

## Employers in crisis: What are your options?

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APRIL 2020

This guidance is current up to 16 April 2020.

As an employer, your employees are one of your key assets but in the current circumstances, with revenues dropping or businesses closing as a result of the Covid-19 pandemic, their wages are also one of your key expenses.

This note sets out a few practical options for you to consider, outlining the position as at 16 April 2020.

### **Jersey Government support measures**

For most employers, retaining employees will be the preferred option and the government schemes are intended to assist businesses with cash flow issues as well as to help maintain employment. The first option will be to see if you can take advantage of the government schemes allowing deferral of GST payments and social security contributions. Another key measure will be the Government Co-Funded Payroll Scheme, further detail of which is below. As explained below, this scheme reimburses you *after* paying your employees. If cash flow is critical you will need to ensure you have access to sufficient cash to pay your employees first.

The Business Disruption Loan Guarantee Scheme may be available to assist you to manage your short-term cash flow constraints by guaranteeing your borrowings from your bank. The Government's FAQs for the Scheme can be found [here](#). Where you are concerned about cash flow, it is critical to keep in close contact with your bank and to seek to access this sooner rather than later.

Qualifying businesses delivering a 'public good' or serving an essentially strategic purpose for Jersey may also be able to get longer-term funding through an application to the Jersey COVID-19 Special Situations Fund (formerly the Jersey Recovery Fund). The Government's FAQs for the Fund can be found [here](#).

For more about government support options generally, see our briefing [here](#). Please note that this briefing outlined the position as at 27 March 2020 and certain measures have been developed further by the Government since then (for example, in relation to qualifying businesses).

This is a rapidly developing area and in all cases, including practical guidance on how you can access these support measures, please contact your usual Collas Crill contact. Up-to-date information can be found on the Jersey Government website [here](#) and on the Jersey Business website [here](#).

### **Government Co-Funded Payroll Scheme**

The Jersey Government Co-Funded Payroll Scheme applies in two phases.

Phase 1 covers the period from 20 March to 31 March 2020 and is available for businesses in a restricted range of industries. They must have suffered significant detriment as a result of the circumstances brought about by COVID-19. It permits application for support of £200 per work reimbursement for each worker who was paid at least £320 per week or £1390 per calendar month during that period. There are adjustments for workers earning lower weekly or monthly amounts. Phase 1 closes for applications on 30 April 2020.

Phase 2, which is currently confirmed for the period April to June 2020 applies to a wider range of sectors. As at 9 April, the threshold for eligibility was updated, requiring that the business had suffered 'material detriment' – that is a loss of turnover of at least 30% – over the relevant period compared with a previous comparable trading period.

This support allows for qualifying industries to apply for support of 80% of each worker's monthly gross salary paid up to a wage cap of £2,000. This means a maximum cash payment of £1,600 per worker per month. On 9 April, further qualifying industries were added, together with specific requirements for some these. The updated list of industries is available [here](#) and the FAQs detailing specific requirements for certain industries is [here](#).

It is important to remember that this scheme works by reimbursing the business **after** you have paid your employees. It will be available from the end of April. It is anticipated that claims will be processed within three working days of receipt, and payment will be made by BACS, taking a further three working days to arrive. You will need to manage your cash flow accordingly. If you are concerned about your ability to pay your staff, you should consider using the options above for deferring GST and social security and seek to access other forms of short-term funding available to you (including potentially under this loan scheme).

Remember that if your cash flow is likely to result in employees being paid on a different date than usual, you should advise them as soon as possible to let them manage their own payment obligations. Unlike in the UK, you do not need to furlough your staff to apply. You are encouraged to keep them working as much as possible in line with government health advice issued during the duration of the COVID-19 pandemic. Receipt of payment is subject to a requirement that, if you have any employees with capacity, you make them available upon request to support government and community actions, again taking full account of ongoing health guidance.

## **Voluntary Employee Consultation**

Where Government support schemes are either not available or not sufficient, you may have to consider redundancies. Before doing so, it is worth considering if there are any other contractual options. For example, do your contracts have clauses which permit you to lay staff off temporarily or are any employees on zero hours contracts? If this still does not solve the problem, you may wish to see if your employees are prepared to make voluntary reductions in salary, for example

- reduced working week, e.g. employees moving to four days instead of five
- reduced hours to allow employees time towards studying for other qualifications
- unpaid sabbatical for two to three months

Before doing this you should prepare your communications carefully. Remember this is a voluntary option. Your employees are unlikely to sacrifice salary voluntarily unless they understand why it is necessary and can see that the owners of the business are sharing (or in many cases shouldering) the pain. This may seem obvious to you but not all your employees will

be aware of the profitability of the business and the impact that the current situation will have on your business. It is important that it is made clear that this is voluntary and that employees are free to accept or reject the offer as they wish.

## **Redundancies**

Should none of the above options be suitable and you wish to proceed with the redundancy process then as an employer you must follow four principles of fairness when considering redundancies, i.e. duties to:

- consult;
- warn of redundancy;
- establish fair criteria for selection of employees for redundancy; and
- explore alternatives to redundancy (for example, by considering the available support measures outlined above).

Where an employee has a minimum of two years' qualifying service then they have a right to a redundancy payment. Where there is a proposal to make 12 or more redundancies in a 30-day period, there is a statutory obligation to undertake collective consultation with employee representatives.

## **Employees with less than five years' residency**

Where you have employees with less than 5 years' residency who have lost their full-time employment because of the COVID-19 pandemic, you may want to point them towards the Covid Related Emergency Support Scheme (CRESS).

For employees who have been working in Jersey for at least six months, this provides a weekly payment for a single person living alone of £150 week and for a couple who have both lost their employment of £250 per week. There is a child supplement of £50 per child.

Those who have been working in Jersey for less than six months will receive £70 per week per person. The scheme can also provide support with repatriation costs to return home where travel arrangements can be made. For more detail, see the government website [here](#).

## **How can we help?**

Please contact a member of the Collas Crill employment team for up-to-date guidance and we will be happy to help you.