

Furloughed employees entitled to full pay for redundancy purposes

The government has brought in new legislation to ensure that any employees who have been furloughed will have their statutory redundancy pay calculated based on their full-time wages as opposed their furloughed pay in the event that they are made redundant.

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Please note: the information contained in this legal update is correct as of the original date of publication.

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Employees with more than two years' continuous service are entitled to receive a statutory redundancy pay which is calculated based on their length of service, pay and age, subject to certain statutory caps. For those individuals who have been furloughed under the CJRS, some employers have been choosing to base those calculations on the current pay that employees are receiving under the CJRS (80% of normal pay) as opposed to the full-time pay they would have been receiving had they not been furloughed. This new legislation puts a stop to that and ensures that employees will receive their full statutory entitlement.

This legislation only covers statutory redundancy pay, not any enhanced contractual redundancy pay that employers may offer. The question of whether or not enhanced redundancy pay can be paid at the lower CJRS rate or needs to be increased to the full-time salary will largely depend on the specific wording of an employer's redundancy policy and we would advise you to take specific advice on this before proceeding with any enhanced redundancy payments.

The legislation also dictates several other entitlements that must be calculated on full-pay as opposed to the CJRS pay as part of the redundancy process, including:

- any period of absence to look for new employment once notice of termination is given;
- notice pay where the statutory minimum notice period provisions apply;
- any claim for failure to provide written particulars of the reasons for dismissal;
- failure of an employer to comply with an order for re-instatement or re-engagement; and
- the basic award in a claim for unfair dismissal.

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