



## 14 alternatives to redundancy to consider during the coronavirus

### crisis – A guide for businesses

#### Summary

- Prioritise measures to take, depending on the severity and nature of the impact of the coronavirus (COVID-19) crisis on your business.
- Make use of any relevant government assistance for businesses affected by the coronavirus outbreak.
- Consider seeking agreement to a temporary reduction in the number of days/hours that staff work, or to a period of unpaid leave.
- Check if there is a contractual right to implement a lay-off or short-time working.
- Seek to agree a postponed start date for new recruits, or consider withdrawing job offers.
- Where the impact of coronavirus does not present an immediate threat of closure, consider measures to achieve longer-term efficiencies.
- Take care that any recruitment freeze does not place employees in an intolerable position regarding increased workload.
- Review whether or not any new vacancy can be filled by redeploying an existing member of staff, with appropriate retraining where necessary.
- Review overtime to see if it can be reduced or stopped altogether.
- Invite staff to volunteer for reduced hours or other types of flexible working.
- Consider reducing or stopping the use of temporary staff.
- Consider inviting employees to apply for sabbaticals on part or no pay.
- Take care that cuts in bonus payments do not amount to a breach of contract.
- Do not overlook possible ways of reducing overhead costs.
- Consider the high costs of making people redundant, including the "hidden costs".
- Make sure that you enter into constructive dialogue with your employees about any proposals for cost-cutting measures.

## Introduction

The coronavirus (COVID-19) outbreak presents a number of issues that can quickly lead to financial difficulty for some businesses. Many businesses will be affected by lack of customer demand in addition to staffing, supply chain and cash flow issues, as people follow government advice on social distancing and self-isolation. The uncertainty around the duration of the measures to prevent the spread of the virus creates added difficulty for employers trying to mitigate the impact.

Some employers will need to take urgent action to remain in business. Employees will be aware of the potential impact of the crisis on their jobs and income and may well be prepared to accept emergency measures on a temporary basis, to protect their jobs in the longer term. Communication and honesty is key at the moment!

The impact of the coronavirus crisis on other employers will be less immediate. Those employers will have more time to implement contingency measures to avoid the need for redundancies.

Making employees redundant may help an organisation to survive in the short term. However, the long-term effects of cutting staff may be detrimental, particularly when market opportunities pick up again. Alternative measures may achieve the necessary reductions in expenditure, while preserving the viability, market share and brand recognition of the business for the longer term.

The impact of the coronavirus crisis on businesses will vary greatly, dependent on factors such as the nature of the business and the resources available to see it through the downturn. It is recognised that the options covered in this guide will not all be viable for all businesses.

### 1) Government assistance

Employers should ensure that they are aware of any assistance available from Government for businesses affected by coronavirus, and make use of this where possible. For example, the employer may be able to apply to the Coronavirus Business Interruption Loan Scheme, The Job retention scheme and employers with fewer than 250 employees will be able to reclaim 14 days' statutory sick pay paid to employees who are unable to work because of coronavirus.

### 2) Reducing the number of days/hours that employees work

One of the common ways for employers to reduce costs in difficult times is to ask staff to agree to reduced days or hours - and a proportionate reduction in pay. Some employers may need to ask staff to agree a period of unpaid leave, for example where the business has had to temporarily close to customers during the coronavirus crisis.

Such a change cannot be implemented lawfully without the consent of the employees concerned (unless there is contractual provision for lay-off or short-time working, see below). This is because the employer would commit a fundamental breach of contract if it imposed a shorter working week and/or a reduction in pay on employees without their agreement. Such a breach of contract would entitle the employee to make a variety of claims against the business. The employee would be likely to succeed in an employment

tribunal claim for unlawful deductions from wages, or in a claim in the county court for damages for breach of contract. Imposing such changes unilaterally is therefore not in employers' interests.

Nevertheless, in difficult times, many employees will understand the need for emergency measures. They may well be prepared to agree to work fewer days or hours for reduced pay, or accept a period of unpaid leave, especially if they are aware that the aim is to avoid staff being made compulsorily redundant in the immediate future. It may be easier for the employer to obtain their agreement if the changes will be in place for a defined period of time, rather than open ended. If the employer consults the employees and properly explains the business position to them, their agreement may be forthcoming.

### **3) Implementing a lay-off or short-time working**

Where an employer needs to temporarily close its business, or does not have enough work for all its employees, it may be able to lay-off employees or introduce short-time working. The employer would not need to pay employees their normal wages in these circumstances, but the employees may be entitled to a statutory guarantee payment. (see <https://www.gov.uk/lay-offs-short-timeworking/guarantee-pay>)

An employer can impose a lay-off or short-time working, without employees' agreement, if it has a contractual right to do so and you must get guidance on how to do this.

### **4) Withdrawing job offers or postponing new starts**

If there are new recruits due to join the business, who have not yet started, the employer may need to consider withdrawing job offers. The withdrawal of an unconditional job offer will be a breach of contract and the individual could bring a claim against the employer. Compensation for the breach is likely to be limited to the notice period under the contract, however usually candidates will understand that need to have a job offer withdrawn.

Alternatively, a new recruit may be prepared to accept a delay to their start date if the employer explains the situation to them.

### **5) Measures to achieve longer-term efficiencies**

Where the business is not at immediate threat of closure but is nonetheless suffering from the financial impact of the coronavirus crisis, the employer will be able to consider efficiencies that could enable it to avoid redundancies in the longer term. The employer should be clear to employees about the likely timescale of any measures under consideration.

### **6) A recruitment freeze**

On the face of it, a recruitment freeze would seem to be a straightforward method of cutting costs, because it avoids the often substantial costs associated with replacing an employee who has resigned. However, in practice, recruitment freezes can prove problematic. This is particularly so if the co-workers of a departed employee are expected to take on extra work without additional resources, pay or thanks. In any case, the roles that become vacant may be those that are essential for the proper functioning of the organisation.

An alternative would be for the employer to institute a policy under which managers are not automatically permitted to fill any new vacancies, but may make a case that a job needs to

be filled. Another possibility would be for the employer to permit the short-term filling of vacancies by temporary workers in order to retain some flexibility.

### **7) Retraining and redeploying staff**

Rather than having a complete recruitment freeze, employers might wish to review whether or not any new vacancy can be filled by an existing member of staff, with appropriate retraining where necessary. This approach might give the business the flexibility to continue to fill the jobs that are essential to its proper functioning, while at the same time reducing the headcount in other departments or sections.

In some businesses, the need for specialist or highly skilled staff may reduce in an economic downturn. Although redundancies might represent a short-term solution, problems are likely to occur when the employer seeks to re-establish the necessary levels of skills and expertise when business picks up again. Temporary redeployment of such skilled staff may therefore be a better option than redundancy in the longer term.

Employers considering redeployment should adopt an open mind to all possibilities. Employers should invite applications for key vacancies from all staff, with the proviso that re-training will be provided to any employee who, following an objective assessment, can demonstrate that they are potentially suitable for the type of work in question.

### **8) Cutting back on paid overtime**

Where employees regularly work paid overtime, employers may wish to review to what extent such overtime can be reduced, or if it can be stopped altogether. Such a move will clearly save money, particularly where employees are paid premium rates for overtime working.

Eliminating overtime working may impact on levels of production or service, as well having a financial impact on employees. Employers should review the likely practical effects of taking this step, and consult staff to explain the reasons for the measure, before making any decision.

Employers should take care not to act in breach of contract. There may be an express contractual right to a defined amount of overtime. Even if this is not the case, there may be an implied right if custom and practice over many years has genuinely led employees to expect to work, and be paid for, a minimum amount of overtime each week.

### **9) Introducing flexible working**

Where employees are self-isolating to prevent the spread of coronavirus, homeworking will be one of the first options that employers will have considered to prevent disruption to the business. Where working from home is not an option, employees may benefit from some alterations to their hours or working patterns, for example to enable them to avoid using public transport or to accommodate a change to their childcare arrangements.

Implementing a policy of flexible working is a great idea at any time, irrespective of the prevailing economic conditions. Accepting employees' applications for part-time hours, job-sharing, term-time working or homeworking, or simply allowing flexibility as regards start and finish times, can produce enormous benefits for the employer in terms of morale and motivation. In a challenging economic climate, inviting staff to volunteer for reduced hours

or alternative ways of working (whether temporarily or permanently) may well produce some benefits for the organisation.

### **10) Reducing or terminating the use of temporary workers**

The use of temporary workers can give an employer much-needed flexibility to cover sickness absence, maternity leave and routine peaks and troughs in the workload. However, reducing or terminating this use during a downturn may be a valid way to cut costs.

An employer should think carefully about the effect on the morale and productivity of permanent staff before issuing a blanket ban on the use of temporary or casual staff, where there is still a workload that permanent staff would need to cover. If they are not able to draw on the resource of temporary staff, key members of the employer's core staff may become overworked. This may lead to demotivation, stress and higher levels of sickness absence. An alternative approach would be for the employer to permit managers to set out their case that a temporary worker needs to be recruited in the circumstances.

### **11) Offering sabbaticals**

Employers may wish to consult some or all of their staff about the possibility of their taking sabbaticals for a defined period of time, or simply invite staff to apply for sabbaticals of a defined length and on defined conditions. Management would need to have the final say on who was accepted for a sabbatical and its duration.

A sabbatical could be on either an unpaid or a part-pay basis (eg a percentage of basic pay). Realistically, the employer would also have to accept that employees on sabbaticals (especially if they are unpaid) might wish to take up temporary employment elsewhere.

### **12) Implementing pay freezes or pay cuts**

Introducing a blanket pay freeze, while unattractive to staff, is unlikely to amount to a breach of contract, as few employers give their staff a contractual guarantee of a pay rise every year.

However, a pay cut, would represent a fundamental breach of contract so you would need consent from staff to do this. Many employees will be understanding given the current circumstances, so it's more likely you will get their consent as an alternative to redundancy.

### **13) Cutting or stopping bonus payments**

Whether or not cutting or stopping bonus payments will amount to a breach of contract will depend on whether or not payment of the bonus in question is a contractual entitlement or is purely at the discretion of management. This requires specific advice.

### **14) Reducing overheads**

Employers should not overlook ways of reducing costs that do not directly involve their staff. Reducing the amount of electricity used, selling off excess equipment and renegotiating contracts with suppliers may all produce essential cost savings.

Management may wish to invite staff to suggest ways of saving money, with an incentive for any ideas that are put into practice.

### The business case for considering alternatives

In addition to the redundancy pay costs, there are "hidden" costs that employers that tackle an economic crisis by cutting jobs may also have to bear.

These include the cost of the management time that will be necessary for planning, consultation and administration; the effects of low morale among the "survivors" of the redundancy exercise; consequent reduced productivity; and the likelihood of increased sickness absence and staff turnover.

Employers that have drastically cut staff numbers will be ill equipped to take advantage of new opportunities when the coronavirus outbreak is controlled and economic conditions begin to improve. Such employers may also find that skilled people are reluctant to accept job offers, as an employer that has shed staff in difficult times may not be an employer of choice. In addition, there will be the costs of replacing the redundant employees when business picks up again. Deciding on redundancies in order to cope with a current downturn may therefore be a false economy if alternatives are available.

### The importance of keeping staff informed

Employers that are facing the need to cut costs should, at an early stage, enter into constructive conversations with their employees (or employee representatives where a trade union is recognised or a workforce committee is in place). The timing and extent of such communication will depend on the urgency of the measures required.

Consultation is not only useful, with the workforce potentially having some valuable ideas about how costs can be cut, but may also be obligatory in the event that redundancies become necessary after all. At the very least, the employer should notify employees that it needs to make costs savings, the reasons for this and the initiatives that it is considering.

It is common for management to want to "keep things close to their chest" for fear of unsettling employees. However, employees are far more likely to become discontented if they are kept in the dark, and patronisingly reassured that all is well when they know it is not. Employees will be well aware of the situation and the potential risks to the viability of the business. Openness and honesty represent a much better approach. If an employer adopts this approach, whatever measures it subsequently proposes or takes, employees are much more likely to understand the need for them and cooperate with management than if decisions are made unilaterally or without warning.

*Disclaimer: While everything has been done to ensure the accuracy of the contents of this at the time of publication, it is a general guide only. It is not comprehensive and does not constitute specific HR advice. Specific HR advice should be sought in relation to the particular facts of a given situation.*

#### USEFUL LINKS TO SUPPORT BUSINESSES:

- <https://www.gov.uk/government/publications/guidance-to-employers-and-businesses-about-covid-19>
- <https://www.acas.org.uk/coronavirus>
- <https://www.who.int/emergencies/diseases/novel-coronavirus-2019>