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## September 2020 Update

Welcome to this month's update - where we discuss the latest legislation and guidance.

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In this month's edition, we report on:

- Furloughed Employees to Receive Full Redundancy Payments
  - Guidance on Notice Periods
  - Returning Employees to the Workplace
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### Furloughed Employees to Receive Full Redundancy Payments

As of the 31st July, a law has been brought in to ensure all furloughed employees receive redundancy payments at 100% of their normal pay, rather than a reduced furlough rate.

\* For those with normal working hours, any reduction in the amount payable for whatever reason whilst on furlough leave must be disregarded.

\* For those workers who do not have normal working hours, a week's pay is calculated looking at the 'reference salary' for claiming furlough pay under the Coronavirus Job Retention Scheme.

However, you need to remove the cap that is put on by the Scheme to calculate a 'weeks' pay.

The legislation also covers other statutory employment rights that depend upon calculating a 'week's pay', namely:

- Pay for time to look for employment/ training (Ss.53 and 54 Employment Rights Act ('ERA'))

- Notice pay (Ss.88 and 89 ERA)
- Compensation for failure to provide a written statement of reasons for dismissal (S.93 ERA)
- Compensation for failure to comply with an order for reinstatement (S.117 ERA)
- Compensation for unfair dismissal.

This is much welcomed by employees who are being made redundant as it gives certainty to the redundancy payments they should receive.

**Employers:** We can assist with redundancy advice and support

**Contact us:** If your business is needing to make changes to staffing

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## Guidance on Notice Periods

As many employers are unfortunately needing to undertake redundancy consultation to reduce staff costs as the furlough pay stops at the end of October, we have set out below guidance on notice periods.

### 1. The minimum notice period required by law

Start off by looking at the contract

s.86 of the Employment Rights Act 1996 (ERA) sets out the statutory minimum notice period, which is if you are employed for more than one month then an employee is entitled to one week for each year worked up to a maximum of twelve weeks for twelve years.

If the period set out in the contract is less than this the employee gets the statutory minimum.

If the contract has a longer contractual notice period then this must be paid over the statutory minimum notice period.

Both parties can agree to a shorter notice periods.

If there is no written contract then the employee is entitled to reasonable notice, which is normally the statutory minimum but it may be longer if there is an industry norm.

### 2. Two situations when notice is not required:

- a. Fixed term contract – no notice period needed to terminate a fixed term contract.

However, if the employee has worked for more than 2 years, if you don't follow a fair procedure then the redundancy could be found to be unfair dismissal.

- b. If it is found to be gross misconduct. Again for employees over 2 years you must follow a proper disciplinary procedure.
- 3. Breach of contract  
This is if an employee is dismissed without proper notice they may have a claim for breach of contract.
- 4. The law doesn't say how giving notice should be done but bear in mind:
  - a. Put it in writing (exclude texts). Always best to send by first class post as an employee can refuse to accept signed for post.
  - b. Give clarity with dates. The day you give notice is not calculated in terms of giving notice. So if one month notice is given on say 1st January the last day of work will be 1st Feb.  
If an employee gives notice confirm their last day of work.
  - c. Notice has to be clear and unambiguous and takes effect when communicated.
- 5. Alternatives to working out notice:
  - a. Payment in lieu of notice (PILON) brings an employment contract to an immediate end.  
You need to have a PILON clause in your employment contract to allow you lawfully to pay these.  
You can get it agreed with an employee.
  - b. Garden leave – this is useful if an employee is very senior of you need to stop an employee working for a competitor, though you need to have a garden leave clause in the contract.

**Employers:** We can assist with redundancy guidance, contracts and letters

**Contact us:** If your business is needing to make changes to staffing

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## Returning Employees to the Workplace

More employees are returning to the workplace after the Government's guidance from the 1st August and with the re-opening of schools.

We are finding many businesses seem to have some employees reluctant to go back into the office.

There is more emphasis on considering individuals circumstances in the risk assessment, including how employees get to work, who they live with and whether they are employees at higher risk.

However, if you take the steps outlined in our recent webinar with Silverstone Technology Cluster <https://www.youtube.com/watch?v=B76pvp6LIIQ&feature=youtu.be>, you can ensure an effective and practical risk assessment is put in place and get employees back at work.

We have put together a package of documents, guidance and templates in step by step form to make it easy for a business to undertake the Covid-19 Risk assessments in a straightforward and practical way.

**Employers:** We can guide your business through the risk assessment process and the documentation you need for as little as £400 for the package.

**Contact us:** Please see our most recent webinar with Silverstone Technology Cluster <https://www.youtube.com/watch?v=B76pvp6LIIQ&feature=youtu.be>

**For more information or assistance Email:** [enquiries@employmentlawsupport.co.uk](mailto:enquiries@employmentlawsupport.co.uk)



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