

The “Desperate Marketing Ploy of the Month Award” for April must go to the supplier of corporate gifts and freebies which emailed us recently with apparently unrepeatable discounts on those little tokens of your esteem and thanks which you could use to welcome your staff back to the office after furlough or lockdown.

These items included a desktop garden for those not already sick of being in the garden, the usual mugs and sweeties, plus (no doubt for those employers who want to “say it with flowers”), a your-name-here keyring in the shape of a cactus. Each an employee-engagement winner in its own little way, of course, but against the background of at least three more weeks’ lockdown and a month’s extension to the furlough scheme, surely all rather premature?

Not at all.

It is time now to start considering how you will get people back into the workplace because there are nearly as many vexed issues in bringing your employees back as there were in furloughing them in the first place. This is not just a question of their all pitching up on Monday and off you go. We have done some thinking around the sorts of practical issues which HR and Legal are likely to encounter in the slow return process. There are not always definitive right answers to these questions, but the sooner you start working on them, the better placed you will be to face the challenges which will undoubtedly arise.

Have you carried out a documented review of the genuine and reasonable requirements of the business going forwards, including:

- How quickly or otherwise it is likely that your market will return?
- Whether all roles (including any which were furloughed) will be required at all or in the same numbers going forward?
- Whether any working from home for your employees was effective or otherwise?
- Whether the technology you relied upon to enable working from home was effective?
- Whether any move to part-time working during lockdown was effective or not?
- Whether and when and how far any pay cuts can be reinstated?
- Whether any normal HR processes which have been stalled need to be re-started?

In relation to bringing employees back to work, have you considered:

- Which staff it is appropriate to bring back first?
- The order in which work must be resumed or ramped up again?
- Whether to require/invite staff to take fully paid holiday before their return to mitigate the build-up of accrual?
- Whether any returning employees have suffered bereavement or other trauma while in furlough/lockdown and now need further time out and/or other support (and have you reviewed any appropriate policies accordingly)?
- How you will deal with any flexible working applications from those wanting to continue to work from home?
- Preparing a plan for how to maintain ongoing communications with employees around the return process?

In relation to your duty of care in relation to your employees’ health and safety, have you:

- Ascertained what government advice about health and safety precautions is still in place and the steps that may need to be taken in order to respect it in your particular workplace, including:
 - Complying with social distancing by moving/separating desks or equipment within the workplace?
 - Installing more partitions or screens or moving queues or waiting areas into the open air?
 - Moving exclusively to contact-free customer payment?
 - What supplies of PPE and/or cleaning materials you will need?
 - Staggering hours or operating non-overlapping shifts (by time or working spaces) to minimise the risk of infection at or on the way to work?
 - Issuing any refresher guidance to staff about their conduct in this respect in the workplace?
 - Making any alterations to your office cleaning arrangements?
 - Having the air-conditioning on as usual, or off to minimise the range of air-borne droplets?
- Thought about implementing pre-return testing procedures to mitigate any anxieties that your staff may have around a return?
- And if so, have you got people in place who are both qualified to carry them out/take any necessary steps arising from the results, and appropriately trained on the confidentiality and personal data/privacy aspects of collecting that information?

In relation to employees who cannot/will not come back to work, have you:

- Considered how you will deal with those employees who:
 - Decline to return to work on the basis of their fears around infection, either at work or on the commute?
 - Are fit and willing to return to work but unable to do so because of childcare responsibilities?
 - Are in self-isolation or shielding vulnerable people who may also be fit to return but unable to do so by reason of the duties they owe to ill housemates or elderly parents?
- Looked at whether you will need to make redundancies (including voluntary redundancies) if you will not need all your staff back by the time the furlough scheme ends and cannot see a need for them in the short term after that?
- And if so, developed appropriate selection criteria?
- Borne in mind that if you may need to make 20 or more redundancies in a 90-day period, you will need to factor collective consultation into your proposed plans, including:
 - The minimum periods of collective consultation required?
 - Appropriate means of electing employee representatives by secret ballot, including where it is necessary for the voting to be done remotely?
- Thought about whether any employees you re-hired purely so that they might benefit from furlough now need to be re-terminated one way or the other?
- Where you will need some people back from furlough sooner than others, worked out a non-discriminatory means of picking among colleagues in similar roles?

Watch out for our series of upcoming webinars which will cover in more detail some of the issues employers may need to think about as we come out of lockdown, including changes to terms and conditions and collective redundancies

If you have any queries, please do not hesitate to get in touch with your usual Labour & Employment contact.

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