

LAY-OFF AND SHORT TIME WORKING (ALTERNATIVES TO REDUNDANCY)

Meaning of temporary lay-off and short time working

If a company is experiencing a temporary shortage of work and does not wish to make employees redundant, short time working or temporary lay-off may be a suitable alternative.

A **lay-off** occurs when an employee is not provided with work and may therefore not be entitled to pay for that period.

Short time working occurs when there is a reduction in the work provided for an employee in that week to the extent that their wage for that week is less than half a week's pay.

It is wise to keep the period of lay-off/short time working as short as possible depending on business needs. If the employee is on short time working or laid off for: **4 continuous weeks or 6 weeks in total (with no more than 3 of the weeks being consecutive) out of 13 weeks** they may be able to claim a redundancy payment, provided they have been employed for two years or more. If they are earning more than half a week's pay the employee does not have the right to claim redundancy.

The right to implement short time working or temporary lay-off

There is a general right at common law to tell most employees not to turn up for work but no automatic right not to pay them. Ideally, in order to implement such a measure, the contract of employment should contain a specific clause permitting lay-off or short time working without pay. An employer might also have an implied right if clear evidence exists to show that this right has been established over a long period by custom or practice. Where it is imposed by an employer without a contractual right to do so, employees could pursue claims to a civil court and/or to an Industrial Tribunal. It is advisable therefore to include such a clause in contracts of employment for any new employees.

If the contract does not permit lay-off or short time working, the best option is to seek employees' agreement to implementing these measures. It is helpful to provide as clear and accurate information as possible about the reasons for this action. Many employees may prefer short time working or lay-off to the alternative of redundancy and be content to agree. If some employees do not agree however the employer has a dilemma. One solution is to terminate the contracts for these employees and re-engage them on new terms including the right to lay-off without pay.

Employers should be aware however that following this course does carry a risk of an Unfair Dismissal claim and should seek specific legal advice before following this course. The employer should be able to demonstrate that they have looked at all options and be able to show the impact on the business of not implementing the lay-off.

Right to guarantee payment

When employees are laid off/placed on short time working, they might be entitled to a statutory guarantee payment from the employer, limited to a maximum of 5 days in any period of 3 months. Where an employee is contracted to work less than 5 days a week, the limit is that number of days. So, for example, if an employee normally works 4 days a week, the guarantee payment will be for 4 days. Where the number of working days varies from week to week, an average is taken over the 12 complete weeks preceding the week in which the lay-off occurred.

The daily amount is subject to an upper limit which is reviewed annually. The current rate can be obtained from the NI Business Info or the Labour Relations Agency websites. On days when a guarantee payment is not payable, employees might be able to claim Jobseekers Allowance and should contact their local Jobcentre office about eligibility.

Claim for redundancy

If an employee wishes to make a claim for redundancy, he/she must give the employer **written notice** stating that this is what he/she intends to do. The employer may serve a **counter notice** to the employee if there is a reasonable prospect that normal working will be resumed **within 4 weeks for at least a 13 week period**. If the employer wishes to do this the counter notice must be in writing, must state that a claim for redundancy will be contested and must be issued within 7 days of service of the notice to claim for redundancy. The counter notice should also state that normal working is likely to resume within 4 weeks. If the employer has served counter notice to a claim for redundancy, the employee will have no right to a redundancy payment unless they apply to an industrial tribunal.

Further sources of information:

The Labour Relations Agency website: www.lra.org.uk
NI Business Info: www.nibusinessinfo.co.uk