

Short-time working - a viable option?

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In today's climate, many employers are looking to cut costs without actually making redundancies. A short term solution worth considering is the introduction of short-time working. However, whilst this can be an effective way to make savings without reducing headcount, the implementation of short-time working is not without its difficulties. Below, we look at how employers might approach short-time working and manage the issues.

What is short-time working?

This is where an employer reduces the hours the employee is required to work by reducing the number of working days and/or hours the employee works in a day. The employee's wages are reduced accordingly.

Can employers impose short-time working?

Employers can only impose short-time working where there is a contractual right to do so (for example, in the contract of employment, a collective agreement, or possibly through custom and practice). Flexibility as to how hours are reduced, how long the arrangements can last, who is selected etc may depend on how the contractual provisions are drafted.

What if there is no contractual right to impose short-time working?

The employer should present its proposal to the relevant staff (or their representatives) explaining why it considers that short-time working is necessary with a view to seeking their consent. Many redundancy policies will provide for the employer to consider short-time working before carrying out any compulsory redundancies and this may help in getting the employees' buy in.

Implementing short-time working

Even when an employer has the right to impose short-time working, if the right is not exercised regularly, the situation should be handled sensitively. As the employees'

pay will be reduced, it is sensible to communicate with the workforce and explain the company's thinking behind the reduction in hours, to encourage employees to be "on side". If the reduction is to reduce/avoid redundancies, employees are likely to be more amenable to short-time working.

What if an employer imposes short-time working without the right to do so or without consent?

In these circumstances, the employees could bring a number of claims. These potentially include claims for unlawful deduction from wages, unfair dismissal, breach of contract, redundancy payments (see below) and protective awards. This is a high risk approach. Be guided by your knowledge of your own workforce in gauging how they might react.

Selecting employees for short-term working

If a whole section of the workforce will be affected, selection will be straightforward. If the short-time working pattern requires you to select particular employees, care should be taken to avoid any discriminatory or unfair selection process.

Are employees entitled to be paid during short-time working?

In relation to unworked hours, employees on short-time working may be entitled to:

- payment if there is a contractual entitlement;
- a guarantee payment (see below);
- Jobseekers' Allowance.

Consideration should be given as to what happens to other benefits that are calculated with reference to salary and wages paid. For example, in relation to pensions, contributions (under a money purchase scheme) or benefits (under a final salary scheme) would usually be reduced proportionately.

What is a guarantee payment?

It is a payment which employers are obliged to pay under statute where an employer does not provide work to an employee throughout a whole day during which he would normally be required to work under his employment contract.

The maximum guarantee payment is currently £20.40 per day and is usually limited to five days in any 3 month period (i.e. £102).

When can employees claim a redundancy payment?

Beware - imposing short-time working can give employees the right to claim a redundancy payment. The legal provisions governing this are complex.

In summary, if an employee receives less than half a week's pay due to short-time working for:

- 1 four weeks in a row; or
- 2 six out of thirteen weeks (with no more than three weeks being consecutive)

the employee will be entitled to claim a redundancy payment without actually being made redundant. A claim must be made in writing to the employer who may refuse to pay only if it believes normal working is likely to resume within four weeks.

Practical steps for employers

- do you have a contractual right to impose short-time working?
- work out proposed new working patterns and selection criteria;
- beware of inadvertently triggering redundancy payments;
- check any contractual entitlement to payment for unworked time; and
- communicate constructively with employees.

Disclaimer: This briefing gives general information only and is not intended to be an exhaustive statement of the law. Although we have taken care over the information, you should not rely on it as legal advice. We do not accept any liability to anyone who does rely on its content.

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