

Payroll Co-Funding Scheme – Employment Law Rights

My employer is still operating and has asked me to attend work but is going to reduce my salary, is this right?

Yes, provided there is evidence of a fair process and consultation on a reduction of salary and you are able to reach an agreement.

Some of the people I work with are getting to stay at home while I have to work. This isn't fair so why is it allowed?

There is a need for both safe working practices and essential employees. The scheme is designed to help businesses survive the current difficulties, so priority may have to be given to those who possess particular skills to be able to protect the future of the business

Can my employer charge out at normal rates but still be part of the scheme and pay me less?

Yes. This may help the employer be able to future-proof the business for when business activity returns

Can an employee expect to be paid if they refuse to return to work?

No. If an employee refuses to attend work (unless they are in the vulnerable category) and safe practices are in place then there would be no entitlement to be paid. As an alternative an employee might be asked to take a period of unpaid annual leave

Can an employee on notice still be part of the scheme?

Yes. They are still an employee until they leave the business

Can my employer pay bank and public holidays at the reduced rate?

Yes. If you have agreed with your employer to a reduced wage or reduced hours, then this also includes holidays and bank holidays as well

Can my employer say that they are back-dating the lower rate of pay to 1 April if only advised of this scheme very recently?

No, your employer can only change your wage or hours after they have agreed this with you. The scheme means that your employer can claim at least 80% of your wages from the government.

Can my employer say that I will have to pay back any or all of the 20% they pay over as part of the scheme?

No. Your employer will continue to pay your wages at the level you have agreed with your employer. This scheme allows your employer to claim at least 80% of your wages from the government. If your employer cannot afford to cover 20% of your wage cost they can apply for a special exemption within the new scheme. You have a legal right to your wages and you should not agree to pay your wages back to your employer.

What can I do if my employer does not want to be part of the scheme and says there is no money to pay me?

Your employer can ask for a special exemption under the new scheme which allows them to make a smaller or no contribution towards your wages. However this does not by-pass the need for the employer to consult with an employee.

You will need to discuss with your employer to understand if your role is still required and if you have not been released from employment. Did your employer warn you that this might be the situation? Was a fair process followed?—You should also bear in mind that you may be entitled to make a claim to the Tribunal in these circumstances, but there may be no business assets available to fund an award

My employer is asking me to drop my salary again from the £2,000 I had previously agreed – can they do this?

This would depend on the process that was followed. There is nothing to prevent an employer from making such a request and trying to come to an agreement with you. If you do not agree to the reduction, your employer might be able to change the terms of your contract without your agreement and argue that exceptional circumstances required him or her to do so, and that they had tried their best to negotiate with you.

Bear in mind that nothing should be off the table when it comes to negotiating any changes to contracts, it is important that employees contribute to discussions and feel they have been heard. Whilst the Employer must act reasonably at all times Employees also have a part to play in this under the current circumstances. Therefore in order to achieve an outcome that works for both parties openness, honesty and transparency are crucial to these talks.

Can my employer place me on a zero hours' contract?

If this is a change to your normal contract, it must be agreed between you and your employer. In order to do so, your employer must demonstrate that they have conducted a fair process and negotiated properly with you

Does an employer have to pay full wages in order to apply for the scheme- will I receive £1600 grant?

Employers need to act reasonably at all times and consult and negotiate as far as possible to negotiate a change to contractual rights (pay) and the employee needs to engage in this process, silence can imply acceptance – so look at other things that could be considered a drop in hours to match the pay (if still able to work), taking of holidays, overtime, unpaid leave. The main thing is that there is a return to substantive contractual rights once through the current situation (it does not have to be a date, but an event so returning to work once lockdown has been lifted as an example). If however there is 'no hope' then due process for closing contracts and or business will need to be followed.

Can my employer hold back some of my wages as an administration fee because they need to apply for the government payroll scheme?

No, your employer must pay you the wage that you have agreed with them. They cannot make any extra deductions because they are applying for the government scheme.

Can my employer make me redundant under the Scheme?

The Scheme is designed to keep people in work and the government will meet at least 80% of your wages for April May and June. If your employer tells you they need to make you redundant, you will need to discuss this with your employer to understand if your role is still required. You should ask “Did the employer warn you that this might be the situation? Was a fair process followed?”

You should also bear in mind that you may be entitled to make a claim to the Tribunal in these circumstances, but there may be no business assets available to fund an award.

How can contracts be varied?

An existing contract of employment can be varied only with the agreement of both parties. An employer who is proposing to change an employee’s contract of employment should fully consult with employees and explain and discuss any reasons for change. Variations of contract can be agreed verbally or in writing. It is preferable for any agreed changes to be recorded in writing.

Where a variation in the contract has been agreed and the changes concern particulars which must be included in the written statement of terms and conditions, the employer should give written notification of the change to the employee, within 4 weeks of the change taking effect.

My employer has cut my wages - is this going to be permanent?

The government is looking very carefully at the restrictions on businesses and will try and lift these restrictions as soon as it is safe to do so. You can ask your employer to confirm that you will go back to your normal wages and hours as soon as the current situation has improved.

My employer has applied for phase 1, they have said they will pay us the £200 per week given by the Government, and will pay the difference to make up our wages, but the money they use to make up the difference they would like to employees to pay back. Can they do this ?

No. Under Phase 1 on the scheme £200 per week was provided for by Government. The scheme is to provide assistance to pay wages/salary that were due in March 2020. Once wages have been paid there is no outstanding debt to the employer. Any money received by an employer under the Scheme can be re-claimed by the Government if the employer breaks the rules of the scheme.

What happens when an employer varies a contract without the agreement of the employee?

If an employer imposes changes in contractual terms without the agreement of the employee, there will be a breach of contract. Contractual terms include the number of hours you work and the hourly wage rate.

What could an employee do in these circumstances?

The employee can accept the breach and continue to work under the amended contract. Where an employee continues to work under revised terms without objection, it may be regarded as the employee having agreed to the changes.

Where an imposed change involves a significant change to the contract, e.g. a reduction in pay or alteration of working hours, an employer may well be acting in fundamental breach of contract. Where there is a fundamental breach, the employee may treat the breach as bringing the contract to an end and leave the job. In such circumstances and subject to having the necessary qualifying service, the employee will have the opportunity to make a claim of constructive dismissal before the employment tribunal. In coming to a decision the tribunal will take into account whether the employer acted reasonably in all the circumstances of the case.

Alternatively, the employee may continue to work within the varied contract but under protest, making it clear that the terms are not accepted and is treating the change as a breach of contract and dismissal from the original contract. In these circumstances the employee will retain the right to seek damages from the employer for a breach of contract and/or a declaration from the courts that the employer must abide by the original terms. Subject to having the necessary qualifying service, the employee may also have the opportunity to make a claim for unfair dismissal before a tribunal. The tribunal, in the first instance, will have to decide whether the new terms are so substantially different as to be an entirely new contract and not a variation of the old one.

Whether or not the breach is a fundamental one, the employee may sue for damages for breach of contract in the civil courts; or if the employment has terminated, the claim can be made to an employment tribunal, which can award damages limited to a maximum of £10,000.

Is there an alternative method of making contractual changes if agreement on a variation cannot be reached?

Yes. If, after negotiation, agreement on a variation of contract has proved to be impossible, an employer can terminate the original contract, with proper notice, and offer a new contract to the employee, including the revised terms. There will be no breach of contract as a result of taking such action. If the employee accepts the new contract, continuity is preserved.

Proper notice will be as specified (or implied) in the employee's contract, or the minimum statutory notice period, whichever is the longer.

Under the law the termination will be regarded as a dismissal and it will be open to all eligible employees to claim unfair dismissal before the employment tribunal – whether they refuse to accept the new contract and leave, or are dismissed under the old contract and re-engaged