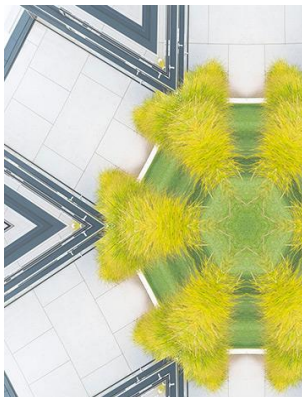


CORPORATE AND COMMERCIAL

# COVID-19: Practical Considerations: Return to Site – ending furlough

11 May 2020

Guidance for companies  
in Northern Ireland.



## RETURNING EMPLOYEES TO WORK FROM FURLOUGH

As employers in Northern Ireland will begin to consider returning employees to work over the next weeks and months, we have set out some of the key factors that will have to be taken into account by employers.

### 1. Consider the circumstances in which employees are to return to work

- Have all staff been furloughed or was a rotation in place?
- Are employees going to be making a phased/staggered return? If so, consider how employees will be selected.
- Will they be returning on the same terms and conditions as before?
  - Reduction in hours/short time working?
  - Compressed hours?
  - Reduction in pay?

- If employees' terms and conditions of employment are being changed, check if there is a contractual right to vary and also consider how any changes are communicated to employees.

### 2. Review the terms of the employees' furlough agreements/letters

- Is the date the employees are returning to work consistent with what was stated in their furlough agreements/letters?
- Check if the return date is consistent with the employer's claim to HMRC under the Job Retention Scheme.
- Check whether the employee has been furloughed for at least 21 calendar days (ending furlough before 21 calendar days have elapsed will dis-entitle the employer to recover sums from HMRC).

This document is a general summary of developments and is not a complete or definitive statement of the law. Specific legal advice should be obtained where appropriate.

### 3. Consider if employees' circumstances have changed

- Are employees self-isolating due to having COVID-19\* symptom(s) or because of a household member who is showing symptoms?
- Check if any employees are shielding and when their shielding period is due to end. (Consider potential health and safety risks if these employees are brought back to work before their shielding period ends).
- Consider those employees caring for dependents or children.

### 4. Annual leave

- Are employees are permitted to take annual leave when on furlough?
- If employers want employees to use some annual leave before returning to work, they must ensure that employees are given twice the amount of notice for the length of leave they are being asked to take. E.g. if an employee is being asked to take 5 days of leave, they should be given 10 days' notice.
- Consider the possible (although unchallenged) risk that annual leave during a period of lockdown may run contrary to the rationale for annual leave, namely, to enjoy rest, relaxation and leisure.
- Employers should also consider if they want to prevent employees taking annual leave while their business gets up and running again.

### 5. Health and safety

- Social distancing (will this involve changing the workplace set up?).
- Health and safety assessment?
- Additional hand-washing facilities?
- PPE being provided?

### 6. Employee Relations

- Consider steps that can be taken to boost employee morale.
- Ensure that support is available for employees as they re-adjust to the workplace.
- Have clear communication channels with employees and ensure they are kept up-to-date with any changes

in the workplace.

Be mindful that employees may have suffered bereavements.

### GUIDANCE ON DRAFTING A RETURN-TO-WORK LETTER

When drafting a return-to-work from furlough letter, employers should consider the following:

1. Refer to the furlough agreement and explain why the period of furlough is coming to an end (particularly if different to the period previously agreed).
2. Clearly set out the date when furlough will end and when the employee is required to return to work.
3. Set out the hours of work that the employee will be working (appreciate that employee may be required to work different hours).
4. If a phased return is occurring explain what this involves and how it will operate.
5. Explain the arrangements for the employee's return to work e.g. social distancing in place, health and safety considerations, use of facilities, increased hand-washing etc.
6. If any of the employee's terms and conditions of employment will be changed, make sure that the changes are clearly and thoroughly set out.
7. Consider addressing the position around annual leave.
8. Reassure the employee - it is possible that employees will be apprehensive about returning to the workplace so try and mitigate this by offering them the chance to ask any questions before they return.
9. Explain that the situation will be kept under careful review in light of government and public health guidance.

## KEY CONTACTS



**Alan Taylor**  
Partner  
D: +44 28 9026 2671  
M: +44 77 7245 9461  
alan.taylor@arthurcox.com



**William Curry**  
Partner  
D: +44 28 9026 5881  
M: +44 79 1890 6415  
william.curry@arthurcox.com



**Cahal Carvill**  
Partner  
D: +44 28 9026 2659  
M: +44 75 8788 2055  
cahal.carvill@arthurcox.com



**Chris Ritchie**  
Partner  
D: +44 28 9026 5541  
M: +44 79 1890 6420  
chris.ritchie@arthurcox.com



**Rosemary Lundy**  
Partner  
D: +44 28 9026 2673  
M: +44 79 1890 6405  
rosemary.lundy@arthurcox.com



**Emma-Jane Flannery**  
Partner  
D: +44 28 9026 5897  
M: +44 79 1890 6373  
emma-jane.flannery@arthurcox.com