

UPDATE

# COVID-19 employment update: week of 23 March 2020

This is a further update for employers prepared by Carla Benest (Partner, Jersey) and Rachel Guthrie (Senior Associate, Guernsey)

With coronavirus dominating the global agenda for the foreseeable future, here is our next update for Channel Islands employers on the latest developments and questions we're facing.

We will be publishing regular updates, but for any particular issues you are dealing with, our employment team is available to help. Please contact Carla or Rachel in the first instance.

## **Should employees be at work?**

The current advice is that, where possible, employees should work remotely in line with the ongoing priority to take social distancing measures. Many businesses across the Channel Islands are now requiring their employees to work from home, and grappling with the technical and logistical demands required to maintain a semblance of business as usual.

## **What if employees cannot work from home but are unable or unwilling to come into work?**

Employees who are not able to work due to the virus (whether or not this is diagnosed) or who are undergoing self-isolation because of medical advice or government guidance should be treated as on sick leave, including in respect of sick pay.

Employees who do not have the resources to work from home but who are prevented from working, either by their employer's instructions or because a decision has been taken to shut the workplace, ought to be paid as normal as they are acting in accordance with their employer's instructions.

The position is sensitive for employees who feel unwilling to go to work when their attendance is (for the time being) expected, especially if not exclusively in relation to employees who have been identified as "high risk". Employers should be wary of threatening disciplinary action, and mindful of the duty to ensure a reasonably safe working environment. Employers are entitled to maintain that pre-booked annual leave should still be taken as such. But they may also wish to agree (or ultimately direct) that an employee's non-working time will be designated as annual leave if they are unable or unwilling to work remotely.

But along with requiring employees to submit formal flexible working requests, employers should be aware that sticking to harsh or overly restrictive protocols should be carefully considered. Unilateral steps to the detriment of the workforce or particular employees are unlikely to be attractive and may well threaten the engagement which most businesses will be counting on in the coming months.

## **What are the options in the Channel Islands for temporary lay-offs?**

The statutory employment frameworks in Jersey and Guernsey do not specifically address temporary lay-offs or short time working. There may be contractual provisions in an employee's terms and conditions of employment to allow for those or similar measures, but this is not a common or consistent practice.

Any measures to reduce employee working hours and/or pay will need, therefore, to be agreed with employees or otherwise imposed unilaterally. Unilateral imposition, even in the current circumstances, will carry some risk of resignations and claims for constructive dismissal and/or complaints that a redundancy situation has arisen.

If there is a genuine redundancy situation, a redundancy process (which may need to be appropriately adapted in the circumstances) would need to be followed.

### **What are the local Channel Islands governments doing to help employers?**

The Government of Jersey has announced a payroll co-funding initiative whereby employers can claim up to £200 per week of its payroll costs for each employee up to a maximum of six weeks.

Few details yet are available but it is expected that the first payments will be available in early April 2020. The key condition seems to be that the relevant employee must have been employed as at 20 March 2020. Importantly, this is a payroll reimbursement scheme, so would only apply to the cost of employing continuing employees.

The Government of Jersey has also indicated that it will extend the availability of Short-Term Incapacity Allowance (STIA) – which is typically paid to employees direct – by removing the need for employees affected by coronavirus to be certificated as ill and to have made six months of social security contributions.

It is, however, presently unclear what the position will be for individuals in Jersey who have lost their employment and who are unable to obtain social security benefits due to their short duration of residency.

In Guernsey, the Employment & Social Security department has set up a hardship fund to help people of working age who need financial support as a result of the coronavirus (for example, because they have been made redundant or are unable to work due to childcare commitments but do not qualify for unemployment or sickness benefits).

Wider measures are also underway in both islands to help locally established businesses with matters such as deferral of tax and/or social insurance payments. Information is now available via the islands' respective online resources with further details anticipated shortly.

### **Are population controls applying as usual?**

The States of Guernsey has confirmed publicly that legislation is in progress that will allow individuals holding an employment permit to continue to lawfully remain in Guernsey after the expiry of their permit. This is to enable businesses to retain staff and to avoid the potential hardship of individuals who lose their employment having to leave the island.

As yet the Government of Jersey has not made a similar announcement but our expectation is that, likewise, a pragmatic and proactive approach will be necessary and desirable.

## **Contacts**

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