



Support

Government announces further support for businesses

Due to rising Covid-19 infections and measures introduced to help reduce the spread of the virus such as the 'rule of six' and pubs closing at 10pm, the Government has announced further support for businesses which is designed to help until March 2021.

The furlough scheme ends on 31 October and it will be replaced with new financial support for businesses with staff working reduced hours. The new Job Support Scheme will be available for businesses with staff working at least one third of their normal hours but receiving 77% of their normal wage (unless

hitting the cap). The scheme is open to all SMEs and to larger businesses who can show a fall in turnover. It starts on 1 November 2020 and will operate for six months.

Making up the unworked hours will be down to both the employer and the Government. In short on a basic calculation the employer will be paying 55% of a worker's wages for an employee working a third of their hours

Other announcements include the extension of the repayment terms of the bounce back loans and CBILs which can now be extended to up to 10 years.

Bounce back loans and CBILs applications will now remain open until the end of this year and will be replaced with a new 'successor loan scheme' from January 2021.

Businesses which have deferred VAT payments until March 2021 can now spread payments over 11 smaller instalments with no interest penalties. Self-assessment income taxpayers can also spread payments over a 12-month window from January 2021.

The hospitality and tourism sectors receive an extension of the 5% VAT rate through to 31 March 2021 which will be welcomed by many.

Again, more welcome measures from the Government to help struggling businesses, but there will be pros and cons so it is important to be fully informed and take legal advice where necessary before making any decisions.

Care workers receive back pay awards after employment tribunal ruling

A recent employment tribunal ruling has awarded a group of homecare workers an average of £10,000 each in back pay, as it found they had been unlawfully paid less than half of the minimum wage for providing care to elderly and disabled people.

The 10 workers were also on zero-hours contracts and they were found to be underpaid as they were not paid for the time they spent travelling between their client's homes. Many of the workers were

often working up to 14 hours a day and as a result they received half of the £7.20 minimum wage at the time of the case being brought to court in 2016 by the trade union Unison. The tribunal found that the time between their appointments which was often up to 60 minutes of travelling should have been treated as working time.

Unison said in response to the ruling: "The employment tribunal judgement sends a clear message to employers that it was unacceptable to pay staff 'illegal poverty wages'".

This ruling is significant for all homecare providers, councils, the NHS and also for individuals privately buying their own care on how payments should

be calculated for workers. If an employer is unsure about how to calculate employee pay or have questions about complying with the National Minimum Wage rules then they should get in touch to discuss it otherwise they may face a large bill in the future. The experience and skill of care staff which has and continues to be critical during the Covid pandemic should be valued more.

It is also worth noting that in this particular case, the employer 'inherited' the pay regime under TUPE which resulted in these historic liabilities. Care providers who are considering taking over new contracts should make sure they carry out due diligence to identify any historic back pay liabilities to avoid this happening in the future.



protection in the workplace

A recent ruling in an employment tribunal gives confirmation that the Equality Act not only protects workers who are going through gender reassignment but it also extends to those who identify as gender-fluid or non-binary.

In the case Ms R Taylor v Jaguar Land Rover Ltd, Ms Taylor had worked for Jaguar Land Rover as an engineer for 20 years and previously presented as a male but began identifying as gender-fluid and non-binary in 2017.

Ms Taylor won her claim for harassment, discrimination and constructive unfair dismissal

after she was subjected to insults and jokes from colleagues and had difficulty using toilet facilities at work after dressing in women's clothing.

Ms Taylor told the employment tribunal that she had received 'little support' from the firm's management which did not allow her to retract her resignation from the company.

Jaguar Land Rover argued that Ms Taylor as a gender fluid/non-binary individual did not fit into the definition of gender reassignment under section 7 of the Equality Act 2010.

The tribunal found Ms Taylor had the protected characteristic of gender reassignment and found Jaguar Land Rover's argument was 'totally without merit'.

Judge Hughes commented that: "Having heard submissions on this point, this employment tribunal considers it appropriate to award aggravated damages because of the egregious way the claimant was treated and because of the insensitive stance taken by the respondent in defending these proceedings." He went on to say: "We are also minded to consider making recommendations in order to alleviate the claimant's injury to feelings by ensuring the respondent takes positive steps to avoid this situation arising again." Ms Taylor has subsequently been awarded £180,000 compensation.

This is an important judgement as for the first time the law recognises the rights of a small number of individuals with complex gender identities. The courts have shown they are willing to stand up for the rights of an individual and the financial award reflects this. Employers should engage with all employees and be open to having conversations on issues such as gender to help to break down barriers in the workplace, especially in sectors which are heavily dominated by one gender or where after a number of years an individual feels confident to express themselves and identify in the way they choose.

This can be a complicated issue for many organisations to understand and we can provide advice and guidance on how to avoid issues like this in your workplace.

News in brief



Job Retention Bonus Scheme

On 2 October 2020, a fourth Treasury directive and HMRC guidance were published providing further details on the Job Retention Bonus (JRB). Employers will be able to apply for the £1,000 JRB in respect of eligible employees between 15 February and 31 March 2021. Employers will only be able to claim in respect of employees who:

- They previously furloughed under the Coronavirus Job Retention Scheme (CJRS).
- Are continually employed between the date of the last CJRS claim made in respect of them until 31 January 2021.
- Earn a minimum of £1,560 in total during the three months between 6 November 2020 to 5 February 2021.

Employers may not claim in respect of employees who are on notice, either statutory or contractual, on 31 January 2021 (including notice of retirement), or who have TUPE transferred to them after 31 October 2020.

Redundancies

A Freedom of Information request response has revealed that British employers have planned a total of 498,000 redundancies during the first five months following the onset of the COVID-19 pandemic, with 150,000 reported between June and July 2020 and a further 58,000 reported in August 2020. This represented an increase of 150% compared to the previous year.

Although the UK economy showed signs of recovery during the summer months, a recent survey by Acas revealed that a third of employers intend to make further redundancies in the upcoming three months.

Employment tribunal time limits should be raised from three to six months

The Law Society has called for the Government to increase the time limit for individuals bringing an employment tribunal claim from three months to six months at the same time it says that 'urgent action' is also needed to deal with the backlog of employment tribunal cases, which according to the HM Courts and tribunals Service currently stands at just over 40,000.

In July 2020, the Government asked the Law Society for its views on proposals to improve the running of employment tribunals. Their proposals included:

- Raising all time limits to six months
- Looking at how best to manage multiple cases
- Whether giving further autonomy to case workers would help quicken decision making while also maintaining confidence in how employment tribunals operate.

In its response, The Law Society also says:

- The different limitation periods often cause confusion for claimants, especially where parties are not legally represented.
- There should only be one test for deciding whether a time limit can be extended.

- It favours the just and equitable extension as it gives judges the right level of discretion when considering reasons why a time limit has not been met.
- There is a need to assess the Employment Tribunal rules as they apply to multiple claims.
- That giving further autonomy to case workers could have benefits, but it is essential that if there is a dispute about a decision, a caseworker makes sure the matter is escalated to a judge.

Going forwards it is important that the Government works to deal with the growing backlog of cases and The Law Society wants to see better access to justice for all individuals who are currently barred due to what could be a genuine mistake around the time limits. They do not however support the Government's suggestions that non-employment judges could sit on employment tribunals to increase the capacity in the system.

It is expected that we will see a rise in mediation to resolve many employment issues as it is likely to be a faster and less expensive way of dealing with disputes, especially as if there is a rise in redundancies due to the Covid pandemic in recent months. Many people both employers and employees will want to see a quick resolution so they can move on either with their lives or their business.



Making a success of your family business

It might surprise you to learn that 88% of all businesses in the UK are family owned and run and more than one in 10 of the UK's largest companies are family owned.

When running a family business, it is important for everyone to understand how the interests of the business vs the wider family interests relate, to avoid some of the issues that can lead to arguments and disruption.

Here are some tips to ensure family businesses run successfully.

Ownership and day to day management structure

Ownership may take a number of forms and the business activity could be split into separate divisions. The structure should be reviewed as the business grows to ensure that it remains fit for purpose. It is important is to decide who has control and responsibility for the day to day running of the business and how dividends will be paid. There may be conflicting demands by family members who want more shares, votes or dividends.

Consider if shares will be made available to non-family members to help raise external investment or for non-family employees, perhaps as part of an employee share scheme.

You also need to decide what happens to a family members' shares if they decide to leave the business, retire or if they pass away. Another factor to take into account is if a family member divorces and the impact this could have on the shareholding structure. It is important to take professional advice to get this right or to help make changes as people enter or leave the business.

Recruitment

It is recommended that a family business has an open and fair recruitment process to all otherwise existing employees may become demotivated or feel aggrieved if their promotion chances have been pushed to one side in favour of a less qualified family member. This also applies to disciplinary processes. If family members are not performing effectively then they should understand they may be disciplined or dismissed in the same way any other employee would be treated. Fairness is important to maintaining a happy workplace.

Funding requirements

Should the business need to raise additional funding to help it to grow then it is important not to overstretch family finances. Take advice on what security might be required for this and how loan covenants will be adhered to.

Future changes

It is natural that members of the family coming into the business might want to bring changes with them, so it is essential to consider how any change might be discussed and implemented. With change may also come disputes and these can be resolved in a number of ways. For example, business mentors, independent professional advisors and, in situations where deadlock occurs, independent mediation may offer advice and to help resolve a dispute.

Having an up to date shareholder agreement is the first step to avoiding and resolving disputes and the business may also wish to appoint non-executive board directors to provide impartial and expert advice.

Whatever the type of business you run, getting the structure and day to day running of it right is the key to ensuring long term success for the generations to come.

Quick reference section

Statutory minimum notice periods:

An employer must give at least:

- One week's notice to an employee who has been employed for one month or more, but less than two years.
- One week's notice for each **complete** year of service for those employed for more than two years.
- Once an employee has more than 12 year's service, the notice period does not extend beyond 12 weeks.

National Minimum Wage

	April 2019	April 2020
Apprentices	£3.90	£4.15
16-17	£4.35	£4.55
18-20	£6.15	£6.45
21-24	£7.70	£8.20
25+	£8.21	£8.72

Statutory Sick Pay (from April 2020)

Per week £95.85

Statutory Shared Parental/Maternity/Paternity/Adoption Pay

(basic rate) (from April 2020) £151.20

Statutory Holiday

5.6 weeks for a full time employee. This can include bank and public holidays.

Redundancy Calculation

- 0.5 week's pay for each full year of service when age is less than 22.
- 1 week's pay for each full year of service where age during year is 22 or above, but less than 41.
- 1.5 week's pay for each full year of service where age during year is 41 and over.

Calculation is capped at 20 years. Maximum week's pay is capped under the Statutory Scheme for dismissals after 6th April 2020 at £538.00.



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