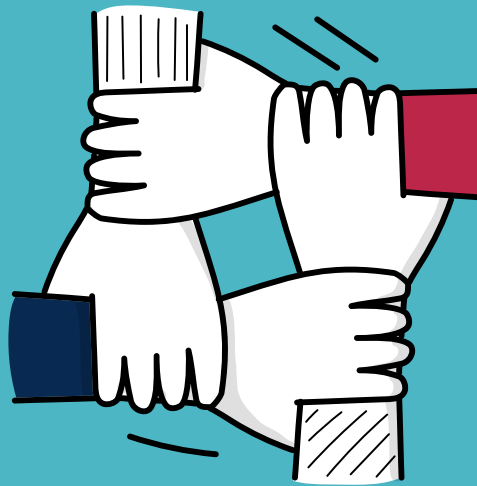


lay-off / short time working

a guide for employers

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introduction

In the current economic climate, employers are, quite rightly monitoring costs and work levels. Whilst redundancies are being considered employers should first look at whether the current situation is short term and whether temporary Lay-Off is a better alternative to redundancy. Lay-Off being defined as having no work for a full normal working day.

The advantage of Lay-Off is that your skilled employees remain your employees and can be called back to work when the volume of work increases.

We know that going through a Lay-Off / Short time working process can be stressful and most employers dread having to deal with it. The law surrounding the issues can be complex and that's why Sentient is here to help all clients through it.

Here is a starter guide on Lay-Off to assist employers through the process from our HR experts here at Sentient.

Our employment experts are available on the advice line – 03456 446 006 - and our on-line document library will provide you with the letters you'll need for every stage.

the right to 'lay-off' employees

Employers do not have a general right to 'Lay-Off' employees without pay. They need to have the contractual right (or the right through custom and practice) to do it. This is best achieved by having a written term within the Contract of Employment. This is usually in either the initial contract document or Employee Handbook but in both cases must be signed for in agreement.

A worker is entitled to be provided with work and be paid for the normal contractual hours. This will usually be as detailed on the Principal Statement of Terms of Employment. When there is no work available under normal contract law, the employee must be paid for the contractual hours. However, when an employer lays-off an employee in line with a contractual right to do so, then the obligation to pay them is effectively suspended for the Lay-Off period.

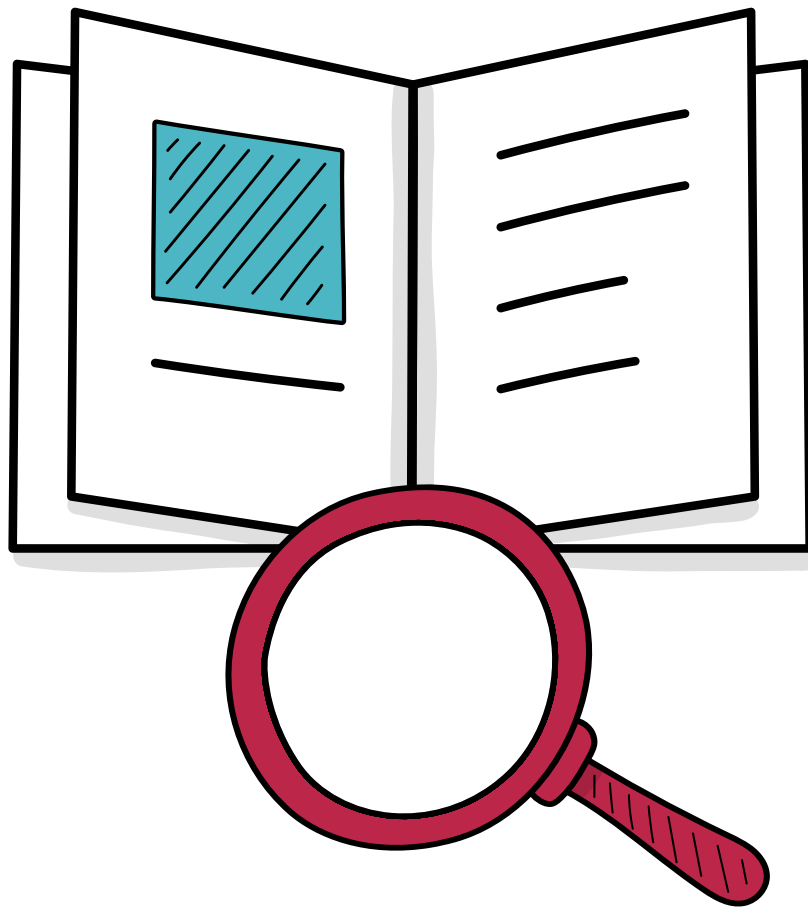
greater flexibility for employers

There are currently no 'legally' specified rules governing how the Lay-Off is to be applied or how employees are to be selected for Lay-Off. Unlike with redundancies there is no requirement to 'consult' for periods or minimum notice required. This allows a degree of flexibility for employers which may prove useful in the current difficult times.

Employers must though give some reasonable notice of the Lay-Off, although 'reasonable' is not defined. In practice employers should make this as long as they can.

There is always a risk that the Employee might resign and claim constructive dismissal if they perceive they have been unreasonably laid-off. Situations where this might happen include if it seems the Employer is unfairly singling the Employee out.

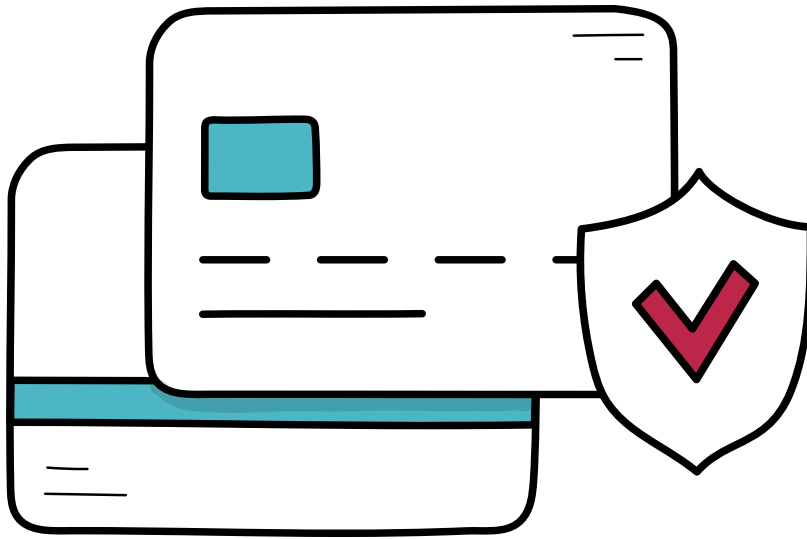
Provided there is genuinely no work to do or there is a reduced need for the work to be done by those in a unique or standalone position, there should be no real problem in effecting a Lay-Off. If selection for Lay-Off requires say 3 from 10 workers in the same occupation to be laid-off it will be important to have objective reasons for selection to avoid any suggestion of discrimination. Alternatives would include sharing the Lay-Off equally amongst the whole group or could be limited to a very small number.



the 'short time' alternative

Short time working is another alternative to full day Lay-Off. Instead of laying-off for whole days, employees may alternatively work shorter days than normal. They may attend each normal working day but do less work and consequently receive less pay. Again, a Contractual Term must be in place to allow short time working and it must genuinely be as a consequence of shortage of work.

It is essential that specific advice is taken when considering the implementation of any of the above.



guarantee pay

When laid-off, employees are not paid their contractual earnings. There is however, statutory protection in the form of 'Guaranteed Pay'. This is paid for a maximum of five days, in any rolling period of three months.

The employee must do no paid work at all on a 'lay-off' day to qualify for Guaranteed Pay. After three months and if still laid-off, the employee should be paid Guaranteed Pay again for up to a maximum of 5 days. If the employee normally works fewer than five days a week Guaranteed Pay is pro-rata based on the number of days worked in a week.

Guarantee payments are worked out by multiplying the number of normal working hours for the day in question by their average hourly rate. The employee should receive their daily rate or the Upper Limit, whichever is less.

This "Upper Limit" amount of a day's Guarantee Payment is laid down by parliament from time-to-time and you should contact Sentient to obtain the prevailing Upper Limit of Guarantee Pay.

An employee is not entitled to receive Guarantee Payments until he has at least one month's service with the employer.

other entitlements

During any day or period in which lay-off applies, the contract of employment continues in all respects save for payment of wages/salary. Continuity of service, entitlement of maternity, paternity, parental, adoption rights, paid holiday entitlement accrual all continue during the lay-off period.

As with all employment matters a great deal of confusion and argument can be avoided by confirming things to employees in writing. A straightforward explanatory letter to employees who are laid off should explain:

- The reasons for the lay-off
- The start and finish (if known) of the lay-off period
- How the employer will keep in touch with the employee during lay-off
- What 'Guarantee Pay' the employee is entitled to receive

An example of a letter can be found at Appendix 1.

holidays during lay-off

There is nothing stopping an employee requesting any holiday entitlement to which they are entitled be used as an alternative to being laid-off. This option can be made available at the point of initial discussion with employees.

length of lay-off

It is important to note that there is no maximum limit for how long an employee can be laid off or put on short-time.

However, employees have the right to leave and claim redundancy, but this request is only available in limited circumstances and requires the employee to meet formal requirements.

when can an employee ask for a redundancy payment?

Subject to certain conditions, an employee can ask for a redundancy payment if:

- they have been 'laid-off' for 4 or more consecutive weeks OR for a total of any 6 or more weeks within a 13 week period;

OR

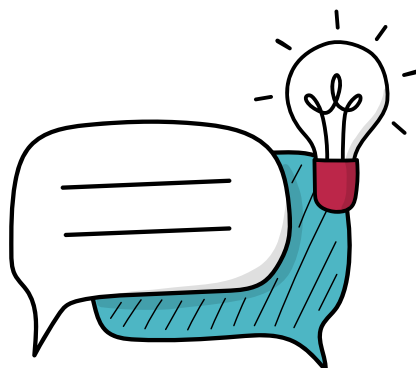
- they have been receiving less than half a week's pay each week as a result of short time for 4 or more consecutive weeks OR for a total of any 6 or more weeks within a 13 week period.

The conditions are:

- They must meet the minimum service requirements for redundancy pay (currently: 2 years' service at the effective date of termination).
- They must resign their employment giving the employer written notice stating that they intend to claim redundancy. This must be within 4 weeks of the lay-off period for which they are claiming.
- The employer has not given counter-notice that they reject the claim.

If an employee makes a claim for redundancy pay under these provisions and the employer accepts it then employment will terminate on grounds of resignation. This is not therefore a 'dismissal' in the usual sense.

Providing the employer pays appropriate redundancy pay then it would be very unusual for any valid Employment Tribunal claim to arise purely from this. Employers should of course guard against the possibility that the initial lay-off (or short time working) gives the employee any room to make a discrimination claim. The selection of those laid-off should be entirely objectively justified.





dealing with a request for redundancy pay

The Employer has seven days in which to either accept the claim or give the employee a written 'counter-notice'. If the employer doesn't give counter notice they are assumed to have accepted the claim.

The counter notice is to inform the employee that the claim for a redundancy payment is rejected. The ground for this will be that work will be available in the near future. Technically - within four weeks. Work lasting 13 weeks must be available for this rejection to be successful. Employees can challenge this through Employment Tribunal courts.

The employer can decide to withdraw their counter notice by telling the Employee in writing. In order to be able to get redundancy pay the Employee must resign by giving notice.

NOTE: TO QUALIFY FOR A REDUNDANCY PAYMENT, THE EMPLOYEE MUST HAVE 2 YEARS' CONTINUOUS SERVICE

appendix 1

This draft document is intended as a guide and may require amendment to fit the individual circumstances of each case. You are recommended to take advice from us if you intend to use it as is, or with changes.

Private and Confidential

[Name]

[Address]

[Date]

Dear [Insert Employee's name]

Lay-off

This letter confirms our meeting on [insert date].

[Explanation why being laid off]

As a consequence of the above, it is necessary to lay you off from work [insert extent of lay off e.g. one day per week/your normal working week] commencing [insert date].

[Explanation of the short time working arrangement – if applicable]

This is a temporary arrangement and is expected to last for a period of approximately [x] weeks/until further notice. However, we will monitor the situation and keep you informed of when the lay-off may be lifted and when you may return to work.

We confirm that you have not been made redundant: you remain an employee. During the period of lay-off you will be paid Guarantee Pay for the first 5 days of the lay off period. Thereafter, you are at liberty to contact the job centre/benefits agency about any financial assistance that may be available to you. We attach some information, which we hope you find useful.

Should you wish to discuss any of the above, or have any queries during the period of lay-off, please do not hesitate to contact [insert name].

Yours sincerely

[Name]

[Title]

appendix 2 - lay-off information for employees

What is a lay-off?

If your employer doesn't have enough work for you, they may tell you to stay at home. If you're off work for at least one complete working day, this is a lay-off.

A lay-off is temporary - if you're no longer needed to do your job permanently it's classed as redundancy. In some circumstances you can apply to be made redundant once you have been laid off for a certain period.

Are you paid while laid off?

You should get your full pay unless it is part of your contract that your employer can lay you off without pay (or on reduced pay).

You have the right to be paid Statutory Guarantee Pay (if you qualify) (see below).

Statutory Guarantee Pay

Statutory guarantee pay is the minimum you should be paid when laid off. To get Statutory Guarantee Pay you must: have been employed continuously for at least one month.

Guarantee payments are made for a maximum of five days in any rolling period of three months. After that time you should get them for another five days. If you normally work fewer than five days a week, you're paid for the number of days in your normal working week.

Guarantee payments are worked out by multiplying the number of normal working hours for the day in question by your average hourly rate. You'll receive your daily rate or the prevailing upper limit, whichever is less.

When Guarantee Pay has run out you should go to your Jobcentre to find out about any benefits available to you.

Contractual Terms whilst on Lay Off

You are entitled to take any paid leave (at your individual contractual holiday rate) which falls due during a period of lay off is in effect.

During any day or period in which lay off applies, your rights continue (continuity of service, maternity rights, paid holiday entitlement accrual, etc), because effectively you remain in employment, even if not actually working.

How long can I be laid off for?

There's no upper limit for how long an Employee can be laid off or put on short-time, (short-time means laid off for not more than 50% of their normal working week) but employees who only get paid for work they actually do have the right to leave and claim redundancy after a certain amount of time. An Employee if they're laid off for four or more weeks in a row, or for a total of six or more weeks within a 13-week period, can apply for redundancy. There is a procedure to follow and you are advised to take advice on that procedure.

Please note: to qualify for a redundancy payment, you must have 2 years' continuous service.



03456 446 006 | info@sentientuk.co.uk | sentientuk.co.uk

Romero House, 8 Airport West, Lancaster Way, Yeadon, LS19 7ZA