

Live Webinar
3rd June 2020

Dental Practices: Getting your staff back to work

www.jfhlaw.co.uk



Welcome



- Who we are
- What we do
- Who we represent



Julia Furley is a senior barrister and founding partner of JFH Law, bringing with her a wealth of experience gained from over a decade at the Independent Bar. She advises businesses in all aspects of company law and employment law, and represents companies and individuals appearing before the courts, employment tribunal and appeal tribunal. Julia also represents clients appearing before professional panels, such as the General Dental Council.



Laura Pearce is a senior solicitor at JFH Law advising dental practices and dentists on a wide range of matters, including employment law, drafting contracts, consumer and commercial disputes, dispute resolution and professional and regulatory matters. She has over 15 years experience in litigation.

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- Conducting risk assessments
- Changing work patterns
- Ending furlough
- Dealing with vulnerable/difficult staff
- Making redundancies/dismissing staff
- Dealing with associates' rights

1.

Conducting Risk Assessments

Health and Safety Issues

- Employers have a legal duty to ensure the health and safety at work of both employees and non-employees
 - Legal duty to put in place suitable health and safety requirements

Health and Safety Issues

- As a minimum:
 - Health and safety policy
 - Risk assessments
 - Formulating health and safety plan
 - Identifying key staff
 - Providing access to competent health and safety advice
 - Providing employees with information
 - Providing employees with instructions and training
 - Ensuring supervision is in place
 - Consulting with employees about their risks

Health and Safety Issues

Health and Safety Policy

- Review and amend if needed
 - Likely to be sufficient
- Do you need any temporary policies?
 - Will training be sufficient?

Health and Safety Issues

Risk assessments

- Research what the latest guidance is
 - BDA, Public Health England, Health and Safety Executive, Government advice
- Carry out the risk assessment
 - Consult with staff/health and safety reps

- The FGDP published their guidance 1st June

<https://www.fgdp.org.uk/sites/fgdp.org.uk/files/editors/Implications%20of%20COVID-19%20for%20the%20safe%20management%20of%20general%20dental%20practice%C2%A0-%20a%20practical%20guide.pdf>

Health and Safety Issues

Risk assessments

- Record the risk assessment
 - Only need to put in writing if 5 or more employees
 - But given risks involved record all risk assessments so you have a paper trail
 - Provide results to staff
 - Publish results?

Health and Safety Issues

Conducting a risk assessment

- Identify and evaluate the health and safety risks arising from COVID-19
 - NB ONS – Dental nurses more at risk than doctors, nurses and dentists!
- Analyse what you are currently doing, if anything, to prevent spread and protect staff/patients
- Consider other possible measures to reduce, avoid or transfer those risks
 - The higher the risk, the more you must put in place to prevent it

Health and Safety Issues

Free toolkit from Society of Occupational
Medicine

<https://www.som.org.uk/som-and-partners-launch-free-toolkit-help-employers-create-safer-workplaces-returning-employees>

Health and Safety Issues

Training for staff

- Make sure staff are fully trained in all measures **BEFORE** they start work
 - Make sure this is clear for all staff to understand
- Ensure those who supervise staff check measures are being complied with
 - Discipline staff who do not follow guidance

Health and Safety Issues

REMEMBER

- Staff who refuse to work in an unsafe environment should not be penalised
 - Protection from detrimental treatment/dismissal

Health and Safety Issues

TESTING

- Cannot compel employee to take test unless in contract
 - However, might be reasonable management instruction as working in health and social care
- Tests results will be covered by GDPR
 - ICO guidance

https://ico.org.uk/global/data-protection-and-coronavirus-information-hub/data-protection-and-coronavirus/workplace-testing-guidance-for-employers/?utm_source=twitter&utm_medium=iconews&utm_term=9a464ec4-b31d-4293-9e2e-1cf1a66941af&utm_content=&utm_campaign

2.

Changing Work Patterns

Changing work Patterns

- Give staff as much notice as possible about the plans for returning to work
- If staff have any concerns, discuss these openly with them

Changing work Patterns

- Hours of work
 - You may need to open your practice longer to allow more time between patients for cleaning
- Part time hours
 - You may not have enough work when you first open to justify staff working full time
- Can staff take on different roles?
 - If the practice is less busy can reception staff do admin work

Changing work Patterns

- Before you can make any changes to an employee's contract you will need their consent
 - Hold meeting/telephone call to confirm plans
 - Follow with letter setting out proposal
 - Give employee time to consider options
 - If they consent, make sure you have this in writing
 - If they do not consent, consult with them about the changes
 - Why do they not agree, can you accommodate them
 - If they still do not consent, unpaid leave/holiday or dismissal?

Changing work Patterns

- Do you need all staff to return?
 - You can continue to utilise the furlough scheme until October 2020
 - From 1st July employees can work part time and still claim
 - More guidance to be published on 12th June
 - Prioritise those staff who are vulnerable or have childcare issues

3.

Ending Furlough (or using it to your advantage)

First Steps

- Having completed your H&S assessment and considered the requirements of the business consider ending furlough.
- This will form part of your risk assessment
 - What are the business needs
 - What are the individual circumstances of each employee?

- Get people prepared
- Give notice
 - What did you say to them when you put them on furlough?
 - Have you got a contractual notice period?

Training

- Furloughed employees can engage in training, as long as in undertaking the training the employee does not provide services to, or generate revenue for, or on behalf of their organisation or a linked or associated organisation. Furloughed employees should be encouraged to undertake training.
- Entitled to be paid at least the NMW for time spent training.

Changes to the Scheme

Flexible Furloughing -

- From **1st July** practices can bring furloughed staff back to work for part time hours, whilst still claiming the furlough grant for the normal hours that they have not worked.
- Scheme will close to new entries on the 30th June (employers will only be able to furlough staff who have been on furlough for a full three weeks prior to the 30th June)

Financial Implications

Financial contribution – employers will be required to contribute as of August.

- August: Govt will pay 80% capped @ £2,500. But, employers will pay ER NICs and pension contributions
- September: Govt will pay 70% of wages up to a cap of £2,187.50. Employers will pay ER NICs and pension contributions and 10% of wages to make up 80% total up to a cap of £2,500.
- October: Govt will pay 60% of wages up to a cap of £1,875. Employers will pay ER NICs and pension contributions and 20% of wages to make up 80% total up to a cap of £2,500.

4.

Dealing with Vulnerable or Difficult Staff

Pregnant Employees

Govt Guidance – 1st / 2nd trimester no underlying health conditions = social distancing. Can choose to work in a public facing role with appropriate PPE.

3rd trimester – work from home/significantly reduce social contact

Responsibility for workplace assessment lies with employer NOT employee.



Royal College of
Obstetricians &
Gynaecologists

Advice for health care workers:

1st/2nd trimester with no underlying health conditions – avoid caring for patients with Covid, if not possible use PPE. Only work where risk assessment supports this.

3rd trimester avoid direct patient contact.

- Pregnant employees are entitled to health and safety protection during pregnancy.
- Consider the risks to the pregnant employee
- Make reasonable adjustments
- If still a risk, make alternative arrangements, or suspend on full pay.

- May be advisable to leave pregnant employees on furlough at present.

Vulnerable Staff

- Those who are pregnant
- Those over 70 years of age
- Those with underlying health conditions
- Those who are shielding

Vulnerable Staff

- Whilst the Coronavirus Job Retention Scheme (CJRS) is in place you can continue to furlough vulnerable staff
- Once the CJRS ends, if staff need to continue to stay at home
 - Only those who are shielding or following shielding measures entitled to SSP
 - Others = unpaid leave/holiday or full pay at your discretion

Self-isolation

- Where staff have symptoms or someone in their household has symptoms they must self isolate
 - Should be sent home/stay at home
 - Entitled to SSP from day 1 of absence
 - Monies can be claimed back from Government

Self-isolation

- What if employee self-isolating on own initiative
 - Not entitled to SSP
 - No duty to pay them if not attending work
 - Listen to employees concerns, may want to use discretion and pay full – if not unpaid leave/holiday pay

Refusing to return

- Due to child care issues
 - Can you change their hours?
 - Can you keep them on furlough?
 - If not, unpaid leave/parental leave/holiday
- Exercise extreme caution before initiating disciplinary proceedings

Refusing to return

- Living with someone who is shielding/vulnerable
 - Can you keep them on furlough?
 - If not unpaid leave/holiday?

Refusing to return

- Due to perceived risks
 - Explain to employee measures to protect them
 - If still won't return, offer unpaid leave/holiday
 - Disciplinary?

No worker should face a sanction for refusing to work in an unsafe workplace.

5.

Redundancy/Dismissal

Redundancies

Business Decisions

- Look at your business model
 - Can you make savings elsewhere?
 - Can you make temporary changes to staff contracts?
 - If not, where can you make savings in terms of staff costs
 - Can reception staff take on admin work
 - Do you have staff with less than 2 years service?
 - Be careful not to discriminate
 - Can you offer voluntary redundancy?
 - Make notes of any decisions made

Redundancies

Reductions in staff

- Where only one person carrying out the role
 - No need for selection criteria
- Where more than one person
 - Must decide what selection criteria to use
 - Last in, first out
 - Interview process
 - Matrix scoring
 - Must not be discriminatory
 - Part time workers have protection

Redundancies

Consultation Process

- Give employee as much notice as possible
 - Staff meeting
 - Letter explaining reasons and selection criteria
- First consultation meeting
 - Let employee raise concerns/questions/alternatives
 - Send letter responding to points
 - Do you need another consultation meeting?

Redundancies

Consultation Process

- Undertake any selection process
 - Provide outcome to employee
- Hold consultation meeting to discuss outcome
 - Employee should be given opportunity to challenge decision
 - Any points valid?
 - Write to employee with outcome
 - Offer appeal

Redundancies

Consultation Process

- Undertake appeal process

Remember

- No right to be accompanied
 - But may allow to maintain good relations/make reasonable adjustments

Redundancies

Payments

- Redundancy payment
 - Cannot claim via CJRS
- Notice pay
 - No prohibition from claiming via CJRS
- Accrued but untaken holiday
 - Cannot claim via CJRS

Dismissals

Some Other Substantial Reason

- If staff wont agree to contractual changes
 - Risk unfair dismissal if changes substantial and not justified

Dismissals

Some Other Substantial Reason

- Invite employee to meeting
 - Set out possible outcome
- Hold meeting
 - Let employee set out their concerns
- Confirm outcome
 - Offer right of appeal

Dismissals

Refusal to return to work

- ACAS code of practice still applies to conduct/capability
 - Should you continue/start disciplinary process?
 - Furlough scheme?
 - Can it be carried out fairly?
 - Remote hearings
 - Ask employee their preference

Dismissals

Refusal to return to work

- Carry out investigation into conduct issue
 - Hold investigation meeting with employee
 - Do you consider matter should be escalated to disciplinary hearing?
- Invite employee to disciplinary hearing
 - Provide employee with evidence obtained in investigation
 - Allow employee to provide own evidence

Dismissals

Refusal to return to work

- Hold disciplinary hearing
 - Employee has right to be accompanied
 - Let employee present case/ask questions
 - Do you need to investigate further?
 - Hold second disciplinary meeting?
- Write with outcome
 - Set out your decision
 - Offer right of appeal

Dismissals

Refusal to return to work

Remember

- Consider mitigating circumstances
- Look at alternatives to dismissal
 - Warnings
 - Demotion

6.

Associates

- If the associate is engaged as an employee – all of the above applies.
- If self employed – H&S issues remain.
 - Undertake the same risk assessments
 - Failure to protect workforce may result In criminal proceedings by HSE
 - Claim for compensation for negligence

Refusal to Attend

- Work within the terms of the existing agreement
 - Are they giving notice?
 - Do you want them to serve that notice?
 - Has the agreement already been frustrated by lockdown?
- BUT, where they are vulnerable/shielding may wish to take a pragmatic view and not try to enforce a notice period.
- Pregnant associates – not entitled to paid leave
 - Can they start NHS mat leave early?
 - Are they eligible for NHS sick pay?

Thank you for joining us.

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