

What is the priority for employers?

The priority for most employers is going to be retaining staff if they can.

The key message is talk to your workforce and below a few areas to consider which should be read in the light of the following;

1. The government intends to put a full package of support in place to enable businesses to retain staff, and that will be the goal. Therefore, it is to be hoped that the suggestions given below will be unnecessary.
2. Insurance needs to be fully investigated by all employers - the government has stated that it considers that the current statements made by the government are sufficient to bring interruption to business policies into effect and require insurance companies to make good on those policies
3. In discussions with staff it is probably the most sensible course of action to be as open and transparent as possible about the situation the business is in, the measures you are taking to enable it to survive and what you are asking of them. You will remind them that the survival of the business is in their interests, and that your objective is to work together with them to achieve that, but that you fully understand the situation is going to be very difficult for them all
4. This situation is completely unprecedented, therefore none of us has any idea what approach any tribunal would take, but most employees must realise that there is little point in a tribunal claim if there is no employer to sue, so it would make sense for employees to take a pragmatic view.

What is the law?

There is some very brief guidance on the government website

See <https://www.gov.uk/lay-offs-short-timeworking>

5. The general principle for employees (not for casuals or agency workers) is that an employer cannot reduce unilaterally an employee's pay and/ or hours without their consent **unless** the employer has provided for unpaid short time working in the contract of employment (which is relatively rare). If employees are sent home without pay they are entitled to a guarantee payment, details of which are on the link above, and as stated above may well have a claim for back pay.
6. Thus, if an employer unilaterally imposes a pay cut on an employee that constitutes a breach of contract which would entitle an employee to leave and claim constructive dismissal (less likely in the current circumstances) or remain with the employer under protest and make a claim for back wages on the basis of unlawful deduction.
7. Saving cost by making redundancies is always a possibility. There is no doubt that the many businesses suffering a catastrophic reduction in demand would have grounds for this, and in an emergency situation it is generally accepted that the period of consultation may be very short. Any consultation, however short, would explore other possibilities with the affected employees, such as unpaid leave. Of course redundancy is itself an expense many employers will want to avoid right now and they will need a workforce going forward assuming the business survives.
8. It is possible that by holding frank and open discussions with employees, either within a redundancy consultation or as a standalone meeting, that the employer may be able to persuade employees to accept a reduction in pay and/or hours, which would be likely to prevent them having any later claim for deductions from wages.
9. Any compromise you might reach with them perhaps to reduce hours/pay would contain the proviso that if you do achieve some sort of compensation from government, you will do your best to make up any money that the employees have lost out, or at least restore the previous status quo as quickly as you possibly can.

10. Many employers are closing offices and asking employees to work from home. Many of those employers will not have a clause in the contract allowing this, or any working from home policy. Although there is no way of knowing what approach any tribunal might take to this, the likelihood is that tribunals would consider the situation so unusual that employees should adopt a flexible approach to doing this. It is thought that the key will be good communication and open discussions again; what is the employer expecting or hoping for and what are the issues for employees with working from home, if any? How can any problems be addressed, what sort of equipment is needed and can it be supplied? It is likely that both parties would be expected to act reasonably and accommodate the needs of the business and of the employee as best they can.

If possible, it would be advisable for employers and employees to wait to see how far the government is able to get the package of support up and running and how effective it is before taking any precipitate action. As far as possible no firm decisions should be taken without assessing how far the new grants, loans and other support will allow the businesses to survive and retain staff.

You can find employment law factsheets at <https://www.accaglobal.com/gb/en/technical-activities/technical-resources-search/2020/march/employment-factsheets.html>