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**‘A guide to the Coronavirus (COVID-19) Legislation**

**Supplement 2’**

**By:**

***Patricia Leighton***

Overnight on 4/5th April 202, the government issued some new Guidance to the legislation. Some changes what we already have known but first let us just remind ourselves of the broad categories of employment arrangements that can exist following the legislation:

Working normally

Working from home

Furloughed/unpaid leave of absence

We have looked in general terms at how each system works in the ‘new regime’-who qualifies, what are the basic rules, what break/endangers the relationship etc. The Furlough scheme, of course, has some explicit rules, not least how employers can claim the 80%, what can be claimed for and the administrative rules that apply, even to the detail of registering for the scheme and having a UK bank account. The recent changes appear to have some different policy objectives and to have made the scheme more widely available. For example, it is clarified that the following are covered;

Note, where an \* this indicates a change or important clarification.

* \*Company directors if they are salaried, and the decision was made by the board
* Apprentices
* \*Staff made redundant who would qualify, and who are -re-employed by you for three weeks at least. Some are concerned this might be a useful ‘scam’! This is so, as some suspect it could also apply where re-employed after resignation or even dismissal!
* \* If a person has two jobs, the scheme can apply to both employers-may be very helpful for employers of part-timers the cash limits and basic rules apply to both employers.
* \* (And this is a very surprising change, in the light of the declared policy of the scheme) A Furloughed individual is able to work for a new employer and not be excluded from the scheme. It is thought that the reason for this is to respond to some dire skills shortages in both health and social care, but also agriculture and other areas of work where we now have far fewer migrants. However, this does mean a cost to government where the employee may well not have suffered financial loss. The scheme before had held that so long as work was voluntary, the scheme could continue.
* The scheme does not apply where staff have been TUPE’d; but does apply to agencies and umbrellas where the people are on PAYE
* \* Self-employed PAYE ‘workers’. This is startling in the light of IR 35 and has not been picked up because of the delay to the application of the reforms to the private sector. And also there are special rules applying to public sector employment generally. However, remember the scheme is basically run by and concerned with taxation and; public finances-so maybe too soon to make a connection with employment rights more generally.
* Note that all Furloughed employees etc. have to have a written notice of what happened, i.e. for how long they were, and the record my be kept by the employer for 5 years.

There has also been some clarification of what can be included in the 80% to claim from government.

Included are:

* Wages, ‘past overtime’ (Unclear), fees, (Professional? Agency?)
* Training/volunteering costs

But not tips, discretionary payments or benefits in kind.

It seems to be accepted that employees can take holidays during leave, but also that the employer needs to top pay up to 100%. It is unclear whether that can be reclaimed but best to assume not.

So; some clarification but still quite a lot of uncertainties, especially in terms of how best to handle things. However, the changes do represent a far more radical and interventionist approach by government (And the contrast with the treatment of many if not most self-employed, even more marked)