

Throgmorton – COVID-19: Lockdown and What Next – June Update

Q. We are undecided about when to start returning employees to the office. What are other firms doing?

A. If you'd asked us at the start of June, we would have said that nobody was talking about returning to the office until August. However, in the last two weeks the mood has changed and some of the early adopters have made decisions to reopen their offices, including from this week.

Q. When we feel ready to come out of lockdown, how do we do that?

A. Slowly and with proper risk assessment. We can help you with a template document to consider your risks and ensure that returning employees understand their obligations and sign up to them. If you are a Throgmorton HR client, email us via hr@throgmorton.co.uk and we will provide this template free of charge.

Considerations:

1. Your landlord will have established a safe working limit for the building. You will need to find out how many have been allocated for your firm (if you do not have sole occupancy);
2. You will need to talk to your landlord to get a copy of their due diligence, including what deep cleaning has been done and what routines are in place to ensure that common areas (where these are open) are cleaned regularly to reduce risk of transmission;
3. You will need to do your own risk assessment due diligence, identifying safe working spaces and perhaps marking them out on the floor using tape. Toilets and the kitchen (if open, in the case of the latter) are high risk areas, so we suggest you put additional thought into how you will manage access;
4. Obtaining alcohol hand sanitiser, disposable gloves, and face coverings;
5. You may need to talk to your own cleaning provider to arrange a deep clean and more regular working hours cleaning to take place - if you have been accepting a significantly reduced service during lockdown but paying the same charges you should be able to negotiate the deep clean without additional cost;
6. Ensure that you have pedal bins for used face coverings and gloves at the entrance to the office; and
7. Consider phasing start and finish times to avoid peak traffic in the building.

We have been told to expect schools and nurseries outside of London to re-open first, and indeed some Throgmorton team members already have children no longer enriching the working from home experience. Your employee's ability to return to your business premises may be governed by their local childcare arrangements (as well as your capacity to reopen safely). We would encourage you to take a flexible approach to employees with caring responsibilities, ask everyone to tell you what their preferences are, and try to work with those.

You may also have to manage those with heightened anxiety over travel with care and empathy. At the same time, you will likely also have employees who, for example, can walk or cycle to work and have no caring responsibilities or underlying health condition, who will have a strong desire to return to the office now. As an employer, your care and empathy will have to extend to all scenarios.

We also note that even when the lockdown period is over, people will still contract the virus and may have to return to self-isolation again.

There is still a reduced travel service which may be in place in the early days after lockdown is lifted and this may cause significant frustrations for your employees.

You may want to bring back a couple of employees first to get the office ready (e.g. those referred to above who are desperate to return), making sure that cleaning providers are scheduled to do a deep clean and that drinks machines and fridges are properly re-stocked and ready to cater for your employees. You could think about doing an all-hands welcome back breakfast or organising a lunch or other social event (with proper social distancing rules in place) to remind everyone what a great place they work in!

You may want to open up a dialogue early and ask employees to consider using some of their accrued holiday whilst you get back up to full speed.

Be aware that you should have a fair and transparent approach to avoid allegations of unequal treatment.

Q. When we bring people back what can we do, e.g. to make it easier and safer for them to come into the office. Can we provide taxis or parking or accommodation?

A. This is more of a tax question, so we enlisted our Head of Tax, **Jon Hanifan** to assist us with some guidance.

HMRC has updated (as recently as June 12) its guidance on how to treat typical work expenses: <https://www.gov.uk/guidance/how-to-treat-certain-expenses-and-benefits-provided-to-employees-during-coronavirus-covid-19>

In brief summary, an employer may provide parking close to or at the workplace at their cost, without triggering a taxable benefit for the employee. There is an exception to this rule if, for example, the employer seeks to be reimbursed for the parking cost via salary sacrifice. Please see: <https://www.gov.uk/expenses-and-benefits-parking-spaces> and <https://www.gov.uk/expenses-and-benefits-car-parking-charges> for further details.

Unfortunately, accommodation or taxis to and from a permanent workplace and home will still be considered to be taxable benefits (unless the "Late Night Taxi Exemption" applies, for example) and should be reported accordingly.

Q. Our company sponsors the work permits for some of our employees. Should we be doing something now that lockdown has gone beyond 3 months?

A. If you haven't already done it, you need to update the Home Office system with the change of work location for your employees. This should have been done within 10 days of the change occurring, but they are taking a more relaxed approach due to the lockdown and assuming that many of the employees will have switched to work from home. You will need to ensure that the home address you have on the Home Office system is still correct for them too.

Q. When does a temporary change of location to home worker become permanent and mean we have to re-do workstation assessments?

A. This is an interesting one and the best source of information remains the Health and Safety Executive: <https://www.hse.gov.uk/toolbox/workers/home.htm>

The challenge is when does definition of a 'temporary' homeworker, whose Display Screen Equipment (DSE) and work set up you are not obliged to check, cease to apply. In our experience you should look at other assessments of 'temporary' in an employment law setting, typically these range from 12-17 weeks. Lockdown has been in place for around 13 weeks and so by now your 'temporary' home-working arrangements will be feeling a lot more permanent to many of your employees. If you're thinking that it might be August or September before you get your employees working from the office again, then you might want to consider doing a review of equipment and working environment, including DSE to ensure that your employees are working safely.

Q. Do I need to purchase a desk and office chair for my employees?

A. The answer to this is 'probably'. You remain responsible for building a safe working environment for your employees, even when they work from home. If an employee has been sitting on a stool at a breakfast bar for a few months and develops a Musculo-skeletal issue you may find that they then need to take time off work for medical treatment.

They may well ask you to pay for such treatment or ensure that their pay is not reduced as a result, or they may be too incapacitated to work at all. Additionally, you could have a legal liability to pay compensation to them for that injury.

Rather than buying new desks for each employee to use at home, a better option might be to make arrangements for them to come to the office and pick up their usual chair and/or desk or make arrangements for the necessary items to be delivered to their home. You could also look into renting some office furniture for them to use in the short term.

If you do acquire homeworking equipment, or reimburse employees for so doing, this may be exempt from tax and National Insurance. If you reimbursed employees for such costs post mid-March 2020, these payments may have been taxed before HMRC announced a concession in this area and so payrolls may need to be re-run.

Q. I am a bit worried that one of my employees is not going to be willing to return to work in the office full-time. What can I do if I feel like they are not as productive when they work at home?

A. This is a really tricky one, if you have not challenged efficiency during lockdown, then it will be tough to challenge efficiency after. In order to challenge the efficiency of home working start monitoring their outputs, e.g. is their work taking longer to be delivered? You can look at how long your employee spends online but that can be a bit of a blunt instrument. You need to set some expectations, and then measure delivery against those expectations. If your employee's workload is lighter because they have not got local physical tasks to perform, look at how much of their role was taken up with that type of work before lockdown. You might be surprised to see that many employees are more efficient, rather than less efficient, when they set their own working hours and work from home. We can help you to assess performance properly and fairly, or sense check your approach.

Q. What are the new CJRS grant and Furlough arrangements, and do I need to do anything different?

A. The new Flexible Furlough Scheme Rules are out, and frankly they are a challenging read... in as few words as possible, this is our summary of the changes to the new Flexible Furlough Scheme:

- Starts 01 July 2020, and Employers may still claim up to 80% (to £2,500 PCM). To calculate normal hours for those with variable hours one takes **the higher of:**
 - a. the average number of hours worked in the tax year 2019-2020; or
 - b. the corresponding calendar period in the tax year 2019-2020;
- Under this scheme, employees CAN do some work for their employer and this must be paid at 100% of their normal salary. You will need to recontract with employees to agree the new terms between you;
- The 3-week Furlough cycles have been abolished and so there is no minimum period for Furlough. That said, any CJRS portal claim must be in respect of periods not less than one week, and you may only make 4 claims per month;
- The entitlement to claim and which employees meet the criteria is still set out in the guidance documents on .Gov webpages (although you will note they are now on version 14 of this document); and
- There are worked examples on .Gov webpages also but they are very lengthy, the first example has 29 steps set out. See: <https://www.gov.uk/government/publications/find-examples-to-help-you-work-out-80-of-your-employees-wages>

Q. We heard about a new tax bill being proposed to claw back and means-test CJRS grants. Is that true?

A. Yes, HMRC was (until June 12) consulting on draft powers to claw-back COVID-19 support grants made under various schemes. This is proposed to include grants under the CJRS, and will (if enacted as proposed) result in a 100 per cent tax rate to reclaim CJRS payments which:

- the claimant was not entitled to; or
- were not used to pay furloughed employee costs covered by the scheme within a reasonable period.

In the consultation document, the clawback is proposed to apply if the person making the claim:

1. wasn't entitled to receive the payment. This can include a situation where the employer has made a genuine mistake in making the claim;
2. is no longer entitled to the relevant payment due to a 'change in circumstances'; or
3. fails to apply the grant to pay the envisaged furloughed employee costs (e.g. wages, pension costs, taxes) within a reasonable period.

Subject to the proposed legislation receiving Royal Assent, in its current form, the reclaim/100% tax could be due at relatively short notice. 30 days of, for example, the tax becoming due, is proposed.

As proposed, HMRC will have:

- four years from the end of the tax year to bring re-assessment;
- there has been carelessness on the part of the taxpayer, when the time limit extends to six years; and
- twenty years where the overclaim arises from the taxpayer's deliberate behaviour.

We should add that it seems to us, and other commentators whose views we've seen, that, should HMRC raise an assessment, the burden of proof will be on the taxpayer to demonstrate that the claim complied with the provisions of CJRS.

Q. We are revisiting our resourcing levels, coming out of Furlough. Is there anything specific we need to have in mind in making redundancy selections?

A. The process that you follow should not be radically different from a normal redundancy scenario. You must have clear selection criteria in place that can stand up to scrutiny. Simply selecting based on who is on Furlough, or because an employee is unwilling to return to the office environment immediately are unlikely to be demonstrably fair. If you are a current HR client, email us hr@throgmorton.co.uk we will provide a selection criteria template free of charge and we can work with you.

If you need further information please do not hesitate to get in touch with your usual Throgmorton contact or **Lauri Cox** at lauri.cox@throgmorton.co.uk.