

## ISME Skillnet Live Q&A – Covid-19

21<sup>st</sup> April 2020

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## Wage Subsidy Scheme/Pandemic Unemployment Payment

Can you explain the changes recently announced to the wage subsidy scheme?

- For employees earning less than €412 net per week the subsidy will be increased to 85% of their previous net weekly income
  - For these employees, it will be permissible under the scheme to top up beyond 100% of previous net wages up to a maximum of €350 without the subsidy being tapered back
- For employees earning between €412 and €500 net per week, the subsidy will be €350 per week
- There are no changes in respect of those whose previous average net pay was between €500 and €586 per week who will continue to receive a subsidy of up to 70% of previous net income, up to a maximum of €410 per week.
- For employees with previous net pay in excess of €586 per week a tiered approach will apply. The maximum subsidy payable for these remains €350 per week.
- The tiered approach takes into account both the amount paid by the employer and the level of reduction in pay borne by that employee as follows:

Gross Amount paid by Employer	Subsidy
Up to 60% of employee’s previous average net weekly pay	Up to €350 per week
Between 60% and 80% of employee’s previous average net weekly pay	Up to €205 per week
Over 80% of employee’s previous average net weekly pay	No subsidy payable

- the wage subsidy is now available to support employees where the average net pre-Covid salary was greater than €960 per week, and their gross post-Covid salary has fallen below €960 per week. The tiered arrangement outlined above will apply in such circumstances.
- It is important to note that these changes will apply for payroll with a pay date on or after the 4 May and received by the Revenue Commissioners on or after that date and that no back-dating of increased subsidy will apply.
- The change to those who were earning more than €960 net per week pre Covid-19 applies from 16<sup>th</sup> April.

How will employees’ PRSI contributions be affected if employer avails of the temporary Wage Subsidy Scheme or a worker claims the COVID-19 emergency payment?

- The payments are liable to income tax; however, the subsidy is not taxable in real-time through the PAYE system during the period of the Subsidy scheme.
- Instead the employee will be liable for tax on the subsidy amount paid to them by their employer by way of review at the end of the year. When an end of the year review takes place, it may be the case that an employee’s unused tax credits will cover any further liability that may arise.

If an employee is Temporarily laid off, but processing the Covid Unemployment payment themselves, should they be left on payroll at normal PRSI class (not J) and zero earnings?

- Yes, the updated revenue FAQ document, found [here](#) state that the employee does not need to be ceased on payroll, and a DEASP Pandemic unemployment payment will only be stopped if the employee is also in receipt of salary from the wage subsidy scheme.

If an employee is Temporarily laid off and ceased off payroll are they entitled to Public Holidays to be paid/taken as leave when they return?

- Employees are also entitled to benefit from any public holidays occurring in the first 13 weeks of temporary layoff, so if taken off the payroll system this record needs to be maintained somewhere.

Is the Pandemic Unemployment Payment taxable?

- Revenue has indicated that it will treat the COVID-19 Pandemic Unemployment Payment as taxable income. Depending on a person's overall income during a year, the COVID-19 Pandemic Unemployment Payment may affect a person's overall tax liability for the year.

We laid off people on 28<sup>th</sup> / 29th march staff applied for the emergency payment that week. However, welfare have said, in order to get the payment for that week, they would have had to apply before 26th march (which was impossible as we didn't know about the shutdown then) Have welfare done anything or are they going to back pay this week?

- We have had no clarification from the department on this issue, and the department of employee affairs and social protection will only deal with individuals on their own claim. If employees are querying this, they should be directed to their DEASP claim manager within the department.

Is there any template or suggested wording of a letter employers should provide to their employees if they are availing of the Temporary Wage Subsidy Scheme? In particular looking for suggestions on required content regarding the tax due on the payment at the end of the tax year

- Yes, there is a template on the ISME website available [here](#)

A retail shop who have let all staff off. When we return can we change to the wage subsidy scheme 85%. We currently don't have cashflow issues. but our business has ceased for the past 3 weeks & 2 more to go.

- The Subsidy Scheme is open to employers who self-declare to Revenue that they have experienced significant negative economic disruption due to Covid-19.
- An Eligible employer must also retain its employees on its payroll.
- Revenue guidance states an employer that has been hit by a significant decline in business but has strong cash reserves, that are not required to fund debt, will still qualify for the Scheme but the Government would expect the employer to continue to pay a significant proportion of the employees' wages.
- If an employer has any doubts about their eligibility for the scheme, they should seek professional accountancy advice.

The scheme allows us to claim a subsidy of 70% of the employee's average wages in Jan/Feb 2020 and to top up a max of 30% on top of that. Our staff are paid hourly and at the moment it is the busiest time of year for those retained - they are putting in long hours. In Jan/Feb hours are considerably less. We are trying to ensure staff are compensated for the hours they are putting in now but the average for Jan/Feb is considerably less. We are told if we top up any more than 30% of the Jan/Feb average, the subsidy will be reduced accordingly. So, the staff on the subsidy scheme have a considerable shortfall from what they would normally be earning at this time of year. What should we do?

- The wage subsidy scheme is calculated on the basis of the average pay on January and February, and is designed to ensure that no employee benefits from being on the scheme. This means that a payment cannot be more than the average figure.
- If your employees are working longer hours and need to be paid overtime for these you would have to query this with revenue through their online employer help system.
- It is important to seek professional advice from your payroll provider if you are in this situation.

Are there any supports available for those earning more than €960 net per week?

- Effective from the 16<sup>th</sup> of April, those who were earning more than €960 net per week before the Covid-19 pandemic may qualify for the scheme, on a tapered basis.
- More information can be found on the [ISME website](#), and in the most recent [Revenue guidance](#) on the scheme.

### Annual/Statutory Leave

Any advice / guidance on annual leave this year as anyone with leave booked for the first half of the year will now have their request withdrawn or cancelled. This will inevitably lead to numerous leave requests for the August / September timeframe and potentially leave employers short of staff in critical areas.

- Firstly, it is important to note that while the majority of employers run their annual leave year from Jan – Dec, the WRC views the annual leave year as running from April – March. Any claims relating to annual leave, or any contraventions found in an inspection will be judged on the WRC leave year.
- Annual leave is granted at the discretion of the employer. This means that you can deny requests, and also direct employees to take annual leave at a time that suits the business.
- If employers are directing employees to take annual leave, they must give at least 30 days' notice, and take the employees personal circumstances into account.
- If an employee agrees to take annual leave with less notice this can occur, but it is advisable to get written confirmation that they are agreeing to it.
- Many employers who still have employees working are requesting that they take annual leave at the moment, where the business allows, in patterns such as 1 or 2 days per week – Allowing the employee to be paid for a full week but only working part of it.
- Employers can also put in place annual leave plans for the second half of the year, by requesting that a portion of leave is used by a certain date.
- If the business genuinely requires it employees can also carry over 5 days of their statutory entitlement into the following year, but it must then be used in the first 6 months of the following year. This practice should only be used where there is a genuine business requirement for an employee to be present.
- More information about annual leave entitlements can be found in the members section of the ISME website under [ISME Human Resources](#).

What is the situation to Holiday pay/Entitlement during lockdown? Does it qualify for leave during this enforced period of lockdown even when their wage is being tipped up or not?

- If the employee is working while the employer is availing of the wage subsidy scheme, Annual leave can be granted and taken as normal.
- If the business is shut down, this will not count as annual leave taken by the employee.
- While availing of the wage subsidy scheme, employees are not deemed to be on temporary layoff, even if the business is closed, therefore they continue to accrue annual leave.

Carers leave, will this be extended for the duration of the lay off or per the original agreed dates?

- Carers leave continues as agreed, and carers benefit is paid by the department of social welfare rather than the Covid-19 pandemic payment. If an employee wishes to extend the period, they will need to follow the internal procedure for this as normal.

Employees holidays, already booked but they may wish to cancel. Asking employees to take holidays so that everyone does not end up taking years holidays in second half of year. i.e. They take 1 day in April, 1-2 in May, and if required June.? If employees are asked to take the normal 4 days at Christmas, can this be increase to 7 days.? What paperwork or correspondence is required and what happens if an employee objects?

- As above, if 30 days' notice are given of the requirement to take 7 days this can be done. Should an employee object to this, you should refer them to the company's annual leave policy, where it should state that annual leave is granted at the discretion of the employer.

### Employee Relations & Redundancy

Employees have laid themselves off due to fear of attending the workplace (many due to underlying health conditions). We have replaced them and I am querying what happens when things start to return to a “new normal” and they ask to return to work.

- Employees cannot choose to lay themselves off. If they are refusing to come to work, the employer should engage with the employee to find out why.
- If due to medical reasons either relating to themselves or their family living in the same residence, or someone they care for, they should provide medical certification of same. At this stage it should be dealt with as any long-term absences, an employer can temporarily replace and request notice of return to work in order to facilitate notice for temporary cover.
- If due to health and safety concerns the employer should address these in a documented conversation with the employee. The employer should inform of all precautions, policies and workplace changes that have been made in order to comply with government guidelines.
- Once the above is done, if the employee still refuses to come to work normal absence and disciplinary procedures should be followed in relation to unauthorised absence from work. However, it is more important than ever to ensure that fair procedure is followed during any disciplinary procedure as we do not know how potential unfair dismissal claims related to Covid-19 will be viewed in the WRC.
- A letter should be sent to the employee outlining that they are no longer on temporary layoff and that there is work available for them.
- The Department has set up a process to manage complaints regarding employees voluntarily leaving work and claiming Covid-19 payments. Employers who have these concerns are welcome to provide details to a dedicated email for this purpose to [C19EmployerReports@welfare.ie](mailto:C19EmployerReports@welfare.ie).

One question around people on fixed term contracts that expired during the layoff. Some people we may like to renew when we are operational a few we don't want to renew, where do we stand on this?

- If a fixed term contract is due for expiry during the temporary layoff the employer has two options, they can either renew the contract, or inform the employee in writing that it will not be renewed.
- It is important to note that regardless of temporary layoff, if not renewing, the notice should be given at least one week in advance of the expiration of the contract.
- There should be objective reasoning as to why the contract is not being renewed – The protection of temporary workers act does not allow for fixed term contracts to be used as a means to bypass a performance procedure.

- If the employer is renewing the fixed term contract, rather than moving to a permanent contract, they must provide objective reasoning for why the fixed term contract is extending, rather than being made a permanent role.

When we become operational again, we might not need all employees for their full contracted hours how do we approach this?

- If your employees are on full time contracts, or minimum hour contracts and you wish to reduce their hours you must assess if the reduction is legally considered “Short time” or not.
- Short time refers to a very specific set of circumstances where:
  - The employees pay is less than half their normal pay or
  - The employee’s weekly hours are less than half their normal hours and
  - The employer has a reasonable belief that this will be a temporary situation
- If the above is applicable, you must have a clause in your employment contract that allows for this to be implemented as per business requirements.
- If Short time is not applicable, or you do not have a clause allowing it in your contracts you must agree any reduction in hours with individual employees, and obtain written confirmation of this agreement from each employee before implementing.

When the restrictions are lifted or when the 12wks of wage sub and emergency unemployment payments stop, what is the situation for any employees that you cannot bring back from Temp lay off? I’m concerned it may take us some time to get back to full production and we may not need the same number of people and I don’t want to be in a situation where we “string someone along”. Would that person be entitled to redundancy?

- As it stands no employee is entitled to claim that the temporary layoff is a redundancy situation until the 31st of May 2020.
- After this date under the current emergency legislation an employee will be able to claim the temporary layoff is a redundancy situation. In order to refute this, an employer will need to be in a position to guarantee 13 weeks work within 4 weeks of the claim coming in.
- Should you no longer be able to provide work for all employees when the restrictions lift, it will become a redundancy situation. It is important that there is a clear selection criterion in place to determine which employees are taken back, in order to avoid unfair dismissals claims.
- More information on redundancy procedures can be found in the members section of the ISME website under [ISME Human Resources](#)

Do you have a template letter to outline a pay cut to employees?

- Yes, there is a template letter available on our website [here](#).

### Insurance

My policy does not mention any pandemics or COVID in the 'Business interruption' section but my insurance company are saying they are not covering it. Surely this fall under business interruption? Is there anyone I can get help with this?

- The insurance issue is extremely complex, and it is not possible to give a case-by-case analysis on what is covered or not, as it is down to individual insurance contracts.
- Where you feel your insurance contract justifies a claim, the most important thing to do is to make a claim in writing. The response to this claim from your insurer will inform what action you take afterwards.
- The Department of Finance met with Insurance Ireland on 10<sup>th</sup> April, and the insurers agreed the measures in red below.
- Even where you feel you do not have a business interruption or business continuity claim, you should be looking for a rebate (or policy extension) on Employee Liability, Public Liability and commercial motor policies in particular.
- If you feel your insurer is illegitimately denying you a business interruption/continuity claim, send it to us (even if you are a non-member). We are working with the Alliance for Insurance Reform (AIR) to see if a legal claim can be framed. If it is possible to frame a legal approach, we have enlisted the assistance of a barrister who can assist us.

#### **Forbearance**

- Insurers will reduce premiums for business customers to reflect reduced level of exposure as a result of Covid-19 restrictions for Employer Liability/ Public Liability and Commercial Motor.
- Insurers will allow up to 28 days after renewal for payment.

#### **Business Premises**

- Insurers will maintain cover for unoccupied commercial buildings/ premises not in use due to Covid-19 restriction (for a maximum of 90 days). Appropriate supervision and security of the premises is required.
- Insurers will support requests for a change of property use during the crisis.

### General Questions

How does a sme owner policy of extracting profits from the company for other wealth e.g. pension and lifestyle use, reconcile now with supports being decided upon by banks that largely base decisions on retained earnings and cash balances?

- This is a very difficult and unresolved issue with the wage subsidy scheme. For example, we don't know how Revenue will treat a €30k dividend from a company to its owner where the company made a profit of €30k for the year, after availing of €30k in wage subsidy.
- As a general rule, do not do anything in 2020 that you didn't do in 2019.
- We are looking for clarification on this issue, as is the Institute of Directors and the Law Society.