific financial and industrial relations factors in each company.

REDUNDANCY AFTER THE FURLOUGH

If a business is severely affected by the lockdown it may not be able to re-start all its operations once the furlough ends and may therefore need to make people redundant. **Redundancy consultation periods still apply.** Therefore a company needing to make people redundant on 1st June, the day after the CJRS ends, would need to start a 45-day consultation on 16th April. This is likely to be difficult but existing law has not been changed so companies need to start planning for this now.

EMPLOYERS SHOULD:

- Confirm the position in writing to employees and retain the communication for 5 years;
- Stay in contact with employees as far as possible;
- Start planning for the end of the furlough now;
- Bear in mind that HMRC has the right to audit any company over its implementation of the furlough.

WHAT HAPPENS NEXT?

The CJRS comes to an end on 31st May. At the moment it is unclear whether it will be extended, though it seems likely that it will if the lockdown is extended.

If employers think they are likely to have to make redundancies once the furlough ends, they still need to go through the usual legal process.

This also, therefore, applies if an employer needs to change working practices in the aftermath of the lockdown. There may be sound business reasons for doing so but the processes which would have been followed in any other business change circumstances still apply.

As Martin said at the beginning, **existing employment law still applies.** The current crisis has not suspended it!

[ACCESS THE PARC FURLOUGH SLIDES HERE.](#)



PARC VIRTUAL SPRING SERIES

HEALTH AND FINANCIAL WELLBEING PROGRAMMES – ARE THEY AN ESSENTIAL PART OF THE EMPLOYEE VALUE PROPOSITION?

Thursday 23 April, 12.00pm



Steve Toft – Joined by **Jonathan Watts-Lay**, founder of Wealth at Work and **Nick McLennan**, Partner and UK Growth Leader at Mercer Marsh Benefits, to discuss:

- What are the practical implications (and costs) of taking a greater interest in the financial, health and mental wellbeing of our employees?
- Does this contribute to greater organisational performance, and to an essential value proposition to attract and retain critical talent?

WHAT IS HAPPENING TO THE ECONOMY?

Tuesday 5 May, 12.00pm



Roger Bootle – One of the UK’s foremost economists, Roger is the founder and chairman of Capital Economics. He is also an Honorary Fellow of the Institute of Actuaries and a Specialist Adviser to the House of Commons Treasury Committee and is a regular columnist for *The Daily Telegraph*. Roger will discuss:

- What’s happening to economies now?
- What will the eventual impact of the pandemic be?
- What kind of recovery can we expect?
- What might be some of the lasting impacts?

THE GEOPOLITICAL OUTLOOK – HOW IS IT CHANGING?

Tuesday 19 May, 12.00pm



Amelia Hadfield – Chair in European and International Relations and Head of Department of Politics at the University of Surrey. She has held senior academic posts in the UK and Europe. Amelia is keenly interested in foreign policy analysis, international relations theory, international political and economic policy and analysis. In this session, Amelia will discuss:

- What will be the major impacts of the pandemic for trade, influence, allegiances and institutions?
- How might the EU, the UK, the US and China emerge?
- Will this herald increased world cooperation or conflict?

CORONAVIRUS AND REWARD, HOW MUCH HAS CHANGED?

Tuesday 2 June, 12.00pm



Mike Haffenden – Mike will lead a discussion on reward implications of coronavirus and practical solutions that organisations have enacted.

GROW THE PIE: HOW GREAT COMPANIES DELIVER BOTH PURPOSE AND PROFIT

Wednesday 17 June, 12.00pm



Alex Edmans – Professor of Finance at the London Business School, will explain how purpose and profit need not be an either-or choice. The highest-quality evidence shows that companies can achieve both – but only with a rigorous framework for decision-making that recognises the existence of trade-offs and the need to turn down ‘worthy’ investments for commercial reasons. He will illustrate this framework with real life examples spanning industries and countries, and apply it to the current coronavirus crisis.

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