



HOW EMPLOYERS CAN AVOID REDUNDANCIES

In this current climate, employers are opting to preserve employment for their employees and avoid redundancies as far as possible. Companies experiencing a temporary reduction in work and unable to sustain the costs of full-time working for all employees can explore the options of short-time working and lay-offs.

Short-time working is when an employee's hours of work are reduced by a number of days each week or hours during a working day. The employee is paid for the hours worked or in accordance with the statutory guarantee pay provisions. A lay-off is if an employee is not provided with work for an entire 24-hour period and the situation is expected to be temporary.

IMPLEMENTATION

For an employer to implement short-time working or lay-off, they must have the contractual right, obtain agreement or it must be common practice to do so. Wherever possible, the company should give one week's notice. However, in emergency situations, this may not be possible, in which case reasonable notice should be given. Lay-off or short-time working should be confirmed in writing.

LENGTH OF DURATION

There is no limit for how long an employee can be put on short-time working or lay-off. However an employee could apply for redundancy and claim redundancy pay if they have been on short-time working or lay-off or for:

- four weeks in a row; or
- six weeks in a 13-week period.

REDUNDANCY PAYMENT

An employee can apply for redundancy and claim redundancy pay without actually being made redundant, if they have been on lay-off or short-time working (and receive less than 50% of their

week's pay) for the periods mentioned above and have at least two years' service.

The employee writes to the employer to claim redundancy within four weeks of the last day of lay-off or short-time working period. The employer has seven days to accept the claim or give the employee a written counter-notice. If no counter-notice is issued, it will be assumed that the redundancy claim is accepted.

A counter-notice means that the employer expects work to be available soon and it must therefore start within four weeks and last at least 13 weeks. The employer can withdraw the counter-notice in writing.

The employee must resign to get redundancy pay. The timing is crucial as the employee will have three weeks to hand in their notice, starting from either seven days after the employee gave written notice to the employer (if no counter-notice) or the date the employer withdrew their counter-notice.

STATUTORY GUARANTEE PAYMENT

If eligible employees are entitled to statutory guarantee payment (SGP) during unpaid lay-off or short-time working, it is payable by the company for five days in any three-month period and is currently £29 per day (as of 1 April 2019). If the employee earns less than the SGP rate a day, they receive their normal daily rate. Entitlement for part-time workers is calculated proportionally.

To be eligible for SGP, the employee must:

- have been continuously employed, either full-time or part-time, for at least one month;
- reasonably make sure they are available for work;
- not refuse any reasonable alternative work (including work not in their contract)
- not have been on lay-off or short-time working due to industrial action.

Not paying for SGP is an unlawful deduction.

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FAQS

1. Does this mean affected employees are at risk of redundancy?

This is not the same as redundancy. Employees remain under contract and have not been dismissed.

2. Can an employee request holiday during short-time working or lay-off?

Yes. Holidays can be requested in the normal way, however employees should only book holidays for days they would have worked i.e. the days not on lay-off or short-time.

3. Will the employee's holiday entitlement change?

No. Holidays will continue to accrue as normal based on the employee's contractual working hours.

4. What if the employee is sick?

If the employee is unable to attend work due to sickness on a day they were due to work, they should follow the absence reporting procedure as normal and will be paid sickness payments as per their contractual entitlements.

If the employee is unable to attend work due to sickness on a day they are due to be on short-time working or lay-off they do not need to inform the company unless working part of the day or were specifically requested to work. If either of these apply, they should follow the absence reporting procedure and will be paid sickness payments as per their contractual entitlements.

HOW CAN MOORE KINGSTON SMITH ASSIST?

For advice on your specific circumstances, contact our expert HRC team via www.mooreks.co.uk/hrc or 020 7566 4000.