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# Legal implications of Covid-19 on the manufacturing sector

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## THE NEW NORMAL - EMPLOYMENT LAW CONSIDERATIONS

David Rushmere, Partner, Employment

As we approach the end (hopefully) of Covid restrictions it is important to reflect on business practices to consider whether or not anything should be changed about the way we work to better react to future business disruption that may occur.

We are all hopeful that the Covid pandemic is a once-in-a-lifetime situation; however, failing to be prepared is preparing to fail and so it is important to take some time to see what lessons can be learned.

When the Covid lockdown began the manufacturing industry was somewhat well-prepared in that short-time working and layoff clauses were common in employment contracts. But they were not present in all employment contracts and that left many employers in a difficult situation. As orders dried up, the prospect of large-scale redundancies became a very sobering reality. For the short period in March 2020 until the furlough scheme was introduced, the manufacturing industry was preparing to take a huge hit in terms of redundancy payments and possibly facing substantial volumes of Tribunal claims.

As layoffs and short-time working are only possible where there is a clause present in the employment contract, the absence of a written contract or the absence of such a clause in a written contract left employers with very few options.

Thankfully, with furlough coming to the rescue, many employers were saved at the last moment from having to make large-scale redundancies as they were provided with the alternative of placing staff on furlough. But furlough came at a huge cost to the tax payer and it is not guaranteed that it will be rolled out in the future should there be another mass disruption event to the manufacturing sector. It is therefore advisable for employers to consider their own arrangements to ensure that they are protected in the future should history repeat itself.

The first thing that all employers should do is consider whether they have written contracts of employment in place for their staff. A written statement of employment particulars is mandatory and it must cover certain basic information about the employment relationship. An employment contract usually goes further than this basic statement and contains additional clauses that are usually in the interests of the employer and help with governing the relationship. In addition to having contracts in place at the outset of the employment relationship, it is necessary for employers to think about updating them on a regular basis to ensure that they concur with the current working arrangements for each employee. This can be achieved either through an amendment to the contract or, where the change is relatively minor, by providing written confirmation of the change in a letter or email that is then held on the employee’s personnel file. This is common for things such as pay rises where it would be unnecessary to reissue the whole contract and instead a simple letter will suffice.

Within the employment contract, the employer should consider including specific clauses that relate to the particular requirements of their workplace. Things such as the working hours should be clarified in specific terms. In addition to that, the employer should also think about adding a clause to permit changes to the contractual terms should they need amending in the future. Without a clause in the contract allowing for reasonable changes to be made unilaterally, the employer will be left with very little alternative than to seek the employee's consent to the change. In certain circumstances that can be quite difficult particularly if an employee sees an opportunity for personal gain by withholding their consent.

As well as implementing professionally drafted employment contracts an employer should consider having policies govern the working relationship. For example, a disciplinary policy can set out specific behaviours that are prohibited in that particular workplace so that there can later be no argument by an employee that they were not aware that they should conduct themselves in a certain way. In addition to a disciplinary policy, an employer should consider whether there are any other specific policies that they wish to have in order to govern the working relationship. For example, an employer may wish to have a drugs and alcohol misuse policy if there is a particular problem with that in the workplace or if there are specific health and safety concerns because of heavy machinery.

An employer should consider the particular risks that are relevant to their manufacturing processes or their specific workforce and identify which policies they would need to have in place to properly govern the employment relationships into the future. By imposing well-written policies at the start of the employment, the employer can help protect themselves from any uncertainty that is to come.

Professionally drafted contracts and policies are not necessarily cheap. Legal fees for preparing these documents can run to several thousand pounds; however, by not implementing these documents employers can find themselves facing much more costly Tribunal claims and/or business disruption in their workplace that can cost time and money and hit their bottom line. Employers should therefore see these documents as an investment and not as a cost.

**If you require any assistance with preparing employment documentation, please contact David Rushmere on david.rushmere@machins.co.uk**