

## **GUIDANCE AND FAQs FOR EMPLOYERS ON BUSINESS DISRUPTION, LAY-OFF AND SHORT-TIME**

### **What is “lay-off” and what is “short-time”?**

The impact of COVID-19 on the economy means that many employers are now considering whether to lay off employees or put them on short-time for longer periods of time.

In certain circumstances, if employees are laid off or put on short-time, they may be entitled to a payment under the Redundancy Payments Acts 1967-2014. This payment is separate to any State benefit that such employees may be entitled to when laid off or placed on short-time. For more information on these State benefits, see section on State Benefits For Employees On Lay-Off Or Short-Time.

In order to qualify for redundancy payments, the lay off or short-time must come within the specific definitions contained in the Redundancy Payments Acts 1967-2014. For the purposes of the Acts, **lay-off** occurs where an employer is temporarily unable to provide an employee with the work for which they were employed. **Short-time** occurs where an employee’s hours of work or pay are reduced to less than 50% of normal weekly working hours or normal weekly pay.

In both cases the employer must reasonably believe that the situation will not be permanent and must give employees notice to this effect. The legislation does not stipulate a minimum period of notice. Exceptional circumstances, such as the COVID-19 pandemic, are likely to justify a short notice period.

The employer’s reasonable belief regarding the temporary nature of the period of lay-off or short-time will be construed in accordance with the circumstances prevailing when the decision is made.

A period of lay-off should not be confused with sick leave or a period of self-isolation in accordance with current HSE guidelines.

Employers should exercise care when selecting employees for lay-off or short-time, apply objective selection criteria and be mindful of not discriminating, directly or indirectly, against employees on any of the nine grounds prohibited by the Employment Equality Acts 1998-2015.

### **Am I legally obliged to pay my employees during a period of lay-off or short-time?**

At common law an employer cannot unilaterally place an employee on unpaid lay-off or short-time working with reduced pay unless there is an express contractual right to do so. An example of an express term is a provision in the employee’s individual contract of employment or in a collective agreement which applies to the employee concerned.

Alternatively, the employer might have an implied right to do so, for example, pursuant to an established custom and practice within the employing entity or sector of laying employees off without pay in circumstances of economic downturn or other periods of financial hardship.

However, there have been first instance decisions in relation to claims under the Payment of Wages Act 1991, which found that even where there was no contractual right to impose lay-off and no evidence of custom and practice in the employment concerned, that the employer may still be permitted to lay off employees without pay.

There is a reasonable basis to suggest that this might arise in emergency situations, for example, in the event of a flooded premises, or fire damage, which results in the temporary closure of a

business. A partial or full closure of a business due to Covid-19 may also constitute an emergency situation which may justify lay-off without pay (although this remains to be seen in practice).

**Is an employee on lay-off or short-time entitled to a statutory redundancy payment?**

If an employee has been laid off or on short-time for (i) 4 or more consecutive weeks, or (ii) 6 or more weeks within a 13-week period of which not more than 3 are consecutive, the employee may notify their employer in writing of intention to claim a statutory redundancy payment assuming they satisfy the qualifying criteria, for example, having at least 2 year's continuous service. The notice must be given at the latest within 4 weeks after the lay-off or short-time has ended.

Within 7 days of the employee's notice, the employer can give counter notice contesting liability to pay a redundancy payment. This applies if it is reasonably to be expected that within 4 weeks of the employee's notice the employee will be permitted to work for at least 13 weeks without being laid off or placed on short-time for any week.

**STATE BENEFITS FOR EMPLOYEES ON LAY-OFF OR SHORT-TIME**

**What benefits are available to employees on lay off or short-time?**

Employees who are laid off by their employer due to a reduction in business activity related to COVID-19 may apply for Jobseeker's Payments. Further on the different payments available and eligibility requirements is available on [www.gov.ie](http://www.gov.ie).

Employees who are put onto short-time working by their employer due to COVID-19 may apply for a Short Time Work Support payment. For example, if an employee's working week has been reduced from a 5day work pattern to a 3-day work pattern, the employee may be entitled to receive support under the Short Time Work Support under the Jobseeker's Benefit scheme for the other 2 days.

**Has the Government put in place any additional measures to assist individuals who find themselves out of work as a result of COVID-19?**

On 15 March, the Government announced that employers, who have ceased trading as a result of the impact of social distancing but who continue to pay employees, will be able to claim refunds from the Department of Employment Affairs and Social Protection. The refund will be for €203 per employee per week, the jobseeker allowance rate. A temporary fund is being established for this purpose. The Department has not yet given a timeline for the processing of such refunds but the Minister indicated that refunds may take "some time" to process and that the banks may provide employers with overdrafts and short term loans to cover these costs in the meantime. Further details in relation to this fund are awaited.

In addition to this fund, the Department announced that it is introducing a new scheme for employees whose employer is unable to continue to pay them during this period, the COVID-19 Pandemic Unemployment Payment. It also applies to the self-employed. As the Department is expecting significant volumes of job seeker applications, this new payment is designed to get thousands of people into payment as quickly as possible. The payment has a simple one-page application form and will be paid for a period of six weeks at a flat rate of €203 per week. Individuals applying for the payment will be required to apply for the normal jobseeker's payments within this 6-week period. There is no need for employees whose employers do lay them off without pay, to visit an Intreo Centre. Further information on the COVID-19 Pandemic Unemployment Payment, including how to apply for the payment is also available on [www.gov.ie](http://www.gov.ie).