

Redundancy and considering the alternatives

Stuart Craig discusses the options available to practices looking at managing their workforce during this difficult period.

The news that all private and NHS dental practices in England were permitted to reopen from Monday, June 8, understandably got a lot of press attention and it was greeted as a sign that we are returning to normality out of lockdown. However, for employers across the UK the tentative reopening of workplaces is unlikely to mean that there is an immediate return to pre-lockdown ways of working. The BDA has predicted that due to potential difficulties with the availability of PPE it is likely to take time for practices to be in a position to deliver a full dental care offering.

Unfortunately, Covid-19 is going to affect the way that we are able to work for the foreseeable future and this is probably going to force employers to consider making some difficult decisions on whether their current staffing levels/costs are sustainable when facing-up to unprecedented challenges.

The government's furlough scheme has been a welcome intervention in the hope of trying to avoid redundancies, but with the changes to the scheme coming into force throughout the summer (with employers required to contribute to it) coupled with a predicted slow return to pre-lockdown levels of work, it is likely that many



employers will consider that they have no alternative but to consider redundancies in order to secure the future of their businesses. A recent joint survey by the Chartered Institute of Personnel and Development (CIPD) and *People Management* magazine showed that one in four employers expect permanent redundancies arising out of the coronavirus crisis.

Practices that are having to consider staffing-levels should remember that just because we are facing unprecedented times, this does not mean that they will not be expected to follow a fair redundancy process. Employees who have been dismissed will still be able to bring claims in the employment tribunal even though employers are dealing with unique challenges due to coronavirus. Faced with a depressed job market it is anticipated that we are going to see a spike in tribunal claims, with former employees having little to lose from submitting a claim when they have

found it difficult to secure alternative work. Tribunal claims can be costly, emotional and administratively burdensome. An employee who successfully brings an unfair dismissal claim can be awarded the lower of up to one year's gross pay or the maximum statutory limit (currently £88,519). In collective redundancies (where it is envisaged that 20 or more employees will be dismissed within a 90 day period or less) a tribunal can also make a protective award of up to 90 days' gross pay for each affected employee, where there has been a failure to consult properly.

Notwithstanding the risks of tribunal claims, if employees are dismissed then this will reduce your capacity should there be an increase in work. As the future is so uncertain, we are seeing employers coming up with methods of reducing staffing costs in a way which flexes the resource they have available, without making drastic changes such as compulsory redundancies. In my ☞



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Experience, employees are aware that their prospects of finding other work are currently compromised and are therefore prepared to work creatively with their employers in order to secure their long-term employment. It is possible to agree either permanent or temporary changes to their terms and conditions to allow you a period of time to consider whether redundancies are in fact necessary.

The following are options that you might want to discuss with employees before proposing redundancies:

- Continue with the government furlough scheme/implementing an employer furlough scheme
- Just because a practice might have reopened, this does not mean that all employees have to return immediately.

A practice can keep employees on furlough under the government scheme, being mindful of:

- Employers will no longer be able to reclaim employer national insurance and pension contributions from August 1.
- From September 1, employers will also be required to contribute 10 per cent of wages, with the government contributing 70 per cent.
- From 1 October, the employer contribution increases to 20 per cent and the Government will contribute 60 per cent.
- On October 31 the scheme closes.

However, from July 1, 2020 the government furlough scheme will operate more flexibly, and employers will be able to bring employees back from furlough on a part-time basis. Under this flexible furlough arrangement employees will be paid their normal wage for the time spent working and receive furlough pay for the time spent on furlough. The furlough payment (and the £2,500 cap) will be reduced in proportion to the hours not worked.

Furlough simply means temporary leave of absence. There is therefore nothing to stop an employer seeking to agree a temporary leave of absence – with or without pay – with its workforce after October 31, and agree its own scheme.

Unpaid leave and sabbaticals

Employees will be reluctant to take unpaid leave or a sabbatical but when

faced with the alternative prospect of redundancy may give it some serious consideration. This would remove the cost of that employee from the employer's business for an agreed period of time.

Flexible working

Many employees require flexible working now more than ever. That could be reduced hours, reduced days, and so on. Be careful to act fairly when considering these requests as they can be a discrimination claim in the waiting, but practically they can reduce staffing costs.

A flexible working request is a request for a permanent change to the contract of employment however to encourage a greater take up during this difficult time, you can agree this on a temporary basis.

Reductions in salary

An obvious cost cutting measure is to reduce salaries, either temporarily or permanently. If you are to seek a reduction in salaries, this should be done fairly – either across the board or by selecting teams/individuals based on objective business reasons. We have advised on employers agreeing a 12-month reduction in salary with staff. These reductions have ranged from 10-25 per cent in normal salary costs.

Reductions in working hours

Another obvious cost cutting measure is to reduce working hours, either temporarily or permanently. Again, it should be done fairly, either across the board or by selecting teams/individuals based on objective business reasons.

How to go about implementing these changes

A reduction in hours or salary or changes to hours or patterns of work is a contractual change – you can't just impose it without significant risk. In summary, the process that an employer should follow to implement these measures is as follows:

- Communicate the practice's position clearly and the urgent need to achieve temporary cost-saving to ensure the ongoing financial viability of the practice.
- Explain the proposed changes in detail and seek the employee's agreement, and
- Record the agreed changes in a letter which is counter-signed by the employee.

As long as the employees agree then the changes can be implemented.

However, if employees will not agree then employers will be at substantial risk of claims for unlawful deduction of wages, breach of contract and/or constructive unfair dismissal if they seek to impose these changes unilaterally. Employers should have a clear strategy for what their approach will be should the employees not agree to the proposed changes – for example, they may wish to instead explore a different measure such as redundancies. This may form part of the employer's communication when explaining the reason for the changes and seeking the employee's agreement.

Ultimately it might not be possible to avoid redundancies, but what Covid-19 has demonstrated is that employers and employees are prepared to work together to consider alternatives.

