# sfb Group News

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**Group News - August 2020**

NEWS FROM THE HR TEAM

# Employment law updates;

## Statutory Sick Pay (SSP)

These regulations have been updated for employees, and SSP is now payable where;

- you or someone you live with has coronavirus symptoms
- you've been notified by the NHS or public health authorities that you've been in contact with someone with coronavirus
- someone in your 'support bubble' (or your 'extended household' if you live in Scotland or Wales) has symptoms

You also get SSP if you're taking extra precautions because you're at high risk of severe illness from coronavirus (known as 'shielding'). (Sourced: www.gov.uk)

SSP is not applicable where self-isolation is required after returning from travel abroad.

## Coronavirus job retention bonus

The job retention bonus of £1,000.00 will be paid to each employer where their employee, having previously been placed on furlough, remains in employment from 1st November 2020 until 31st January 2021 and earns at least £520 per month on average between that same period.

Employers can apply for this bonus once they have submitted the relevant PAYE for January and payment can be expected in February 2021.

## IR35 reforms

These reforms were due to come into force this year, however they are now expected to commence from April 2021.



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## Equal pay claim successful where concerns were raised at the start of a new appointment, Walker vs Co-operative Group

Mrs Walker was employed for over four-years as Chief HR Officer and upon being dismissed for only reaching some of her targets, Ms Walker made a claim for unfair dismissal and equal pay.

At the time of her appointment as HR Director in 2014, she raised concerns about her pay with the CEO. She was to receive a base salary of £500,000.00, but it was decided she should receive £425,000.00 due to her being newly promoted. Despite Mrs Walker raising concerns of unequal pay, in 2015 she was advised she would not have a further pay rise. Further two dates for Mrs Walker's end of year reviews were cancelled.

Although the Tribunal found it historic that Mrs Walker had raised concerns of unequal pay, the EAT found that the main issue for consideration in this case was why there had been a pay difference and why a year later the pay difference still existed.

Employers are once again cautioned to consider equal pay for similar work.

## Dismissal without following a procedure found fair by EAT in Scotland, in the case of Gallacher vs Abellio Scotrail

The EAT upheld the Tribunal decision that the dismissal was fair in the case where relations had been stretched between Ms Gallacher, and her line manager at a critical business juncture, meaning the mutual trust and confidence had broken down. Subsequently, Ms Gallacher was signed off with depression from November 2016 to January 2017.

Upon her return, she was exited from the business, after nine years of service, where no procedure was followed and no appeal was offered.

The Tribunal found that the dismissal without any procedure was within the band of reasonable responses. It found that the carrying out of any formal procedure would only have worsened matters. The EAT upheld the Tribunal decision and noted that procedures could be disregarded by employers where such procedures would be futile. The EAT also noted that dismissal without the use of a procedure is not stated in law as automatically unfair, however, all circumstances of the case have to be considered, and further noted that extra care should be taken by Tribunals when deciding if a dismissal without the use of procedure would fall into the band of reasonable responses.

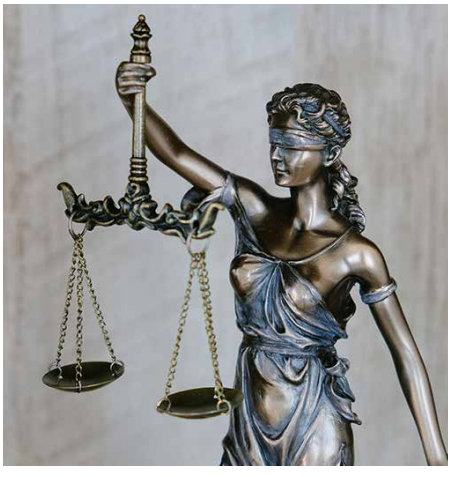
It is imperative for employers to consider if relevant procedures are applicable where issues arise with employees and we can guide you through this on a case by case basis.

## EAT finds that even if beneficial changes are applied, they are void if the reason for the changes are due to TUPE

In the case of Ferguson and others v Astrea Asset Management Ltd, Owner-Directors of a Company amended the terms of their contracts to ensure they would be eligible for certain bonus payments and termination of employment payments. However, the Tribunal found that these changes were done in relation to them knowing a TUPE transfer would be happening and therefore these changes were not valid, and the new owner would not be obliged to meet those new terms.

Perhaps if a new term had been mutually agreed by both parties, it would have been enforceable, but employers are reminded that terms should not be amended unilaterally where they relate to a TUPE transfer.

Consultation is key in getting TUPE right and we can support you through the process making sure employer obligations are fully considered and risk of claims are limited.

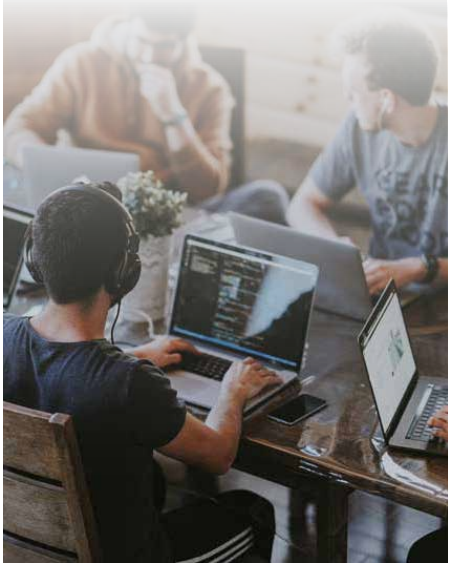


## Part-time employees, should they be the first to be considered when costs need reducing?

We have had many enquiries for making part-time employees redundant or changing their hours or working days. In such cases we would recommend employers consider that part-time employees are potentially a high risk for claims of sex discrimination, as the majority of part-time employees tend to be female.

Where redundancy is needing to be considered, ensure that the work itself is actually no longer required, or required within the same capacity moving forwards. Where hours need to be changed, this change should be based on business needs and the employee would be consulted with to implement the change. Where poor performance is the issue, the Formal Performance Improvement process is initiated.

Whichever change is required, we would support you step by step and work with you to limit the risk of a potential claim and ideally reach a mutually amicable agreement for both the employer and employee.



# Redundancies and other cost cutting measures which one will be suitable for your business at the end of the Flexible Furlough Scheme?

Hopefully, your business has endured the past few months and things are back on track. However, for many SME's the impact of the pandemic and nearing end to the Flexible Furlough scheme will now leave them having to decide whether redundancies or other cost cutting measures need to be implemented to ensure their future financial viability.

Some businesses may not be able to survive the cost of redundancies, and in such cases, contractual changes may be required. For example, pay cuts, reduced hours or a business restructure which may lead to limited redundancy costs.

Where redundancy needs to be implemented, employers must follow the correct consultation process, ensure no outcomes are predetermined and have the correct paper trail for any potential claims which may follow. We are able to provide step by step guidance on this process and run the relevant meetings required to ensure a compliant process is followed.

### Struggling with underperforming employees or feel like you are nearing end of the employment-relationship?

The recent changes may have highlighted underperforming employees, and whilst many business owners may believe redundancy is the process for those underperforming employees, they should actually consider the Formal Performance Improvement Process, and possibly look to reach a settlement agreement if they definitely wish to part ways with limited risks of a tribunal claim.

### Formal Performance Improvement;

Where performance issues arise, the employee should be encouraged to improve, and shown how to make the changes required. In the first instance this would be over a four-week period and if improvements are still required, then a formal process would be initiated with weekly and monthly reviews with the escalation of disciplinary warnings where required. We would support employers and their managers through this process, and in most cases improvements are made and matters are resolved.

### Changing of job roles and terms of employment, how easy is it really?

Some industries may have adapted to the changing economic climate and employee's roles and job duties need adjusting. In such cases, the changes should be reasonable and not impact their main terms of employment; pay, hours and location. If these main terms require changing, then consultation to change terms of employment would be required, and in some cases, a financial offering may be considered to make any key changes more appealing.

### Lay-offs and short time working

These measures are only suitable for short term/temporary cost reduction measures.

Employers can ask employees to take up to 4 weeks of unpaid leave where this is stated in their contract of employment. Employees can also reduce employee working hours where their contract permits. Alternatively, employers can ask employees to sign consent and agreement to these temporary measures if they are not included within the employee's contract of employment.

However, after 4 or more consecutive weeks of lay off or short time working, or 6 weeks out of any 13 weeks, employees can notify you, the employer, of notice of their intention to claim redundancy. Notice must be given in writing not later than the last working short time day they are relying upon and not later than 4 weeks after that date. Your counter notice would be within 7 days of that notice being received, otherwise they can resign and claim statutory redundancy payment. You would reply if you are contesting it because you can offer 13 weeks at their normal contractual hours to start within 4 weeks.