

Advisory Bulletin

Employment Law Update

March 2020: No. 678

In this issue:

COVID-19 WORKFORCE FAQs
COVID-19 EMERGENCY VOLUNTEER LEAVE
WIDER LGA ADVICE ON COVID-19
ACAS COVID-19 ADVICE
GENDER PAY GAP REPORTING POSTPONED
FACILITY TIME REPORTING UNDER CONSIDERATION
IR35 CHANGES POSTPONED
STATUTORY ANNUAL LEAVE: CARRY OVER RULES RELAXED
EMPLOYMENT RIGHTS (INCREASE OF LIMITS) ORDER 2020
EMPLOYMENT LAW TIMETABLE

Welcome

This time last month, whilst many of us feared it, we did not envisage we would be quite where we are now. At that time there were a small number of Coronavirus cases confirmed within pockets of the country and the emphasis was on containment and isolation of infected people and their close contacts. Therefore relatively small numbers of people were affected by contractual provisions covering time off work following contact with infectious diseases. Now the situation is very different with intense planning and activity, accompanied by wide ranging emergency legislation and unprecedented financial measures to support the economy, while the whole United Kingdom fights Coronavirus watching the rest of the world as it does too.

Every aspect of our lives has been affected and will continue to be so for some time. Therefore this Advisory Bulletin focuses on the workforce implications brought about by the growing emergency.

We set out some answers to the most frequently asked questions we receive in the Workforce team and provide links to other relevant advice from the LGA, the Government and Acas. We also provide some information about known consequential amendments to various strands of reporting requirements and regulations, which are designed to help employers focus on their response to the crisis.

It is fair to say that the questions we receive about the implications of Covid-19 grow and the answers sometimes change to reflect changing Government priorities and local government developments. New support schemes such as the Coronavirus Job Retention Scheme (Furloughing) and emergency volunteer scheme are being quickly put together and everyone is trying to understand them, who they apply to and how they work. The emphasis is on supporting efforts to contain and defeat the pandemic, while keeping things as financially stable as possible for employees, the self-employed and businesses in order to prevent further economic problems and maintain capability to continue business as normal as soon as possible.

This has been a fast-changing environment in uncertain times and therefore adaptation will remain a theme, so whilst these are the best answers we can provide at the time of writing, please keep visiting the LGA website for updates and amendments.

Best Wishes.

Further information

Receiving the bulletin

The Advisory Bulletin is available to local authorities by registering on our website at www.local.gov.uk and selecting the 'Employment Law Update' from the list of email updates available at <http://www.local.gov.uk/about/news/e-bulletins>. For other organisations the Advisory Bulletin is available through subscription. If you have any queries about the bulletin please e-mail eru@local.gov.uk.

The employment law advisers

Philip Bundy, Samantha Lawrence and Kelvin Scorer will be pleased to answer questions arising from this bulletin. Please contact us on 020 7664 3000 or by e-mail on eru@local.gov.uk

Address

The Workforce Team, Local Government Association, 18 Smith Square, London SW1P 3HZ

Website

<https://www.local.gov.uk/our-support/workforce-and-hr-support/employment-relations>

Obtaining legislation and other official publications

Copies of legislation can be found at www.legislation.gov.uk

Key data

SMP, SPP, ShPP and SAP basic rates

£148.68 or 90 per cent of normal weekly earnings if lower from 7 April 2019 (£151.20 from 5 April 2020)

SSP

£94.25 from 6 April 2019 (£95.85 from 6 April 2020)

'A week's pay'

£525 – statutory limit for calculating a week's pay from 6 April 2019 (£538 from 6 April 2020)

£547 in Northern Ireland from 6 April 2019

Contents

<u>COVID-19 WORKFORCE FAQs</u>	5
<u>COVID-19 EMERGENCY VOLUNTEER LEAVE</u>	17
<u>WIDER LGA ADVICE ON COVID-19</u>	18
<u>ACAS COVID-19 ADVICE</u>	18
<u>GENDER PAY GAP REPORTING POSTPONED</u>	18
<u>FACILITY TIME REPORTING UNDER CONSIDERATION</u>	19
<u>IR35 CHANGES POSTPONED</u>	19
<u>STATUTORY ANNUAL LEAVE: CARRY OVER RULES RELAXED</u>	19
<u>EMPLOYMENT RIGHTS (INCREASE OF LIMITS) ORDER 2020</u>	20
<u>EMPLOYMENT LAW TIMETABLE</u>	20

COVID-19 WORKFORCE FAQs

The Covid-19 pandemic has raised and continues to raise questions as to policy and practice in relation to management of various workforce issues. We set out some of the most frequently asked questions and our answers below. This is a fast-moving situation with new Government policies, initiatives and legislation and so the answers to these questions may change as the situation progresses.

Question 1

What if an individual has been in contact with a person who has suspected Covid-19 or has symptoms of the virus?

In circumstances where an individual has come into contact with a suspected Covid-19 case AND has symptoms, they should read in full the latest Government advice on self-isolation, which is available [here](#).

The advice in relation to family members is currently (31 March 2020) that where a person has symptoms of Covid-19, all other members of the household should self-isolate for 14 days.

It remains the case that employees are expected to carry out work to help provide services to the authority's service users and clients where they can. As set out in question 2, where it is possible, the work should be carried out at home. In the event that an employee's role cannot be performed from home and they are therefore unable to work because they are self-isolating then if they are on Green Book terms and conditions the National Joint Council for Local Government Services has issued a [circular dated 12 February 2020 Novel Coronavirus: Covid-19](#) setting out advice about the Green Book sickness scheme. Part 2, paragraph 10.9 of that scheme provides:

"An employee who is prevented from attending work because of contact with infectious disease shall be entitled to receive normal pay. The period of absence on this account shall not be reckoned against the employee's entitlements under this scheme."

Therefore, the circular confirms that in the event that an employee is required to self-isolate or is placed in quarantine as a result of Covid-19, the provision above should be applied. Similar, although not identical, provisions apply for fire and rescue employees on Grey Book terms (see [NJC Circular 1/20](#)) and school

staff on the Burgundy Book (see [the LGA reminder](#))

Question 2

What if an individual is in a vulnerable group?

[Government guidance](#) provides that employees from defined [vulnerable groups](#) should be strongly advised and supported to stay at home and work from there if possible. This is due to the fact that they are at increased risk from severe illness caused by Covid-19.

The NJC for local government services has issued a [circular](#) dated 17 March on Covid-19: working at home which addresses these issues for Green Book employees, although the same principles will apply for other employees, albeit the opportunities for employees in other services such as fire and rescue will in many cases be very limited.

The circular advises that “all options for using annual leave, special leave etc should be explored but given the length of time that this national emergency is set to last it is not reasonable, for example, to expect employees to use their entire annual leave entitlement to cover all or part of the lockdown period as consideration should be given to planned booked holidays later in the year, along with employees who may require leave throughout the year to support dependents”.

“Ultimately, in many cases employers will have no option other than to accept that some employees can neither work at home nor be redeployed / seconded etc and will therefore be staying at home on full pay for the duration of this emergency. The LGA is and will continue to be in discussion with Government regarding the support required for the sector.”

Question 3

How do we respond to our employees who may have to undertake caring responsibilities at very short notice?

Following the announcement that schools will now be closed for the foreseeable future there will be many staff who will have to be at home to look after their children, although [critical workers](#) will still be able to send their children to school if they have no other options available for childcare. The availability of employees who have to be at home to look after their children will depend on their individual circumstances e.g. the working arrangements of their partner or the

availability of other people within the household such as adult siblings who may be available or willing to help with childcare at certain times. However, given the Government advice regarding staying at home, social contact and the risk to older people, usual options for some, such as grandparents, will not be available, so options will be limited where both parents work. Some of these employees will be able to do some work from home, again depending on the age of the children and the kind of work and the time that that work has to be carried out. In the current circumstances, employers will want to support their employees in terms of both being flexible in the way that people work but also in terms of the expectations that are placed on people at this very difficult time. It is inevitable that there will be a drop in productivity in some cases, but employers and employees will hopefully be able to come to some arrangement which will allow some functions to be carried out where reasonably possible, such as by allowing someone to work different hours e.g. in the evening. It may also be possible to allocate alternative duties to some home bound employees which would free up other staff to do work which requires a physical presence, or to alter shift arrangements which may allow employees to work at times when there are others who are able to care for their children.

For others who cannot work at home, but have to be at home to look after their children authorities will want to explore all leave options, including extending any carers' leave, but once those are exhausted the authority will need to consider whether the continuing time off should be on full pay bearing in mind other employees who are at home but not working may continue to receive full pay.

Question 4

How do we manage any resulting sickness absence?

Except for the situation referred to below for employees on Burgundy Book terms and conditions, where an employee is too sick to work as a result of Covid-19, whether at home or in their place of work, then their absence should be treated as sickness absence. In the circumstances, the [Government](#) "[strongly suggests](#)" that employers use their discretion around the need for medical evidence. This is obviously due to the difficulties that employees may face in being able to obtain a sick note and the fact that health services will be dealing with higher

priorities. However, the Government has now set up a [digital method](#) for obtaining evidence of sickness absence or the need to self-isolate.

In the circumstances, and to help prevent employees from not reporting as sick when they are, many employers may also choose not to take such absence into account for sickness absence management procedures. Further, if an employee's sick pay entitlement has expired or reduced to half pay, or is about to do so, then authorities are reminded that they have always had the discretion to extend sick pay entitlements in order not to impose financial hardship on employees.

For Burgundy Book employees who have contracted Covid-19 directly in the course of their employment Section 4, Paragraph 10.1 provides:

“10.1 When the approved medical practitioner attests that there is evidence to show a reasonable probability that an absence was due to an infectious or contagious illness contracted directly in the course of the teacher's employment full pay shall be allowed for such period of absence as may be authorised by the approved medical practitioner as being due to the illness, and such absence shall not be reckoned against the teacher's entitlement to sick leave under paragraph 2 above, though such absences are reckonable for entitlement to Statutory Sick Pay.”

If, however, the Burgundy Book employee did not contract Covid-19 in the course of their employment then they should be treated as any other employee.

Question 5

How do we manage staff where we have had to close the service for organisational reasons or due to steps the Government have put in place?

Many services will continue to run, but possibly to a more limited extent, where workers are able to operate from home. However, some services may have to be significantly reduced or shut down on a temporary basis, for example as is the case with some schools, in response to managing the virus. Where workers are not required to provide the service they are normally employed to do, consideration should be given to whether or not it would be appropriate to redeploy them to those essential services where there may be a need for additional staff, particularly if there is an

increase in staff absence. Such redeployment would normally require some form of training including any necessary health and safety information and Personal Protective Equipment if required for the temporary role. If redeployment is envisaged it would be prudent to put as much of this in place as soon as possible and before the need to redeploy arises. (See question 11 for further info on redeployment.)

If it is not currently necessary to redeploy staff, or would not be possible, then employees may be required to stay at home, for which they would continue to receive contractual pay. They should remain available for work and may be called to work at short notice. Any requests for leave should be managed through appropriate channels. Ultimately though should the question of redundancies arise then authorities should consider whether the Government's Coronavirus Job Retention Scheme could apply to prevent such dismissals. However, Government guidance makes it clear that it does not expect many public sector employers to use the scheme and that while public bodies are continuing to receive funding for staff costs, it expects them to use that money to continue to pay its staff (see question 7 for further details). Therefore while funding remains in place the expectation is that public sector employees should not be made redundant due to the impact of the Covid-19 pandemic or be placed on the Coronavirus Job Retention Scheme.

Question 6

In the event of the closure of a place of work, such as a school, does an agency worker remain entitled to be paid if other directly employed employees continue to be paid even if they are not working at home?

Whether an agency worker will remain entitled to be paid through their agency will depend first on whether they are entitled to be paid under the Agency Worker Regulations 2010. Broadly speaking those Regulations give agency workers the right to equal treatment in terms of "basic working and employment conditions", as if they had been employed directly by the hirer to do the same job. In many cases this means that agency workers will be entitled to the same rate of pay as a comparable employee, so if a comparable employee is being paid during the workplace closure period, then the agency worker may be entitled to be paid.

However, that right only applies after a 12-week qualifying period. To determine entitlement under the Regulations therefore authorities will need to check whether the worker has met that 12-week qualifying period (for details of how that is calculated see question 9 of the LGA's [Agency Workers FAQs](#)).

Importantly though, any entitlement under the Regulations will apply only for the length of the assignment. For example, if a worker was brought into cover absence for a week, then they would remain entitled only to be paid until the end of that week. To determine the length of the assignment the first step will be to check the agreement between the agency and the authority to see whether that sets out its length. In some cases though the length of the assignment may be more difficult to determine, for example if they were covering sick leave on an open ended basis. In such cases employers may want to make an assessment of how long the assignment might reasonably be expected to have lasted.

Ultimately though in terms of liability under the Regulations for any non-payment, responsibility for providing rights under the Regulations is primarily with the employment agency. However, if the reason the agency worker was not being paid was because the authority stopped paying the agency then if a claim was brought by an agency worker then an employment tribunal might well find that the authority was responsible for the breach and so it should be liable for the non-payment or an element of it.

If the worker does not have any entitlement to pay under the Regulations, authorities should still check whether there is any contractual obligation with the agency and/or worker which would require them to continue paying for the worker.

In some cases though it may be that the employment agency will be able to consider using the Government's Coronavirus Job Retention Scheme, under which 80% of the agency worker's pay would be funded by that scheme, and in such cases authorities might want to discuss top up pay with the agency so the worker does not receive a drop in pay. Further details of the Coronavirus Job Retention Scheme are in question 7).

Question 7

What is the Coronavirus Job Retention Scheme?

The Government has announced that employers, which, due to the effect of the virus, would need to make their employees redundant, can instead designate them as furloughed under its [Coronavirus Job Retention Scheme](#) subject to the terms of their contract or agreement with the employee. This will allow them to apply to HMRC for the reimbursement of 80 per cent of their wages, plus the associated Employer National Insurance contributions and minimum automatic enrolment employer pension contributions, subject to a limit of £2,500 per month. This could allow the employer to top up the remaining 20 per cent of pay.

However, Government guidance on the scheme makes it clear that while the scheme is available to public sector employers, the Government does not expect the scheme to be used by many of them, as they will be continuing to provide essential public services. The guidance also states that where employers receive public funding for staff costs, and that funding is continuing, it expects employers to use that money to continue to pay staff in the usual fashion. This also applies to non-public sector employers who receive public funding for staff costs. Therefore in such cases there is an expectation that employees should not be made redundant as a consequence of the impact of Covid-19 pandemic or placed on furlough leave.

In some cases though it may be helpful for authorities to advise any of their partner organisations of the details of this scheme to help to protect the wider local government workforce.

In all cases though where questions about the scheme arise we recommend that authorities read the [Government's guidance](#) on the scheme. That guidance sets out which employers can claim, the employees which can be claimed for, how much can be claimed and how to make a claim. In addition the Local Government Pension Scheme will be issuing advice for employers and employees about the implications of being furloughed on pension contributions and benefits.

Question 8

What responsibilities do employees have to their employers in the current circumstances?

Authorities should provide whatever reasonable support they can to employees to enable them to continue to provide services but, to minimise the risk of infection and absence, employees have a responsibility to:

- Work from home if possible in line with the organisation's requirements. If their role means that they are unable to work from home, attend work if well, unless instructed to do otherwise by the employer in line with Government policy, which is constantly being updated. Be open and honest if they feel that they are unwell with Covid-19.
- Be flexible in assisting in the delivery of the authority's services.
- Follow general infection control practices and good hand hygiene which can help to reduce transmission of all viruses.
- Follow all national guidelines issued at the time on reporting Covid-19 symptoms, treatment, use of public transport, self-isolating etc.
- Keep their department informed about any new or continuing sickness absence and the reason for it, in line with the published reporting procedure, and keep any absence to a safe minimum in line with Government guidance to make it easier to maintain services.
- Keep their manager up to date with contact details for themselves and next of kin, and help the authority to help them and maintain services by sharing information on any travel arrangements and caring responsibilities.
- Keep themselves abreast of information issued by their employers on how it intends to handle the Covid-19 situation.

Question 9

What if the employee refuses to attend work or perform their duties?

It is anticipated that employees will, as far as possible

within the constraints of school closures, caring responsibilities and complying with Government advice on self-isolating and social distancing, continue to perform their duties and be flexible to ensure that services continue to be provided. [Personal protective equipment advice](#) should be followed both in relation to Covid-19 and any other risks applying to the roles that employees are asked to perform. If difficulties arise with a refusal to attend work or a refusal to carry out certain duties, managers should ascertain what the concerns are, consider what, if anything, can be reasonably done to address those concerns and take action accordingly, to encourage the individual to work.

If this has been done, but the individual still refuses to attend or perform the task then this may constitute unauthorised absence or partial performance (ie where they are only prepared to carry out certain tasks rather than their full range of duties). This may be a disciplinary issue, which may justify withdrawal of pay. The manager should explain the individual's contractual obligations and the consequences of refusing to work. If there is still no change in the individual's position, immediate advice should be sought from HR to ensure an appropriate and consistent approach can be taken.

Question 10

What about planned absences, such as annual leave?

Planned absences such as annual leave, special leave, flexitime leave, or leave for public duties, (or even compassionate and parental leave in very critical instances) may need to be cancelled or rearranged to ensure sufficient cover can be maintained.

Cancellation will have to be in line with any national advice or guidance and based on the need to maintain necessary services (see the [NJC Circular of 6 March 2020](#)). Leave requests should also be prioritised, e.g. special leave requests for bereavement situations and public duties which must be provided by law, will clearly take precedence over non-critical flexitime or annual leave requests.

As it is necessary to balance the need for work and rest during a prolonged period, this does not mean leave should be automatically cancelled and new requests may be considered. However, leave can be cancelled and turned down where it is considered operationally necessary, and alternative dates will

have to be agreed once the situation returns to normal. This may mean that authorities will need to give retrospective consideration to allowing more leave than normal to be carried forward into the next leave year. Under the provisions of the Working Time Regulations individuals should take a minimum of 28 days' leave (including public holidays) per leave year, pro-rated as appropriate. However, the Government has [temporarily amended the regulations](#) in order to relax the rules around carry over of leave.

Question 11

Can we redeploy individuals?

Covid-19 means a change to local authority service demands and employee attendance levels. Therefore, managers will need to identify any critical areas that are likely to have a shortage of employees as the situation develops in line with the Business Continuity Plan.

Employees are expected to be flexible to ensure that services can be maintained, and early discussions with local trade union representatives about how best to redeploy individuals will help maintain that flexibility. The general principle is that the authority should make the best use of resources to support its communities and that resources should be prioritised towards critical services. Where necessary, employees who are suitably trained or skilled to carry out tasks can be asked temporarily to provide cover if the number of employees available for work who normally provide the service becomes too low. This might apply across sections/departments as well, particularly for those employees who are not able to work in their own area if the service is suspended. In these exceptional circumstances the underlying principle is that if someone has an acceptable level of training or skills and knowledge to carry out the basic task, it should in many cases be reasonable to expect them to do it, although it will very much depend on the individual's circumstances, such as whether they have any underlying condition which might require adjustments in order to perform the new role. The aim is to get the most out of the employees who are fit to work, which will mean employers obtaining flexibility from employees and key considerations in achieving that are:

- If you need to change an employee's role or job location, the first thing to do is to check the

contract to see if it contains a flexibility and/or mobility clause allowing you to make the changes

- Even if it does not have a flexibility and/or mobility clause, if in practice employees routinely change roles or place or work, there may be an implied term that you can change the employees' roles and working location
- The authority should also make sure that the employee is sufficiently trained to carry out any new tasks/role and that the necessary risk assessments are in place. HSE has also issued [guidance](#) on risk assessments relating to working from home due to Covid-19.

However, the best way of obtaining flexibility is to get employees' agreement to the proposed changes and, therefore, the focus should be on reaching agreements on a framework and protocols on staffing issues with local staff-side organisations.

In all cases though, no employee should be pressurised to undertake other duties that they are unfamiliar with and that they do not have the basic skills or knowledge to complete the tasks required.

Question 12

What about bringing in agency workers to cover absences?

It may be possible to use agency workers to cover some absence, although contingency planners/managers must bear in mind that their availability will also be affected in the same way as the authority's employees, and so should work with agencies as early as possible. Any temporary or agency workers brought in should continue to have the appropriate employment checks, for example those with the Disclosure and Barring Service, carried out before they are employed. Please bear in mind the timescales for completing these checks when planning to use this option and explore any options for accelerating those. All agency employees, including those not required as a result of the closure of services, will need to be managed via the agency.

Question 13

What if we need people to work additional hours?

Where an increase in absence levels would lead to problematic staff shortages in essential services, line

managers should ask for volunteers from existing employees to increase their hours, subject to consideration of health and safety issues. Care should be taken to ensure that those working additional hours do not put their own or others' health and safety at risk and that they get regular rest breaks. Appropriate pay arrangements should be agreed in advance, unless there is already something applicable in the contract. This may be time off in lieu at a later date, or paid overtime or shift allowance.

Question 14

How can we best support employees?

Employers are under a legal duty to maintain health and safety; this continues to be the case during an emergency situation. Employees are likely to be concerned about the risk of contracting the virus. The employer must take all reasonable steps to protect employees' health and safety, provide clear and accessible communications about the likely risks and take a supportive view of those who have caring responsibilities. Employers can also provide opportunities for employees to discuss their concerns with their line manager or an occupational health or counselling service.

Question 15

Do we need to put in place special communication measures?

It is important that workers are kept as up-to-date as possible with current Government advice regarding self-isolation and preventing the spread of infection and the steps that the employer is putting in place as a result. There will currently be a significant number of workers working at home and others who are working remotely in essential services and therefore the employer should ensure that there are adequate communications channels (for example via text or email) in place to ensure information reaches these people as soon as possible. Workers should be informed about how the employer will communicate important messages to ensure that they monitor these communications channels as appropriate. Employers should also consider how they communicate any relevant information with those who are currently not at work e.g. women on maternity leave.

COVID-19 EMERGENCY VOLUNTEER LEAVE

The Government has sought many people to return to the NHS and a wider volunteer army to provide various types of support as the crisis develops. It is therefore developing the systems necessary to enable employees to take leave from their employer as they volunteer. To do this the Coronavirus Act 2020 sets out a system for emergency volunteer leave. At the time of writing that part of the Act is not yet in force. However, it will come into force once the further details of it are set out and passed in secondary legislation, and that is expected to happen soon. Once all the details are known we will add questions on the emergency volunteer scheme to our [Covid-19 FAQs](#), but in the meantime the key features are set out below.

What is emergency volunteering leave and can an employer refuse a request for leave?

Emergency volunteering leave is a scheme set out in the Coronavirus Act 2020 which gives employees the right to take leave from their employer for two, three or four consecutive weeks to enable them to volunteer in the health and social care sectors.

The right to take the leave applies to employees in most employers, so applies to local authority employees. Provided the conditions for taking the leave are met, the employer cannot refuse the request. However, should an authority receive a request for leave from an employee, the authority may want to discuss with the employee whether taking the leave could adversely impact on the authority's ability to provide services to the community and health and social care. If so the employer may want to ask whether the employee still wants to take the leave. In some cases it may also be possible for the employee to carry out emergency volunteer type work within their own council. In discussing the options though the employer should act reasonably, bearing in mind the protections against detriment and dismissal in the Act (below).

The employer does not have to pay the employee when on leave. However, apart from pay all other terms and conditions remain in place and the Act provides that arrangements will be put in place by the Government to compensate volunteers for loss of earnings and for travelling and subsistence expenses.

What are the conditions and process for taking leave?

In order to take the leave the employee must give their employer three days' notice in writing and provide their employer with a copy of their emergency volunteering certificate. The certificate is a document issued by an

appropriate authority (as defined) which certifies that the worker has been approved as an emergency volunteer and that they will be working as a volunteer for the period specified in the certificate. An appropriate authority includes councils but also, in England, the National Health Service Commissioning Board and the Secretary of State for Health and Social Care, and in Wales, the Welsh Ministers.

The leave must be taken in one block and only one period of leave may be taken in the first 16-week period from which the right comes into force. Should the scheme be extended for a further 16-weeks or less, then the employee can take leave again, but the same conditions for taking the leave will apply.

What employment protections are in place for those taking emergency volunteer leave?

The Coronavirus Act contains protections against detriment and dismissal for those seeking to, taking or who have taken emergency volunteer leave. The Act also provides the right to return to the same job at the end of the leave.

Does emergency volunteering leave apply to agency workers?

Yes, agency workers are entitled to take emergency volunteering leave in the same way as employees. However, should the agency worker provide the agency with an emergency volunteering certificate then the agency must give a copy to the hirer, or if the certificate is given to the hirer, they must give a copy to the agency.

WIDER LGA ADVICE ON COVID-19

In this Workforce Advisory Bulletin we obviously focus on employment law and employment relations issues for the benefit of HR practitioners. However, the LGA has a full suite of [information for councils relating to the COVID-19 crisis](#) which deals with the wider aspects of local authority work which will also be useful to many of our readers.

ACAS COVID-19 ADVICE

To assist employers generally Acas has produced [COVID-19 Advice for employers and employees](#)

GENDER PAY GAP REPORTING POSTPONED

Due to the Coronavirus outbreak, many of our readers will have seen that the Government Equalities Office (GEO) and the Equality and Human Rights Commission (EHRC) have [taken the decision to suspend enforcement of the gender pay gap deadlines for this reporting year \(2019/20\)](#). The decision means there will be no expectation on employers to report their data.

**FACILITY TIME
REPORTING
UNDER
CONSIDERATION**

In light of the current challenges the public sector is facing due to COVID-19, the Cabinet Office are advising Ministers on this year's facility time online reporting service and will be in a position to confirm shortly next steps for employers. Although not indicated it may mean that the reporting requirements are relaxed.

**IR35 CHANGES
POSTPONED**

The Government has [announced](#) that as part of its response to COVID-19 it has decided to postpone the changes to IR35 which were scheduled to come into force in April 2020 (see [Advisory Bulletin 676](#)) . They will now come into force on 6 April 2021.

**STATUTORY
ANNUAL LEAVE:
CARRY OVER
RULES RELAXED**

Under the [Working Time \(Coronavirus\) \(Amendment\) Regulations 2020](#) the rules on the carry over of statutory annual leave have been relaxed where it is not reasonably practicable for a worker to take some or all of their annual leave in their current leave year as a result of the effects of coronavirus. The relaxation applies to the four weeks leave under regulation 13 of the Working Time Regulations 1998 (WTR) and it means the leave can be carried over from one leave year to the next for up to two years after the leave year in which it was meant to be taken. Further, workers will be entitled to pay in lieu for that leave, should their employment end before the leave is taken.

Such carry over and associated pay in lieu on termination was previously not allowed under the WTR (subject to some exceptions where leave could not be taken for sickness and maternity reasons) and that will remain the case for leave that cannot be taken for reasons other than the coronavirus pandemic. Further, the current rules for the 1.6 weeks' leave under regulation 13A of the WTR remain in place, which means that leave can continue to be carried forward one year where agreed.

Authorities will welcome this change as it will help them to manage annual leave at a time when their services are under great pressure. It should be remembered though that rules apply to an employer refusing a request to take statutory leave, meaning the employer has to give at least as many days' notice as the number of days leave it is refusing. Further the 2020 Regulations introduce a requirement that carried over leave to which this relaxation applies can only be cancelled where the employer has "good reason" for doing so. "Good reason" is not defined but in any event

authorities would be advised to prioritise the taking of such leave.

That being said authorities will be mindful that their employees are under great pressure at the moment and will be for some time and so they will be seeking to allow leave to be taken wherever possible. Related to that, to enable leave to be managed most flexibly and balanced across their whole workforce authorities may be considering relaxing their normal rules on carrying over contractual leave in excess of statutory entitlements.

EMPLOYMENT RIGHTS (INCREASE OF LIMITS) ORDER 2020

The [Employment Rights \(Increase of Limits\) Order 2020](#) has been laid before parliament and comes into force on 6 April 2020. It increases a number of limits associated with rights and compensation under various provisions of the Employment Rights Act 1996 and the Trade Union and Labour Relations (Consolidation) Act 1992.

In particular it increases a week's pay for statutory redundancy purposes from £525 to £538 per week.

EMPLOYMENT LAW TIMETABLE

We set out some of the key recent employment law developments, as well as those to look out for over the coming months.

Delayed from March 2018

Trade Union Act: check off provisions (see [Advisory Bulletin 646](#)). Due to lack of Parliamentary time, the [Trade Union \(Deduction of Union Subscriptions from Wages in the Public Sector\) Regulations 2017](#) have not yet been brought into force. We await information on when they will.

6 April 2018

Changes to tax and national insurance treatment of termination payments (see [Advisory Bulletin 653](#)).

April 2019

National Minimum Wages increases (see [Advisory Bulletin 664](#)).

Changes to itemised pay statements (see [Advisory Bulletins 658 and 665](#)).

1 April 2020

Increase in National Minimum Wage rates (see [Advisory Bulletin 676](#))

6 April 2020

Changes to employer national insurance treatment of termination payments over £30,000 (see [Advisory Bulletin 653](#)). Was originally due to come into force in

April 2019 but has been delayed (see the Budget 2018 feature in [Advisory Bulletin 664](#)).

Good Work Plan developments:

- removal of Swedish derogation in the Agency Workers Regulations 2010
- changes to written statement entitlement
- reduction in employee numbers required to request employer to negotiate an agreement in respect of information and consultation from 10% to 2%
- statutory holiday pay reference period increases from 12 to 52 weeks.

For further details see [Advisory Bulletin 665](#), [Advisory Bulletin 670](#) and [Advisory Bulletin 676](#).

Introduction of parental bereavement leave and pay (see [Advisory Bulletins 662](#), [665](#) and [676](#)).

6 April 2020

Changes to IR35 rules and extension of obligations to large and medium private sector organisations (see [Advisory Bulletin 676](#)). POSTPONED – until April 2021

To be confirmed – exit payment cap and pension reforms

Implementation of various proposals to reform exit payments in the public sector which include:

- Recovery of exit payments made to high earners who leave the public sector on or after the implementation date if they return to the public sector within 12 months of leaving. This was referred to in the Conservative Party Manifesto.
- The fixing of a cap on exit payments made to employees departing public sector employers. Consultation on draft legislation closed on 3 July 2019 (see [Advisory Bulletin 669](#) and [Advisory Bulletin 671](#)). We await the Government's response.
- Other associated reform of redundancy payment limits and related pension scheme provisions.

No set date

Extending redundancy protection for women and new parents (see [Advisory Bulletin 672](#))

Measures to prevent misuse of confidentiality clauses

(see [Advisory Bulletin 668](#) and [Advisory Bulletin 672](#))

Extension of period required to break continuous employment from one week to four weeks.

Changes to National Minimum Wage (see [Advisory Bulletin 677](#)).