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## 1. Introduction

- 1.1 There may be situations where a reduction in demand means that laying-off and short-time working are two options available to employers as alternatives to redundancy.
- 1.2 The term 'laying-off' means that employees are not provided with work by their employer, and that the lay-off is temporary.
- 1.3 The term 'short-time working' means that employees are not provided with full-time work for a number of weeks, or work a reduced number of paid hours for a number of weeks.
- 1.4 However, employers should not lay-off employees or put them on short-time working without further information or consultation. There are serious implications if employers do this. These Notes also contain guidance as to what employers should do.

need to make cut-backs due to a reduction in demand. Laying-off and short-time working can be possible alternatives to redundancy.

Employees who are not provided with work by their employer are on lay-off. This is a temporary situation.

Short-time working means that employees are not provided with full-time work for a number of weeks, or work a reduced number of paid hours for a number of weeks.

Employers should not lay-off employees or put them on short-time working without further information or consultation. There are serious implications if employers do this, and the potentially serious implications if they do not exercise this right. These Notes also contain guidance as to what employers should do.

## 2. Procedure

- 2.1 There is a general right of employees to come into work. However, employers may lay-off an employee if they have a valid reason. There are five ways in which an employer can lay-off an employee:
  - 2.1.1 An express right in the employee's contract of employment; or
  - 2.1.2 A collective agreement between the employer and a recognised trade union (referred to as a 'contract of employment'); or
  - 2.1.3 A national agreement which applies to the industry which the employer follows (which is referred to as a 'contract of employment'); or
  - 2.1.4 Clear evidence of a long-established practice over a long period; or
  - 2.1.5 Mutual agreement between the employer and the employee to vary the terms of the contract of employment (see Clause 4).
- 2.2 Once it has been established that there is a valid reason for laying-off employees or putting them on short-time working, employers should establish the number of employees who are to be laid-off or have their hours reduced. This should be done on a fair basis. For example, if a particular department that is suffering a reduced demand is to be laid-off or have their hours reduced, employers should consider the order in which employees are to be laid-off or have their hours reduced.
- 2.3 Once the number of employees to be laid-off or have their hours reduced has been established, employers should note down their lay-off criteria. This should include, for example, seniority, job elimination etc.
- 2.4 When a lay-off or short-time working is to be implemented, employers should

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(3) a national agreement which applies to the industry which the employer follows (which is referred to as a 'contract of employment');

(4) clear evidence of a long-established practice over a long period; or (5) mutual agreement between the employer and the employee to vary the terms of the contract of employment (see Clause 4).

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discuss it with employees as far as possible. Employees are more likely to be receptive if the employer is trying to prevent permanent redundancies.

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2.5 It may be appropriate to offer any of them wish to volunteer to be laid-off or put on short-time working during the relevant period.

Whether any of them wish to volunteer to be laid-off or put on short-time working during the relevant period.

2.6 Employers should consider their representatives to ensure that employees are adequately consulted and that the redundancy process has taken place, and thereby help to prevent a long-term lay-off or short-time situation is as a result of the situation. See *Meeting with Representatives* (EMP.LAY.01)

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2.7 Once employees have been notified of their redundancy, notice should be given in writing (EMP.LAY.02) and *Notice of Short-time Working* (EMP.LAY.03)

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3. **Payment**

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3.1 Employers may tell employees that they are being laid-off or put on short-time working, however unless their contract of employment expressly allows for this to be without pay or with reduced pay, they must pay them in full. Therefore, even if employees agree not to come to work, there is no automatic right not to pay them.

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3.2 Where employment continues, employees are entitled to full pay. However, if employees agree to accept less or be unpaid during the lay-off period, this should be reflected in a written agreement signed by both parties. The agreement should specify how long the agreement is valid for and whether employees can withdraw their agreement at a later stage.

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3.3 Statutory Guarantee

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3.3.1 SGP will be payable if the employer does not offer the employee suitable alternative work for a complete day which they would normally do.

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3.3.2 The maximum amount of SGP is the current line of pay.

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3.3.3 To qualify for SGP, employees must have been continuously employed for at least two years.

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3.3.3.1 If offered suitable alternative work, including work not in their normal line of work;

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3.3.3.1 If offered suitable alternative work, including work not in their normal line of work;

3.3.3.3 Must not be available to do work;

3.3.3.2 Must have been continuously employed for at least two years.

3.3.3.4 Must not be available to do work because of industrial action.

3.3.3.3 Must not be available to do work;

3.4 Employees that are laid-off or put on short-time working may also be entitled to Jobseekers Allowance for the hours they do not work.

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3.5 Contractual Guarantee

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3.5.1 Employees must be included in their contract including...

...where their employment contract includes...

3.5.2 If CGP is high... However if they qualify (S...)

...do not need to pay SGP. ... must pay employees SGP if...

3.5.3 The employee's contract may also specify a longer guarantee period provided for by SGP.

...nt may also specify a longer guarantee period provided for by SGP.

3.5.4 If no daily rate is provided, CGP should be adjusted in proportion to the number of days for which an employee is laid-off.

...act of employment, CGP should be adjusted in proportion to the number of days for which an employee is laid-off.

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4. Duration and Redundancy

4.1 Lay-offs can last as long as the employee's contract of employment and the length of time for which an employee can be laid-off working.

...employee's contract of employment and the length of time for which an employee can be laid-off working.

4.2 The employee may, in certain circumstances, be entitled to Statutory Redundancy Pay (SRP) if the employee is put on short-time working and is earning less than half their normal pay for either:

...in Statutory Redundancy Pay (SRP) if the employee is put on short-time working and is earning less than half their normal pay for either:

4.2.1 Four consecutive weeks or

...period.

4.2.2 Six weeks or

4.3 If the employee intends to resign, they must provide their employer with written notice of at least four weeks of the end of their employment.

...SRP the employee should provide written notice of at least four weeks of the end of their employment.

4.3.1 Four or more weeks of short-time work in a row; or

...time work in a row; or

4.3.2 Six or more weeks of short-time work within a 13 week period.

...time work within a 13 week period.

4.4 Once the employer has received the employee's notice, they must respond within seven days either accepting the employee's resignation or stating that they do not accept the employee's resignation. This 'notice period' must last for at least 13 weeks.

...they must respond within seven days either accepting the employee's resignation or stating that they do not accept the employee's resignation. This 'notice period' must last for at least 13 weeks.

4.5 A failure to respond to an employee's notice will result in the assumption that the employee has resigned.

...notice will result in the assumption that the employee has resigned.

4.6 An employee must give written notice for a claim of SRP. Many claims can fail where the employee does not comply with any notice period. The employee must give one week's notice when the employer has given the employee's resignation.

...order to receive SRP. Many claims can fail where the employee does not comply with any notice period. The employee must give one week's notice when the employer has given the employee's resignation.

4.6.1 Once seven days' notice has been given to the employer, the employee must resign with three weeks' notice.

...written notice for a claim of SRP. The employee must resign with three weeks' notice.

4.6.2 If the employee has given notice to an employer, the employee must resign within three weeks of the end of their employment.

...and the employee takes the claim, the employee must resign within three weeks of the end of their employment.

4.6.3 Where the employee has given notice but later withdrawn it, the employee must resign within three weeks of the date of withdrawal.

...r notice but later withdrawn it, the employee must resign within three weeks of the date of withdrawal.

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4.6.4 If the employee... employee mu... the Employm

nt tribunal's decision, the weeks of the original decision of

4.7 Where a lay-off or sh... should be send to the... (EMP.LAY.03) and T... (EMP.SH.03)

as come to an end, notice... of Lay-off Period... Working Period Letters

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5. **Changing Contract of Emp**

5.1 Where there is no cla... for laying-off and/or s

ontract of employment allowing... employer may wish to add one.

5.2 The terms of a contra

d only be changed by:

5.2.1 Agreement be... See Lay-off a... of Variation D

the employee, verbal or written... clause (EMP.LAY.04) and Deed...);

5.2.2 A collective a... staff associat

mployer and a trade union or

5.2.3 The existence... changing the

om and practice, thereby

5.3 When making chang... advisable, though no... the terms of an empl... changed the employe... within one month.

ract of employment it is... changes in writing. If, however,... of employment particulars are... oyee with an amended statement

5.4 Where it has been ag... or the employer is ta... clauses are present... Working (EMP.LAY.0

t of employment shall be issued,... they should ensure the relevant... act: Lay-off and Short-time

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6. **Wrongful / Unfair Lay-offs**

6.1 Employers should en... carefully. This is bec... result in employees r... of wages, unfair dism

short-time working are handled... with legal requirements could... of contract, unlawful deduction

6.2 Employers will be ac... without pay and this... employment. They v... on short-time working... impliedly allows this,... deduction from wage

where an employee is laid-off... y allowed in their contract of... ontract if they put an employee... less their contract expressly /... in pay will result in an unlawful

6.3 Employers consideri... terminating the old o... claim. Therefore em... varying their terms o

new contract of employment and... could result in an unfair dismissal... with employees the prospect of... this.

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7. **Notes**

- 7.1 An alternative to lay-off employees that they
- 7.2 If redundancies are in laying-off employees
- 7.3 A fair and non-discriminatory process should always be followed when laying-off employees on short-time working, as otherwise the employer may open themselves to a claim for unfair dismissal.
- 7.4 If the employer is in a position to lay-off employees or put them on short-time working, it should always be followed when laying-off employees on short-time working, as otherwise the employer may open themselves to a claim for unfair dismissal.

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d.  
nt in delaying the process by  
d always be followed when  
-time working, as otherwise the  
to lay-off employees or put  
independent legal advice.