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ALL MEMBERS MEMORANDUM No 102-20

BCSA WEBINAR: COVID-19 ESSENTIAL UPDATE 9TH APRIL 2020 QUESTION AND ANSWER PART 2

Please find on the following pages the outstanding questions and answers from the COVID-19 Essential Update webinar which took place on the 9th April 2020.

Responses have been received from BEIS to some but not all the questions submitted, where possible BCSA has answered the remaining questions.

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*All memos and information from the BCSA regarding COVID-19 can be viewed at
www.steelconstruction.org/covid19*



BCSA Webinar: COVID-19 Essential Update Questions & Answers Part 2

Coronavirus Job Retention Scheme

Question 1

Can you provide any additional guidance on furlough requirements when employees are furloughed because they are “shielding”? Have there been any recent changes to this guidance?

Question 2

If an employee is to be furloughed because they are “shielding”, would they have to have been potentially up for redundancy or is it enough that they are shielding for health/public health reasons? Members are concerned that if they furlough through the coronavirus job retention scheme for reasons other than job retention, they risk not being reimbursed. Is there a risk, as some staff shielding have requested to be furloughed in place of statutory sick pay?

Answer 1 & 2

Employees who are unable to work because they are shielding in line with public health guidance (or need to stay home with someone who is shielding) can be furloughed. It is up to employers to decide whether they wish to furlough their employees who are shielding.

Furloughed employees retain their statutory rights, including their right to Statutory Sick Pay. This means that furloughed employees who become ill must be paid at least Statutory Sick Pay. It is up to employers to decide whether to move these employees onto Statutory Sick Pay or to keep them on furlough, at their furloughed rate.

If a furloughed employee who becomes sick is moved onto SSP, employers can no longer claim for the furloughed salary. Employers are required to pay SSP themselves, although may qualify for a rebate for up to 2 weeks of SSP. If employers keep the sick furloughed employee on the furloughed rate, they remain eligible to claim for these costs through the furloughed scheme.

Question 3

What processes/measures are there in place to ensure companies who don't require support are not taking advantage of the coronavirus job retention scheme? Will companies applying to furlough staff be monitored/verified in any way to ensure claims are valid (Note in addition to clarifying the response to this question you mentioned looking at accounts an attendee said they weren't clear whether this was employer/employee or both)

Answer 3

HMRC will be leading on preventing fraudulent claims. As an example they have designed the 19th March cut off date to mitigate the risk of fraud.

Question 4

We have staff who are able to work from home and on full pay. Although there may be sufficient administrative work to keep them at home the Company would run out of funds to keep them on full pay because of reduced order fulfilment and lower end of month sales due to low production levels from the factory and closed sites. Can I furlough those working from home on financial grounds even though they could carry on with a sufficient workload? What would happen or be the next step if we sent them the furlough letter and they disagree with the action and refuse to sign it?

Answer 4

I'd suggest directing the stakeholder to the guidance to check whether they're eligible. If an employer asks their employee to go on furlough and they refuse they may be at risk of redundancy or termination of employment, depending on the circumstances of the employer. However, this must be in line with normal redundancy rules and protections.

Question 5

Our employees are contracted to work a 40 hour week. Overtime is voluntary and not guaranteed. Should we include average overtime worked over a period of time in the calculation for gross furloughed pay?

Answer 5

This is the guidance on overtime:

You can claim for any regular payments you are obliged to pay your employees. This includes wages, past overtime, fees and compulsory commission payments.

In terms of how pay should be calculated, I'd suggest the stakeholder consults the gov.uk guidance on how to calculate wages, if relevant using the information around what to do if employees have variable pay.

Question 6

What communication can we have with employees on furlough leave? If we invite them to team meetings / communication updates or would it be seen as them doing work?

Answer 6

We can't comment specifically on what does / doesn't constitute doing work, suggest referring to the guidance which states that furloughed individuals can't do any work which provides a service to / generates revenue for their employer.

Health and Safety

Question 7

Client SOPs: If a client does not accept a SOP based on the government guidelines or creates a more restrictive SOP for all their sites where we cannot comply with their requirements (in social distancing or travelling to site), we understand this would always be considered as a VO as this is not a government statutory guidance. We have had situations where private transportation is/was being required and where the 2m rule (as a minimum) is to be followed.

Answer 7

Sites are required to follow PHE guidance. The SOP is aligned to PHE guidance and supporting HMG policy not to shut construction sites.

Question 8

Issues of supply chain being closed especially builders merchants, seems to be carte blanche decision to claim furlough as opposed to maintain service for minimal return. Can clearer guidance be issued to explain that we are supposed to be working if we can?

Answer 8

HMG policy is clear that construction and its associated activities should be open, subject to their compliance with PHE guidance.

Outstanding questions for which a response has not been received from BEIS
the below are responses from BCSA.

Coronavirus Job Retention Scheme

Question 9

Furloughed staff have asked what happens about payment for the bank holidays that are approaching. Would they get full pay for these? Or would they still only get 80%?

Answer 9

<https://www.steelconstruction.org/custom/uploads/2020/04/AMM-97-20-P.pdf>

If an employee usually works bank holidays then the employer can agree that this is included in the grant payment. If the employee usually takes the bank holiday as leave then the employer would either have to top up their usual holiday pay, or give the employee a day of holiday in lieu. During this unprecedented time, the government are keeping the policy on holiday pay during furlough under review.

Question 10

For employees on furlough what is the guidance on holiday pay: Pete is it okay to add in the below from your AMM?

Answer 10

<https://www.steelconstruction.org/custom/uploads/2020/04/AMM-97-20-P.pdf>

Furloughed employees continue to accrue leave as per their employment contract. The employer and employee can agree to vary holiday entitlement as part of the furlough agreement, however almost all workers are entitled to 5.6 weeks of statutory paid annual leave each year which they cannot go below. Employees can take holiday whilst on furlough. Working Time Regulations require holiday pay to be paid at the employee's normal rate of pay or, where the rate of pay varies, calculated on the basis of the average pay received by the employee in the previous 52 working weeks. Therefore, if a furloughed employee takes holiday, the employer should pay their usual holiday pay in accordance with the Working

Time Regulations. Employers will be obliged to pay additional amounts over the grant, though will have the flexibility to restrict when leave can be taken if there is a business need. This applies for both the furlough period and the recovery period.

The government is allowing up to 20 days holiday to be carried over for two years to help ease the burden of everyone trying to take their holidays in the latter part of the year.

Question 11

When working out furlough payments, can you include any overtime or is it based on gross salary only?

Answer 11

the 80% is based on their usual wage, so if they normally have overtime in the wages then this can be included but up to the maximum allowance only.

Health and Safety

Question 12

Guidance issued yesterday requires RIDDOR reporting of workplace exposure to COVID-19 and reporting on associated deaths as a result workplace exposure, does this imply that the HSE will looking to hold employers accountable for the affects of COVID-19 in the workplace?

Answer 12

The general consensus seems to be that the HSE is aiming the RIDDOR requirement at Clinical and Health Care facilities and not at the general workplace, so I would suggest that as long as you are actively monitoring for those with the early symptoms and sending them home and working to the other guidance as much as possible then it will be very difficult for the HSE to take action. The Laboratories are designed for handling viruses so they must have full control.

Question 13

Considering the healthcare sector has got clear guidance on what PPEs need to be used and defines which sort of elements (and respective specs) should be used for different situations, could we use these as a reference to select PPEs to be used whenever the "2m rule" cannot be followed?

Answer 13

The healthcare workers are at very high risk of exposure to confirmed cases of the virus and this is not the same for other employees as the first defence is for those that think they are at risk should self isolate and not be at work putting others at risk, therefore the only time workplace RPE (masks) need to be considered as a defence is when the 2 metre rule cannot be applied.

Question 14

The question relates to the latest Construction Leadership Council guidance for construction that was received on the 8th April. The advise given "You should plan work to minimise contact between workers and avoid skin-to-skin and face-to-face contact. Where face-to-face contact is essential this should be kept to 15 minutes or less wherever possible."

My questions are. Firstly the 15 minutes, is this a maximum exposure limit i.e. 15 minutes per day? Clarification is required. Secondly the same statement conflicts with other advice

with regards to maintaining a 2 metre distance between individuals, is there medical evidence to suggest that this is a safe action and that individuals are not being placed at greater risk?

Answer 14

BCSA suggests when working in close proximity the healthcare workers use the FFP3 Masks (the other cloth masks are for general use) FFP3 and 2 is the masks used in the steelwork factories, so this should prevent any ejected particles, and the guidance does say work side by side rather than face to face where possible.