

Workplace Newsletter

Keeping you up to date with all things Employment Law, HR & Work-Based

September 2020



Furlough - the end is in sight

Changes to the government's coronavirus scheme came into effect on 1 September 2020. These changes affect the amount of an employee's salary that the government will cover and the amount that an employer must contribute in order to keep an employee on furlough.

Changes from 1 September 2020

From September the government will now only contribute 70% of an employee's wages up to a new cap of £2,187.50. This is a reduction from the previous rate of 80% of an employee's salary covered up to a cap of £2,500. This remaining 10% will need to be covered by the employer to ensure the employee receives 80% of their salary up to a cap of £2,500.

Changes from 1 October 2020

From October the government cover will reduce further to 60% of an employee's wages up to a cap of £1,875. Employers will need to make up the remaining 20% so as that the employees still receive the salary they have been receiving during furlough.

What about pension and National Insurance contributions?

Employers have been required to cover their pension and National Insurance contribution obligations for furloughed employees since 1 August and this remains the case.

Will the job retention scheme be extended?

There is increasing pressure on the government to extend the furlough scheme beyond the end of October but there are no signs currently that this will happen. Instead the government appears to be focusing on other ways to encourage employment, for example via the job retention bonus scheme and measures to encourage employment of young people.

Welcome

Sorry we missed you in August – with it being holiday month we thought we'd save everything up for September.

We've been speaking to employers who are facing new challenges – flexible furlough, returning people to the workplace and thorny issues around redundancy.

We've introduced a new bite size feature to tackle some of these – "What do I do about...?", which we hope you find helpful.

As always, please follow us on [LinkedIn](#) for our latest updates.

The future of the UK labour market

The end of freedom of movement within the EU is now just around the corner. The Government has provided further information on its new immigration policy. [Read more P2>](#)



outset.

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Sponsored routes



The future of the UK labour market

With COVID-19 having been all encompassing this year, its easy to forget that we used to talk about Brexit all the time – but the end of freedom of movement within the EU is now just around the corner. Since our update in March, the Government has provided further information on its new immigration policy.

The new immigration system will apply from 1 January 2021, when free movement of EU nationals to the UK will end. Our current points-based system will be revamped, and other than Irish citizens, anyone coming to the UK to work will need to apply for a visa in advance.

The new system will be much more flexible than the current points based system, which typically only permits employers to sponsor highly skilled individuals, and often only after advertising the role for 28 days, giving preferential treatment to the resident labour market.

Under the new system, in most cases, employers will still need a sponsor licence but it will be much easier than it is currently to recruit those who don't already have permission to work in the UK. The new immigration system will apply equally to all foreign nationals, with no preferential treatment for those from the EU. (Note that this will not apply to EU nationals already resident in the UK who qualify for settled or pre-settled status).



What should employers do to prepare?

In the majority of cases employers will need a sponsor licence in order to employ a worker from abroad. For those businesses who don't already hold a sponsor licence and consider that future recruitment will include the EU (or wider) job market, act now. Applying for a sponsor licence is bureaucratic process which is easy to get wrong – we can help you make sense of the rules and be in the best position possible to become an approved sponsor.

Its also important to budget. Applying for a sponsor licence and sponsoring individuals isn't cheap, so you'll need to factor those costs into your budget planning.

And lastly, if you currently have EU national employees, make sure they know they must apply for settled status by 30 June 2021 at the latest – but encourage them to apply sooner rather than later.

Skilled Worker Route

Under the new immigration rules, from 1 January 2021, anyone coming to the UK to work will need to demonstrate as a minimum that:

- they have a job offer from a Home Office approved sponsor
- the job offer is at the required skill level – RQF 3 or above (A Level and equivalent)
- they speak English to the required standard

Applicants will require 70 points under the new system and some points are trade-able – so if the applicant doesn't score in one trad-eable category but does in another then they will still be able to make up the points.

The characteristics scored are as follows:

Characteristics	Trade-able	Points
Offer of job by approved sponsor	No	20
Job at appropriate skill level	No	20
Speaks English at a required level	No	10
Salary of £20,480 (minimum) - £23,039	Yes	0
Salary of £23,040 - £25,599	Yes	10
Salary of £25,600 or above	Yes	20
Job in a shortage occupation (as designed by the MAC)	Yes	20
Education Qualification: PhD in subject relevant to the job	Yes	10
Education Qualification: PhD in a STEM subject relevant to the job	Yes	20

Intra-company Transfer (ICT)

This route exists currently; it enables multinational organisations to transfer workers between group companies to the UK, subject to a number of restrictions. There are likely to be few changes to how it operates. For example, employers will only be able to sponsor employees for role skilled to RQF level 6 (graduate equivalent level).

Seasonal Workers Pilot

This route is currently being trialled, until the end of 2020. The Home Office will then decide whether to continue the route under the new immigration system.

Un-sponsored routes



There will be some other routes for non-British nationals where they won't need sponsorship, including:

Global Talent Route

This will allow the most highly skilled individuals to come to the UK to work without a job offer, but they will require a recommendation from a select group of government recognised bodies:

- The Royal Society, for science and medicine
- The Royal Academy of Engineering, for engineering
- The British Academy, for humanities
- UK Research and Innovation, for science and research
- Tech Nation, for digital technology
- Arts Council England, for arts and culture

Graduate Route

International students who have graduated from a UK University from summer 2021 will be allowed to stay and work in the UK for two years after graduation. PhD graduates can stay and work in the UK for three years.

Youth Mobility Scheme

This scheme exists currently under Tier 5 of the current points based system. It enables applicants from certain nationalities, aged between 18 to 30 years, to come to the UK for up to 2 years.

This scheme does have its limitations, but it can be a useful, short-term solution, particularly for employers without a sponsor licence.

Those from the following countries are able to apply under the Youth Mobility Scheme:

- Australia
- Canada
- Japan
- Monaco
- New Zealand
- Hong Kong
- Republic of Korea
- Taiwan

The scheme also applies to:

- British overseas citizens
- British overseas territories citizens
- British nationals (overseas)

The cost of sponsorship

Sponsoring individuals to come and work in the UK can be a time consuming and costly process.

Some of the main costs involved are:

Description	Cost (as of July 2020)
Sponsor licence – first time application	£536 or £1,476, depending on the size of the company and type of licence
Certificate of sponsorship – this must be assigned to an individual by a licensed sponsor to enable them to apply for their visa	£199 per certificate assigned under current Tier 2 (General) and ICT schemes
Immigration Skills Charge – payable by the employer for each individual sponsored as a Skilled Worker or ICT	£364 or £1,000 for each year of the certificate of sponsorship, depending on the size of the employer
Visa – current Tier 2 (General) visa cost, which will essentially be replaced by the Skilled Worker route. This is payable by the individual (but in a lot of cases the employer pays/ reimburses the individual)	£464 for up to 3 years, £1,220 for more than 3 years. These costs go up and down slightly depending on whether: <ul style="list-style-type: none"> • the individual is a citizen of Turkey or Macedonia; • is applying from within or outside of the UK; • the role is one where there is a shortage of workers in the UK
Health Surcharge – most individuals applying for a visa to work have to pay this surcharge as part of their visa application	£300 per year for a Youth Mobility Scheme visa £400 per year for all other visas The amount for the total duration of the visa being applied for must be paid upfront, e.g. £1200 for a 3 year Tier 2 (General) visa



Recent Case Decisions

Can an employee be dismissed because they might be guilty of a criminal act?

K v L

In this case, no, the courts found that the risk of potentially being guilty of a criminal act was not an adequate reason for dismissal.

L, the claimant, was a school teacher who was arrested and charged for being in possession of a computer which contained indecent images of children. However, no prosecution followed as it couldn't be established who had downloaded the images.

Perhaps understandably, due to the nature of the alleged offence, the school took disciplinary action however it didn't explicitly allege that reputational damage was a concern at that point – it relied on the teacher's involvement in the police investigation.

The teacher denied downloading the images. He was dismissed because:

- it couldn't be proven L hadn't downloaded the images; and
- the school was concerned of reputational damage should L be prosecuted in the future.

The EAT found the dismissal to be unfair on two grounds:

1. the employee wasn't given notice that an allegation of reputational damage might lead to dismissal; and
2. it wasn't reasonable for the school to dismiss L based on a concern that he might have committed the offence. Instead the school should have considered the evidence they had available to them and apply the balance of probability in reaching its decision. The risk of a future conviction was an unknown risk that could not be relied on.

This case highlights the importance of ensuring all allegations are put to an employee when inviting them to a hearing (and not relying on a reason for dismissal which the employee hasn't been able to respond to).

It also highlights that, no matter how serious the potential circumstances might appear on their face, its necessary to consider the actual evidence available rather than relying on 'what ifs'.



Believe it or not?

In these uncertain and challenging times, there are lots of people considering career changes – whether out of necessity or re-evaluation.

With pockets being hit hard, we thought it would be interesting to see what the top 10 highest paying jobs in the UK are (in 2020, according to Indeed.com):



Chief financial officer

£112,666

VP of Sales

£109,278

VP of engineering

£108,623

Orthodontist

£99,010

Dermatologist

£93,282

Director of product management

£92,692

Neonatologist

£92,003

Rheumatologist

£91,704

Ophthalmologist

£91,704

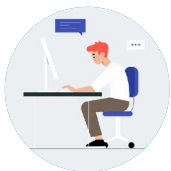
Director of Catering

£91,578



Home-working practicalities

Since our last piece about home-working becoming the new norm, we've been inundated with questions about employers' obligations to their employees who are working from home. Here, we set out the answers to some of the most frequently asked questions.



Do I have to provide my employee with equipment like a desk and chair?

No. There is no legal obligation on an employer to provide the equipment necessary for home-working (e.g. desk, chair, printer, etc.). For practical reasons though it might be sensible to.

For example, if someone working from home doesn't have a proper desk and chair set up they may be at increased risk of suffering from muscular issues which could lead to absence or, at worst, even personal injury.



If I supply IT equipment to an employee, what are my obligations?

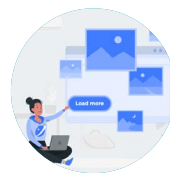
The use of electrical equipment at work is covered by a variety of EU and UK legislation including the Electricity at Work Regulations 1989 (SI 1989/635). Briefly, an employer is responsible for the equipment it supplies. However the homeworker's domestic supply, including electrical sockets, remains their responsibility and they should be reminded of this.

It will be the employee's responsibility (once the employer has satisfied itself the equipment provided in the first place is safe) to highlight any issues with the equipment, but employers should provide guidance/a checklist to employees on what to look for (e.g. broken wires, overheating equipment).



Do I need to supply a home worker with a first aid kit?

An employer must supply appropriate first aid provisions and supplies to all employees, including homeworkers (Health and Safety (First Aid) Regulations 1981 (SI 1981/917)). The precise requirements depend on the nature of the work and the risks involved. Most home-working will be of low risk and should not create any particular problems: a simple first aid kit should suffice.



Do I have to reimburse a home-worker for using their electricity and broadband?

No, but you can choose to. Employers can, if they wish, pay a home worker up to £6 per week to cover additional household expenses without that sum having any tax implications. Any amounts above £6 per week might be taxable as an employment related benefit.



Can I ask questions about childcare commitments if an employee asks to work from home?

Yes, but carefully. Ensure the same questions are asked to both men and women, and are limited. Only ask what you need to in order to ensure there is adequate childcare in place, so the employee is able to concentrate on their duties during their working hours.

What do I do about...

Grievances and redundancy?



It can be difficult to know what to do when an employee has been put at risk of redundancy and raises a grievance about it. They might raise it at the start of the process, once the consultation is underway, or even at the end, after they've had the appeal outcome and been told there is no further right of appeal.

If their grievance is about the redundancy process/decision, what should an employer do?

It will depend on the stage at which the grievance is raised, and exactly what the employee is complaining about. For example, if it's at the start of the process, and the employee is alleging that the manager scoring them has a personal vendetta against them then it might be wise to deal with the complaints as a standalone grievance. If you don't want to hold up the redundancy process, and its practical, you might be able to appoint a different scoring manager in the meantime. of the redundancy process, for example discrimination or whistle-blowing, the its best to treat the complaints as a formal grievance and investigate them fully.

What if the grievance is purely about the redundancy process (for example, the employee is challenging their scores), and the issues are the sorts of things you would normally deal with during the consultation meetings?

In those cases it might be appropriate to explain to the employee that the consultation meetings are the opportunity to discuss those issues. If you can deal with them as part of the redundancy process and, document your response, it may not be necessary to deal with them under a separate grievance process. Be careful though, this is a delicate balancing exercise. Employers must follow the Acas Code when dealing with grievances – otherwise, if the employee brings a claim connected to their employment and grievance, there could be a 25% uplift on any compensation awarded.

Bear in mind that if there are any complaints raised which might affect the integrity of the redundancy process, for example discrimination or whistleblowing, it will always be best to treat the complaints as a formal grievance, investigate and deal with them fully.

What if a grievance is raised after employment has ended?

The Acas Code doesn't require employers to deal with grievances raised after the employment relationship has come to an end. However, a tribunal has awarded a 25% uplift in a case where a post-employment grievance alleging discrimination wasn't dealt with, and that hasn't yet been challenged.

Where the employee had over 2 years' service and the grievance is raised soon after employment ends, or there are allegations of discrimination or whistleblowing, then it would be best for the employer to deal with the grievance. This will help minimise the risk of a potential claim as well as ensuring you're able to address any issues which might remain in the workplace.

Can we have a different policy for post-employment grievances?

Yes, and it can be beneficial to have a more streamlined process for dealing with post-employment grievances, including placing a time limit on how long after termination a grievance can be raised. Consider ensuring as a minimum that the policy is in line with the Acas Code of practice.



Support for young workers

The government has introduced a number of measures to incentivise employers to recruit young workers.

Kickstart Scheme

A new scheme has been launched to support young workers called the 'Kickstart scheme'. Its aim is to encourage employers to create 6 month placements for young people who are on Universal Credit and at risk of long term unemployment.

The government will pay the wages of young employees for the first 6 months of employment. For each "kickstarter" job, the government will cover the cost of 25 hours' work a week at the National Minimum Wage - £4.55 for under 18s, £6.45 for 18 to 20-year olds, and £8.20 for 21 to 24-year-olds. Employers will be able to top up that payment if they wish.

The government payments will also include national insurance and pension contributions. There is a further £1,500 per job placement available for setup costs, support and training.

The first placements are expected to be available from November 2020 but the application process is open now.

Eligibility for Kickstart Scheme

The scheme is available in England, Scotland and Wales and is available to any organisation regardless of size. Any employee brought on under the Kickstart Scheme must not be replacing existing or planned vacancies nor have an impact on existing employees or contractors working hours.

An application to use the Kickstart Scheme should include how you intend to support the employee in obtaining long-term work, supporting them with their CV and provisions for the employee to gain basic workplace skills. Once a work placement has been advertised it can be taken up by a second employee once the first employee completes their 6 month term.

Applying to use the Kickstart Scheme

If you are applying for 30 job placements you can submit an application directly through the government website.

If you are posting less than 30 job placements you must partner with other organisations (e.g. similar employers or local authorities) before applying.

If you need help with the Kickstart process check for your local or national employer contact [here](#).



Apprenticeship incentive payment

The government has introduced an incentive scheme for employers who take on a new apprentice between 1 August 2020 and 31 January 2021. You'll receive a bonus of £2,000 for apprentices aged 16 to 24 and £1,500 to take on apprentices aged 25 and over.

The payments will be made in two equal instalments on day 90 and day 365 of the apprenticeship. They payment can be used for anything to support your costs and doesn't have to be repaid.

The ability to apply for the new Apprenticeship support opened on 1 September 2020 and you can apply for it via your online apprenticeship service account.

Traineeships

A traineeship is a course that includes a work placement and, unlike apprenticeships, employers don't usually have to pay trainees a wage, although they may choose to pay travel expenses or a food allowance. A traineeship can last from 6 weeks up to a year, and employers should offer a minimum of 100 hours work experience.

The government is introducing a number of measures to encourage and boost support for age 19 to 24 traineeships. Employers who take on a trainee will receive a £1,000 grant to support young people receiving work experience and contribute to costs, for example PPE.

The new grant will be available for up to 10 trainees per employer.

The scheme should be in place soon, and news about the framework for delivery and funding will be published via the following [government page](#).



In case you missed it... Outset meet the team

Every week on our [LinkedIn](#) page we interview a member of the outset group to help our clients and contacts get to know us better.

Many of you may have worked with Lorraine Williams in our Employment team, she's a key member of the team and is Outset's longest serving employee but did you know she has an unusual hobby? Read more about Lorraine [here](#).