

## Summary of questions:

*Returning to work webinar, 10am Thursday May 21<sup>st</sup> 2020.*

### WAGE SUBSIDY SCHEME & PAYROLL WITH BRINGING STAFF BACK

1. Will be able to claim TWSS as we ramp up with possibly one day per week now returning to full employment in September/October. (The technicians are countrywide so we will require all to ramp up gradually) What would be do If TWSS is discontinued before pubs reopen fully.
  - Yes, the TWSS is available to employees who are not working, working part time or working full time.
2. We have received higher amounts from Revenue than we are entitled to. How or when will Revenue reconcile their payments and how do we repay. (note we requested Revenue not to take normal payments due 23Mar and have submitted normal returns since but have not submitted for payment
  - Revenue outline the procedure for refunding overpayments in section 6.1 of their guidance on the TWSS available [here](#).
3. How long can you claim TWSS if you are back to full production, wages are paid weekly but monthly turnover will be 25% lower?
  - The [revenue guidance](#) outlines the criteria for claiming from the scheme
  - If an employer has doubts over whether they are still eligible they should seek professional financial advice.
4. Took on a new employee in early March. Because the Employee was not on the payroll in Jan or Feb, they were not eligible for TWSS. They are currently on Pandemic Payment but Employer would like to re hire them but cannot do so with the aid of TWSS. Is there anyway of overcoming this. The Employee was in full time employment elsewhere in Jan and Feb 20.
  - The eligibility criteria states that an employee must have been on the payroll on the 29<sup>th</sup> of February 2020 to be eligible. This is still the case.
5. Does the employer get any payment from covid 19 scheme when reopening the business on a part time or full-time basis?
  - Yes, the TWSS is can be claimed against employees who are not working, working part time or working full time, so if a business is reopening the TWSS can be claimed.
6. Can employees return to work on fewer hours than normal, a 4-day week, and receive the Covid payment through payroll with a top up from the company of 10%? Should we take employees back on 3-day week as an alternative, and can't they then claim the short working hours benefit whilst being paid Covid payment through payroll?
  - Yes, the revenue guidance states that where possible an employer should aim to top up to 100%, however it is not mandatory.

- If employee hours and or pay are being reduced it must be done through mutual agreement, and in line with the [National Minimum Wage act 2000](#).
- Revenue guidance states that employers should not claim a subsidy in respect of an employee who is receiving a jobseeker's payment from DEASP unless they rehire the employee and the employee notifies DEASP that they are "signing off" and re-joining their employer – the short time payment is a form of Job seekers benefit.

## REFUSING TO RETURN

1. What to do if an employee is needed but refuses to return to work for as long as the Covid payment is available
  - As soon as work is available, the employee is no longer eligible for the Covid 19 Pandemic unemployment payment.
  - Once you have ensured that any reasonable concerns or health issues are addressed normal absence procedures can be applied.
2. We are encouraging staff to work remotely as much as possible but if we decide we need someone in for sound reasons what happens if they refuse to come to the office.
  - The employer should engage with the employee and address any concerns raised, if the employee has a medical condition that puts them in the vulnerable category, they should be accommodated to work from home wherever possible.
  - If the employee has genuine health and safety concerns these should be addressed in a documented conversation whereby the measures put in place to protect employees are outlined.
  - If an employee continues to refuse, as long as the employer is compliant with all guidelines and legislation in place and there is no medical reason they cannot come to the workplace, working from home is a benefit granted by the employer, and if they do not come to the workplace when required during contracted hours you can fall back on your usual absence and disciplinary procedures.
3. If an employee says they have an underlying medical condition and don't want to return to work what do/Can we Do?
  - Employees with medical issues should be accommodated in as much as is reasonably possible.
  - If they can work from home, an employer should facilitate where possible
  - An employee can also get a cert from the GP to state they are unfit to work during this time and it would be treated like any long-term absence
  - Vulnerable employees who do return to the workplace should have added measures to ensure they are safe such as closed off working space with good ventilation, dedicated times to use refreshment facilities, and increased hygiene measures in their working area.
4. If Employees have issues with childcare what rights do, we have if we have full time work for them
  - Legally, an employer under Equality law must look at reasonable accommodation to see if the employee at a reasonable cost could facilitate home working. However, the employer does not have to redesign the job, and does not have to facilitate it if it is not reasonable.

- An employee can opt to apply for parental leave, which is a statutory entitlement, but unpaid.
- If an employee does not want to take this option but refuses to come to work, normal internal procedures for non-attendance can be followed.

## ROADMAP

1. This week saw the return to work for construction workers for exterior projects. Many buildings and fit out companies seem to have taken this as a green light to resume all activities - indoor or outdoor. This is putting pressure on manufacturers of fitted furniture items who are being asked when they will be delivering and installing such items. According to the "Roadmap" indoor manufacturing and construction should not begin until the 8th of June. What sanctions - if any - will be applied to sites that open and request their sub-suppliers do the same to deliver product for indoor fit-outs, and what capacity is there to police the re-opening of building sites?
2. Has the Govt put a timeframe in place regarding the back to work protocols. ie if/when the immediate danger is reduced or under control will there be any relaxing of these protocols?

## **ANSWERS TO THE FOLLOWING SESSION WERE PROVIDED BY THE HSA IN THE VIDEO**

### GENERAL 'WHAT HAS TO BE DONE' QUESTIONS (HYGIENE / TEMP / SPACE)

1. What documents do companies need to have in place to facilitate returning to work safely. Are their templates available for companies to work from?
2. What are we legally required to provide and what measures should be implemented for staff to protect against COVID 19?
3. Are HSE recommendations advisory or compulsory?
4. Unsure of the physical setup of a small retail space? If an employee shows symptoms a small shop does not have space for isolation and how do we get them home?
5. Will we get notification of inspection? If not and our Covid-19 Rep is unavailable for some reason, will the inspector re-arrange a visit?
6. We clean all touch points every 15 mins. (food retailer). How often is recommended?
7. This week an increasing number of children arrived to shop with a parent. How should this be handled?
8. Clarification please re contact tracing records to be kept by employer.  
Thanks!
9. What is the protocol for recording visitor information when delivering or collecting from our premises?

10. Can we ask employees back on a phased project-by-project basis, not all returning on the same date?
  - Yes, as long as you have objective reasoning for which employees you chose to bring back when.
  
11. There are not enough hours in the day or days in the week to put staff into 2 teams of A Team & B Team, so as they don't overlap. What do we do in this situation as staff do not want to reduce their hours?
  - In a situation like this, if staff members are not willing to reduce hours you may have to look at more drastic measures such as redundancy if you cannot accommodate all staff on site any more.
  - If employees can complete part of their week at home this is another option.
  - Employees may agree to use some annual leave each week to accommodate this.
  
12. Can you please advise on the recommended procedures around toilet facilities? We are in a Business Centre with several different companies and all share 1 toilet area (with 3 cubicles in the males' toilets, 3 cubicles in the female and 1 disabled toilet). What is best practice here?
  
13. Advice has been issued to companies regarding the cleaning and sanitising of their premises twice a day. Will the HSA be issuing guidelines for the cleaning companies to follow in relation to training their staff in working in a non-clinical environment during a Covid-19 Pandemic as they are at increased risk without the proper training or PPE and there seems to be a big discrepancy between understandings around cleaning and sanitising. I see companies going in fogging and spraying places that have not been cleaned. Its like trying to sanitise dirty hands!
  
14. What training does the Covid 19 representative require? Is there a back to work office checklist available?
  
15. We have provided a digital thermometer for self-testing on entry but does this need to be done daily? Is it mandatory, what happens if someone refuses?
  - The national protocols states that temperature checks should be done in line with public health guidance. There is no [current guidance](#) stating that temperature checks are mandatory or recommended.
  - If an employer is introducing this, they need to ensure that they are doing so in a manner that is compliant with [general data protection regulations](#). The employer must ensure it has a lawful basis for such checks and processing of the subsequent health data, meaning that it must be able to identify a legal basis under Article 6 of the GDPR, and an exemption under Article 9 of the GDPR.
  - There is currently no guidance or legislation to rely on if an employer denies an employee entry to the workplace as a result of refusing a temperature check.
  
16. For the private bus transport operators, are there any policy guidelines or information available for employees returning to work?

17. How do we manage corridor space and back to back seating with the usual 800/1000 degrees passageways between them? Can one get/pass on the covid when passing briefly.
18. Are there allowances in the protocol in the case of a family-run enterprise where all staff are members of the one household?
19. Is the employer liable if government guidelines are not followed in the workplace and a member of staff contract the virus in the work place?
  - There are two key pieces of legislation to consider. A breach of either of these Acts could give rise to civil liability for an employer.
  - The first is the [Safety, Health and Welfare at Work Act 2005](#). It imposes a general duty on employers to ensure “so far as is reasonably practicable” that the safety, health and welfare of their employees is safe-guarded. The [Health Act 1947 \(Extended 2007\)](#) is another key piece of legislation in the context of the current health crisis. This Act contains the legal force behind our current restriction regulations. [Section 43](#) of the 1947 Health Act is one of its lesser known provisions, and means that a person can initiate civil proceedings.
  - If your employees cannot work from home and they must still come to work it is important to take, and document, all the measures outlined in the national protocols document to ensure that you are providing a safe place to work.
20. How long should a staff member be with a client in a treatment room? (BEAUTY)

#### PPE

1. Is there clear guidance on the wearing of cloth face masks in the workplace (some employees prefer them to face shields) - are they acceptable, in place of surgical masks which are more difficult to get
2. As a food manufacturing company with a snack line; Are face visors sufficient with the usual precautions in place/ Should one use face masks as well? We are putting in automatic temperature control as well. Are dividers necessary if people are only a metre apart on a production line. This would be awkward as a product is passed along.
3. What’s the general advice in terms of masks in the office environment? Worried about trying to be helpful and supplying the wrong mask and it coming back to bite us.

#### LETTING STAFF GO / REDUCING HOURS / RE HIRE

1. Can you let go some of you employees for good during this period?
  - This will become a redundancy situation. Fair procedure and notice periods must be applied and redundancy payments will be due to those with over two years’ service.
2. Staff returning from maternity leave where there is currently not a full-time role.

- Any change to core terms and conditions must be agreed with the staff member.
  - Coming back from maternity leave, it is important to be sure that such a move could not be construed as discriminatory, so ensure that you have evidence that this was a decision based on role requirements and not on the fact that the employee has not been in the workplace for a period of time.
3. General advice with moving staff to part time.
- Must be done with mutual consent – you cannot change contracted hours without consent, unless there is a provision in your contracts for short time, and the move meets the definition of short time.
  - If the situation is not a short time situation you must get signed agreement from your employees in advance of implementing.
4. We have a number of temporary workers on TWSS and it is now clear that they are unlikely to be required. How do we take them off TWSS? We intend giving a minimum of one week notice to allow them sign on for Jobseekers.
- It is important to note that a term of the TWSS is that the employer intends to keep employees on the payroll for the duration of the scheme, and this action may result in penalties being applied by revenue.
  - The type of contract in place will determine how you go about terminating the contracts, however it is important to note that if it is due to the roles no longer being required before the end date specified in the contracts it becomes a redundancy situation regardless of the fixed term nature of their contracts, Fair procedure must be followed.
  - To cease an employee from the revenue scheme, return the employees to their correct PRSI class and process payroll as normal.
5. How much notice must we give to someone who is on the wage subsidy scheme at present but we will have to lay off once the subsidy ends
- This will become a redundancy situation, and statutory notice will apply unless you have specified a longer notice period in your contracts.
  - Statutory notice periods are:

Duration of employment	Minimum notice
13 weeks to 2 years	1 week
2 years to 5 years	2 weeks
5 years to 10 years	4 weeks
10 years to 15 years	6 weeks
15 years +	8 weeks

6. Can we change people working hours/ days of work to suit the business needs?
- Yes, but only by mutual agreement if their hours and days are defined in the contract.
  - If the contract states hours will be assigned as per business requirements, you need to assess how long they have been working a particular work pattern as custom and practice may exist.
  - If the hours have always been variable you can continue to change as per business requirements.

7. If people have been laid off & put back on the books under the covid 19 employment scheme what's their holiday entitlement?
  - They do not accrue annual leave while on layoff, so if they are part time, they accrue 8% of hours worked, the lay off does not count.
  - If full time, the 20 days entitlement can be pro rata for the time on lay off **However** any employee who works over 1365 hours in a year is entitled to the 20 days, so this calculation will need to be done before deducting annual leave from the balance.

## WORKING FROM HOME

1. Are there regulations I as an employer need to address to facilitate any workers who would rather work from home for part of their working week? e.g. furniture supply, guidance on working time act, H&S in the home workplace
  - Yes, the safety health and welfare at work act still applies for employees working from home. Equipment already in use in the workplace e.g. laptop, mouse, monitor, keyboard and headset could be used for temporary home-working. If the employer provides any equipment, it must be in good condition and suitable for the work activity.
  - Note: Suitable equipment already available in the employee's home can be considered for temporary work from there.
  - You need to consider the following in relation to the employees' workspace:
    - safe access to the workspace
    - the equipment necessary to complete the work
    - sufficient workspace
    - adequate lighting, heat and ventilation to allow comfortable working
    - adequate breaks
    - regular contact
    - emergency contacts and procedures
  - The HSA have an FAQ section on working from home [here](#).

## LOOKING FORWARD

1. We won't be able to open this year as even if the government allows us to open on 8 August, we would make a loss with social distancing measures in place. Will there be any government grant for rent / lease payments for the next 6 to 12 months?