



PENNINGTONS
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COOPER

ROADMAP TO REOPENING

THE TOP 5 QUESTIONS WE HAVE RECEIVED IN THE LAST WEEK: 1ST JUNE 2020



1. WHAT ARE THE LATEST CHANGES TO THE CORONAVIRUS JOB RETENTION SCHEME AND SELF-EMPLOYMENT INCOME SUPPORT SCHEME?

The furlough scheme will close at the end of October 2020. From August, employers will not be able to claim their NI and pension contributions and will also have to pay 10% of furlough payments in September and 20% in October.

From 30 June, the furlough scheme will be closed to new entrants. To qualify for the scheme employees will need to be furloughed by 10 June to satisfy the minimum three weeks furlough leave requirement.

'Flexible furloughing' will be introduced from 1 July and employers will be able to agree with previously furloughed employees that they return to work part-time. For example, a furloughed employee who normally works five days in a working week may be requested to work two days for which they would be paid in full by the employer and at the furlough rate for the three days not worked.

The self-employed will be able to make a further application for a grant in August. The payment may cover up to three months of average monthly trading profits and will be based at 70% of such profits with a cap of £6,570.



EMPLOYMENT

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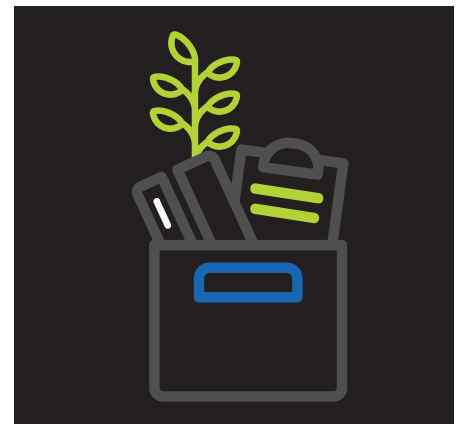
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2. WITH THE GOVERNMENT'S EXTENSION OF FURLOUGH LEAVE, WHAT ADDITIONAL FACTORS MIGHT I HAVE TO CONSIDER WHEN MAKING REDUNDANCIES WHILE THE SCHEME IS STILL IN PLACE?

Despite the name of the Coronavirus Job Retention Scheme, an employer is not expected to delay necessary restructuring indefinitely. However, given the Chancellor's comments about standing by the workforce and keeping people in work, an employer would be advised to consider the method used and any alternatives to redundancy very carefully.

For example:

- Would it be appropriate to make use of the extended period of furlough leave, including the option of part time work?
- Are the selection pools and scores transparent and objective? Remember that some employees will be very nervous about returning to the workplace and may believe they are being victimised as "whistle blowers".
- Would it be preferable to maintain a period of reduced terms and conditions throughout the workforce? (For many employers, redundancies will be more appropriate to give a restructured workforce the chance to move on).
- Could unpaid leave/sabbaticals be appropriate?
- Consider the possibility of moving a good employee from a redundant role into another position that is unaffected.



Tribunals will recognise the need for employers to make redundancies. Performance and skill-based assessments will ensure you have the best workforce going forward.



EMPLOYMENT

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3. DOES THE SUSPENSION OF WRONGFUL TRADING BY THE CORPORATE INSOLVENCY AND GOVERNANCE BILL (CIGB) MEAN THAT DIRECTORS NEED NOT BE CONCERNED?

The CIGB is expected to come into force around the end of June 2020.

Directors have taken comfort since the announcement in March 2020 which stated that the wrongful trading offence would be suspended due to Covid-9. As drafted, the CIGB indicates that this was false comfort.

The CIGB does not prevent a company from trading wrongfully or stop claims for wrongful trading being brought against directors. Instead, when the court is determining how much the directors should be ordered to pay, the Bill only requires the court to assume that the worsening of the financial position of the company, for as long as the temporary provision is in force, was not caused by directors' actions or inactions.

The CIGB therefore does not alter liability for wrongful trading. It only potentially reduces the amount the directors could be ordered to pay. Furthermore, claims arising from preferences, transactions at an undervalue, misfeasance and fraudulent trading remain fully in force and may also give rise to personal liability for directors. Directors must remain on their guard and seek timely advice to mitigate risks of personal liability.



RESTRUCTURING & INSOLVENCY

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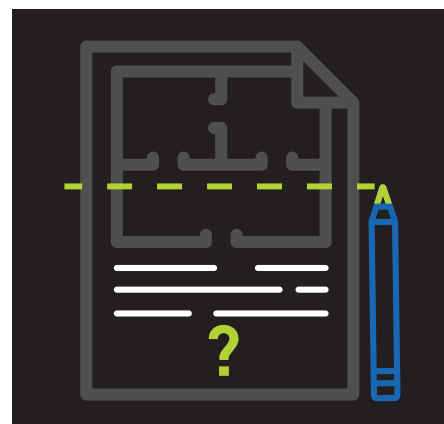
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4. WITH MORE OF MY EMPLOYEES WORKING FROM HOME, I NO LONGER NEED THE SAME OFFICE FLOOR SPACE. WHAT ARE MY OPTIONS?

If you are nearing the end of your lease or a break date, you can look for smaller premises or agree a size reduction with your landlord on renewal.

Otherwise you could consider the following:

- Agree a "surrender of part" with your landlord. This brings to an end your lease for the surrendered part. While your landlord may not agree, it is worth asking if you are located in a popular area.
- Underlet part of the property to another business. You will need to check your lease terms to see whether this is permitted. Assuming it is, you will probably need your landlord's consent. It is important to apply for consent as soon as you have agreed terms with an undertenant as this will give you statutory protection to prevent your landlord unreasonably withholding or delaying consent. Your solicitor can advise how to formally serve the request to achieve this.
- Assign your lease to another business. If permitted by your lease, this will require your landlord's consent. You are likely to only be allowed to assign the whole lease, so you will need to locate new smaller premises. Requests for consent should again be formally served by a solicitor.



REAL ESTATE

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5. I'M A RETAILER AND I HAVE BEEN TOLD I CAN REOPEN ON 15 JUNE. WHAT DO I NEED TO THINK ABOUT?

Re-opening presents a number of new challenges and ensuring a safe environment for your customers and staff is key to the business' survival and success. Start with a thorough risk assessment to highlight the health and safety issues. For the latest government guidance, [see here](#).

CUSTOMERS

Retailers must maintain a safe environment and comply with all relevant consumer laws. Any measure taken in response to Covid-19 must not interfere with the legal rights of customers, such as a right to return a product. Consider introducing a 'quarantine period' before returning the product. See requirements for online trading [here](#).

PRODUCTS

Start reviewing your supply chains for existing and future stock. For guidance on the impact of Covid-19 on supply chains and contracts, [see here](#).

STORE

Depending on the size, layout and nature of the store, retailers may be able to increase social distancing and reduce congestion and contamination by controlled entry, socially-distanced queues and appropriate PPE for staff or customers. Look out for the Government's proposed code of practice aimed at the commercial/high street sector.

Also consider closing fitting rooms or requiring customers to wear protective layers when trying on garments and shoes. Look out for the Government's proposed code of practice aimed at the commercial/high street sector. See [here](#) for more information.

STAFF

Try to streamline the number of staff working in-store at any one time and ask employees able to work from home to continue to do so.

Also consider employees' commute and break time/patterns in your risk assessment. See our guidance [here](#).



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For a selection of briefings and practical guidance to help minimise risk in this period of uncertainty visit our [coronavirus resource hub](#).
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The information contained in this Q&A is general in nature and is not intended to constitute legal advice.