

**Employment Issues During the Coronavirus Pandemic**

**Frequently Asked Questions**

***Should I be going into work during the coronavirus pandemic?***

The government’s [guidance](https://www.gov.uk/government/publications/full-guidance-on-staying-at-home-and-away-from-others/full-guidance-on-staying-at-home-and-away-from-others#going-to-work) is that you should work at home wherever possible. The only exception is where it would be ‘impossible’ to work from home. Whether this is the case for you will be case-specific. It is essential to discuss this issue with your employer as soon as you can do so.

***What is the government’s ‘furlough’ scheme? Can I benefit from the commitment to pay up to 80% of salaries?***

The government have committed to paying up to 80% of wages (capped at £2,500) per month for employees who have been asked by their employers to stop working but are being kept on the pay roll. It is called the [Coronavirus Job Retention Scheme](https://www.gov.uk/government/publications/guidance-to-employers-and-businesses-about-covid-19/covid-19-support-for-businesses#support-for-businesses-through-the-coronavirus-job-retention-scheme). The government will pay this money to employers – it will not be paying money directly to employees. Instead, the idea is that employers will continue to pay their employees even if there is no work to be done.

HMRC has issued [guidance](https://www.gov.uk/guidance/claim-for-wage-costs-through-the-coronavirus-job-retention-scheme) that confirms that the scheme will be backdated to 28 February 2020. This means that, if you lost your job since then, the employer can rehire you, designate you as a furloughed employee and benefit from the scheme. As this guidance has been recently released, it is advisable to contact your employer and inform them that they could rehire you and benefit from the scheme but there is no obligation on the employer to do this.

In order for the scheme to apply to you, your employer must designate you as a ‘furloughed worker’ in writing.

This means:

* You must still be on the pay roll – i.e. your employer cannot dismiss you and must still be paying you.
* You cannot be asked to do any work for your employer while you are designated as a furloughed worker. It is sensible to ask for this to be put in writing by your employer.
* Your employer needs your consent.

Your employer may furlough some employees but not others. However, the choice of which employees are furloughed must be done on a fair basis. This means, for example, that it must not be discriminatory.

The 80% is calculated based on the actual, pre-tax salary, excluding any fees, commission and bonuses. It does not include non-monetary benefits (such as a car or health insurance). For employees whose pay varies, the 80% is based on the higher of either the average monthly pay for the 2018/2019 tax year, or the pay in the same month the previous year. This means that employees on zero-hour contracts can still benefit from this scheme.

If you are designated as a furloughed worker, your employment contract still exists. This means you are entitled to your usual amount of pay (even though the government is only paying up to 80% of this), unless there is a term in your contract that allows your employer to withhold pay if there is no work. Some employers are continuing to pay full salaries, by topping up the 80% received from the government. Some employers, however, are asking employees to take a pay cut. A reduction in your pay will be a breach of your contract (known as an unlawful deduction of wages) unless you give consent to the reduction before it takes place. Most employers will ask you to give this consent in writing, and will address the question of pay when seeking your consent to being furloughed.

You do not have to consent to a reduction in pay (or to being furloughed). However, if your employer cannot afford to keep you on the payroll without your agreement to a pay cut, they may consider making your job redundant.

The best advice is to have an open discussion with your employer about these issues.

***Can employees can start a new job when on furlough?***

Yes, as long as a second job is allowed under your old employment contract.

***My employer has reduced my pay, what are my rights?***

Ordinary employment law still applies during the coronavirus crisis. This means that your employer cannot simply reduce your pay – a reduction in your pay will be a breach of your contract (and an unlawful deduction of wages) unless you give consent to the reduction before it takes place. Most employers will ask you to give this consent in writing.

If your pay is cut without your consent, you can [make a claim to the Employment Tribunal](https://www.gov.uk/employment-tribunals/make-a-claim) for repayment of the unlawfully deducted wages (remember to contact [ACAS](https://www.acas.org.uk/early-conciliation) before applying directly to the Tribunal). There are strict time-limits for bringing claims to the Employment Tribunals (3 months minus 1 day from the date of dismissal), which can be extended by a short period to account for time take up contacting ACAS (see the question below on enforcing your rights for more information on this). As a first step, it is sensible to speak to your employer and try to resolve the issue informally.

***My workplace has closed because of coronavirus, what are my rights?***

If your employer has temporarily closed and does not pay employees, this is known as being “laid off”. Unless there is a term in your contract allowing your employer to do this if there is no work, it will be a breach of your contract and may be an unlawful deduction of wages or a redundancy dismissal.

If this happens, ask your employer about the “furloughed workers”/Coronavirus Job Retention Scheme (see above).

***I have lost my job or been made redundant because of coronavirus, what are my rights?***

Ordinary employment law still applies during the coronavirus crisis. You may be entitled to redundancy pay or to bring a claim for unfair dismissal [to the Employment Tribunal](https://www.gov.uk/employment-tribunals/make-a-claim) (remember to contact [ACAS](https://www.acas.org.uk/early-conciliation) before applying directly to the Tribunal). There are strict time-limits for bringing claims to the Employment Tribunals (3 months minus 1 day from the date of dismissal or redundancy), which can be extended by a short period to account for time take up contacting ACAS (see the question below on enforcing your rights for more information on this). As a first step, it is sensible to speak to your employer and try to resolve the issue informally.

***I have COVID-19, am I entitled to sick pay?***

If you have been diagnosed with COVID-19 and cannot work, or have been advised to self-isolate and cannot work, you are entitled to statutory sick pay. Your contract may also give you a right to contractual sick pay, which will be in addition to statutory sick pay.

In ordinary employment law, statutory sick pay is not available for the first three days of sickness (meaning it ordinarily only starts being paid on day 4 of a sickness (including non-working days)). However, the rules are now different for coronavirus so sick pay is now payable from day 1 (this rule change is yet to be finalised by the government but it is expected to be completed shortly).

Some employers may require evidence that you are sick (e.g. a doctor’s fit note, sometimes called a Statement of Fitness for Work). However, the NHS has advised people not to visit GPs to obtain fit notes relating to coronavirus. Instead, you can get an isolation note by completing an online form on the [NHS 111](https://111.nhs.uk/isolation-note/) website, rather than by visiting a doctor in person.

***Someone in my household has coronavirus symptoms and I have been advised to self-isolate, am I entitled to sick pay even if I don’t have any symptoms?***

Yes. If you have been advised to self-isolate you can get an isolation note by completing an online form on the [NHS 111](https://111.nhs.uk/isolation-note/) website, which will entitle you to statutory sick pay.

***I am worried about catching the coronavirus at work, can my employer make me come in?***

This depends on the type of work you do and where you work. Many employers have decided not to require employees to attend work and have asked employees to work from home instead. If your employer asks you to attend, they have a duty to take reasonable care to provide a safe place to work. For example, this will likely require employers to provide handwashing facilities and to ensure employees and customers can keep a safe distance from each other.

The most sensible first step is to discuss your concerns with your employer. You could request flexible working (e.g. you could request the right to work from home). Your employer does not have to agree to this but does have to consider it and will likely engage with you.

If your employer insists that you attend work, and you are concerned that it is unsafe, you could refuse to attend. There is a risk that your employer may treat this as an unauthorised absence and seek to take disciplinary action against you. Whether your employer had complied with the duty to take reasonable care will be an important consideration in any disciplinary procedure. Alternatively, your employer may treat your absences as annual leave.

***I need to attend work, but my employer hasn’t provided handwashing facilities and is not enforcing social distancing at work, what are my rights?***

Your employer has a duty to take reasonable care to provide a safe place of work. In almost all cases, but depending on the specifics of your job, failing to take basic steps to protect employees against coronavirus is likely to be a breach of this duty.

If you have concerns, it is sensible to speak to your employer and try to resolve them informally. Ultimately, if the employer does not provide you with a safe place to work you could make a complaint to the Health and Safety Executive ([HSE](https://www.hse.gov.uk/)).

***Can I access social welfare benefits without giving up my job?***

Yes. Even if you still have a job, you are entitled to access the welfare system if you have a low income. [Universal Credit](https://www.gov.uk/government/publications/universal-credit-how-it-helps-your-employees-and-workers/universal-credit-how-it-helps-your-employees-and-workers), for example, is available to employees with low incomes.

***I am working from home but I also have to care for my children who cannot attend school, what are my rights?***

There is no easy answer to this problem. Most employers are accommodating employees as much as possible, by allowing flexible working (e.g. working for a shorter period of time or at unusual hours, to fit around childcare commitments). It is sensible to discuss these issues with your employer.

Ultimately, if an agreement cannot be reached with your employer, you are entitled to take unpaid leave. There is no precise limit to the length of time you may take off ([s.57A of the Employment Rights Act 1996](http://www.legislation.gov.uk/ukpga/1996/18/section/57A) entitles you to take “a reasonable amount of time off” in these circumstances). Usually, a reasonable amount of time would be a few days but where schools remain closed for an extended period, employees should be allowed to take longer. Your contract may also entitle you to paid leave, but there is no overarching statutory right to this.

***I am working from home and my employer and colleagues are contacting me outside work hours (e.g. evenings and weekends), do I have to reply at that time?***

No. While working at home, your obligations to your employer remain as they were when you worked at the employer’s premises, subject to any changes agreed in order to facilitate home working. This means that your working hours should remain the same, unless you and your employer have agreed a different arrangement in order, for example, to facilitate childcare commitments.

As home working becomes more common, the reality is that employees will likely be easily contactable outside working hours. In order to protect mental health, it will be important for employers to encourage staff not to interrupt each other’s privacy by extending work beyond normal hours. Given the unprecedented changes taking place in how people work, it would be sensible to discuss this issue with employers.

***Can I take leave from work to volunteer, for example with the NHS?***

The short answer is: ‘soon’. The government has introduced a new type of leave called ‘emergency volunteering leave’. It will allow an employee to take unpaid leave of 2, 3 or 4 weeks in order to volunteer with certain bodies and organisations in the NHS or social care sector. At the end of the leave, volunteers can return to their job.

The scheme is not yet in force, and some of the details are yet to be resolved by the government, but the outline is as follows:

* Employees can take 2, 3 or 4 weeks leave.
* Employees need a certificate from an ‘appropriate body’ (e.g. a local authority or a NHS Commissioning Board) to certifying them as a volunteer.
* The employer does not have to pay the employee during the leave.
* The government will provide compensation to volunteers during their emergency volunteering leave – the amount of compensation is still undecided.
* Employees can take one period of emergency volunteering leave in every ‘volunteering period’, the first one of which has not yet started but is going to be 16 weeks long. Future volunteering periods will be set by the government and be for different lengths of time.

***My employer says I’m self-employed and is refusing to give me the supports that employees should receive, what can I do?***

The law on the distinction between employed and self-employed workers is complex. Some workers (particularly in the ‘gig-economy’) are treated by businesses as self-employed contractors but are in fact employees. In the cases where they are employees, the business owes them the full body of employment rights enjoyed by employees.

If you think you are actually an employee, but your employer disagrees, you could bring an Employment Tribunal claim to enforce your rights (see the answer to the question below for more information on this option).

If you cannot persuade your employer treat you as an employee, there are a number of supports for self-employed people that the government has introduced from which you may be able to benefit:

* The government has introduced a grant that is similar to the Coronavirus Job Retention Scheme (see above) for self-employed workers, called the [Self-employment Income Support Scheme](https://www.gov.uk/guidance/claim-a-grant-through-the-coronavirus-covid-19-self-employment-income-support-scheme). It is a payment worth 80% of average monthly profits (subject to a cap of £2,500), for three months. Self-employed workers with a trading profit of less than £50,000 are eligible to receive it. The government has said that HMRC will contact people who are eligible for the scheme and invite them to apply online.
* Self-employed worker are entitled to [Employment Support Allowance](https://www.gov.uk/guidance/new-style-employment-and-support-allowance) or [Universal Credit](https://www.gov.uk/self-employment-and-universal-credit), which has been raised to match the amount that would be paid to an employee receiving statutory sick pay.
* HMRC has deferred the July 2020 payment of income tax to 31 January 2021.
* The government has also introduced the [VAT Deferral scheme](https://www.gov.uk/guidance/deferral-of-vat-payments-due-to-coronavirus-covid-19), which means that any VAT liabilities that fall due between 20 March 2020 and 30 June 2020 don’t have to be paid until 31 March 2021.

***My employer is refusing to pay me or is breaching my rights, what can I do? How do I enforce my rights?***

The Employment Tribunal exists so that employees can enforce their rights against employers. If you cannot resolve issues with your employer by informal means, you may want to consider bringing an Employment Tribunal claim. However, it is important to recognise before doing this that the Tribunals are already facing severe delays (it is already common for cases to take 1-2 years to be heard). These delays will likely become even longer as many Tribunal offices are unable to function properly during the coronavirus lockdown.

A sensible first step is to engage with your employer and seek to reach an agreement informally. Conduct research online to give yourself an understanding of the relevant legal principles and approach your employer to discuss your concerns. It would be sensible to keep written records of these, either in the form of letters or minutes of meetings. If that fails, [ACAS](https://www.acas.org.uk/dispute-resolution) provide services to help resolve disputes between employers and employees that may help you to reach a compromise with your employer.

If you ultimately decided to bring a claim to the Employment Tribunals, the golden rule is to act quickly. There are strict time limits within which employees have to send their claims to the Tribunals. For most issues, the time limit is 3 months minus 1 day from the date of the breach of rights. Where the breach is an ongoing one (for example, a persistent reduction in wages), the time runs from the last date of the breach.

The three month time limit will be extended by a short period when the employee contacts ACAS before bringing the claim. You must contact ACAS before sending your claim to the Employment Tribunal. ACAS may also be able to help you reach a compromise with your employer without needing to go to the Tribunal.

The easiest way to bring an Employment Tribunal claim is to complete a form (known as an ET1) [online](https://www.gov.uk/employment-tribunals/make-a-claim).

|  |
| --- |
| **Ben Mitchell**  Barrister 6th April 2020 |
|  |
| cid:image003.png@01D60DA1.61A77AF0 |

We will aim to keep information updated as the current situation changes

Please note that these questions are for information and guidance and you are advised to seek specific advice on your individual employment situation.