

COVID-19 – COLLECTIVE CONSULTATION

Does the present situation or new furlough arrangements avoid the need to collectively consult?

We are being asked if the ability to access support via the Coronavirus Retention Scheme (furlough arrangements), or even just the urgency of the current situation overrides any collective consultation obligations. The answer is no. That said, you do not need to collectively consult if you simply agree any changes with employees directly.

Where you may not be able to reach agreement, you would still need to collectively consult prior to changing terms and conditions or ahead of collective redundancies. That said, we would suggest that it would seem entirely possible to comply with your obligations to collectively consult with regard to changing terms or redundancy in a shorter form/duration. We say this for the following reasons:

1. The business case is clear and understood without the need for further debate/consideration.
2. The options are limited, and probably at the forefront of people's minds already.
3. You do not need to spend time honing down the options to the preferred: It may be better to start consultation, simply list the options and consult on which one(s) the majority wish to go with.
4. People would wish for certainty and security to come sooner rather than later.
5. Consultation is always with a view to reaching agreement. If you reach agreement in 1 week then it can be closed, irrespective of whether you are in a 30- or 45-day period. N.B. Any dismissals, i.e. after the expiry of notice must still take effect after 30/45-day period.

Therefore, as long as we invite other options to those presented and give them real consideration as part of the consultation, it would be surprising if such discussions were to last longer than a period of days rather than weeks.

What if you do not have union representation or employee consultation forums?

The answer here is to vote new representatives in across the relevant departments. This can again be done in an expedient manner via online tools such as Survey Monkey. A guide would be one rep per department and around 1 rep to 40-50 employees. You can never really be criticised for having too many reps so the use of a deputy for each area/population would be advisable.

We hope the above is of assistance, and we would of course still urge you to take detailed advice along the way from a member of the team in relation to the above guidance.