



HR issues and the return to the workplace

17 May 2021

Birkett Long HR & Employment in conjunction with CIPD Essex and Ipswich Branch

Agenda

- Testing
- Vaccinations
- Flexible working
- Reluctant returners
- Health and safety in the workplace
- Wellbeing
- Changing terms and conditions of employment
- Redundancy
- Updates: Furlough and right to work checks



COVID-19 Testing in the Workplace

- Government guidance confirms testing is an option for employers
- Voluntary or mandatory? The latter is not without risk
- Legal issues raised: consent, invasion of privacy, data protection, confidentiality
- Embrace rather than enforce
- Policy or contractual requirement – refer to ACAS guidance
- Consider the practicalities:
 - Who will be tested?
 - How often?
 - Where will testing take place?
 - What happens if an employee refuses?
 - What happens if an employee tests positive?



Vaccinations– the legal position and practical considerations

- It is not currently a legal requirement to be vaccinated, but understandably employers may wish for staff to be vaccinated, or to keep track of who has been
- Ethical considerations – religious/philosophical beliefs
- Potential discrimination and unfair dismissal claims

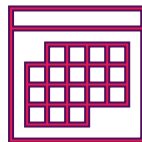
Vavříčka v Czech Republic [2021]

The European Court of Human Rights has confirmed that a compulsory child vaccination programme with penalties for non-compliance is not a violation of human rights.*

**Outcome in case was fact specific, and different outcome may be possible on different facts*

Flexible Working

- What is the new 'normal' for your business?
- Plan for the return
- Points to consider during this planning process
- Ongoing points of consideration
- Create a policy/ guidelines reflective of the information gathered



Reluctant Returners

- What if an employee's preference of returning to the workplace or wanting to remain permanently remote does not match the employer's needs?
- Communicate
- Employer needs to understand the employee's concerns
- Encourage the employee to understand the business needs
- Can you reach agreement?
- Consider potential discriminatory risks



Flexible working requests

- 26 weeks' continuous employment
- For any reason
- In writing
- Three months to notify the outcome including appeal
- Reasonable manner
- May treat as withdrawn
- Can complain to tribunal
- One request in any 12-month period



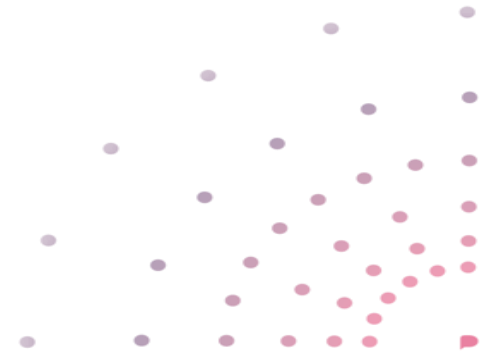
Refusal of flexible working

1. Additional costs
2. Detrimental effect - customer demand
3. Inability to reorganise work
4. Inability to recruit
5. Detrimental impact - quality
6. Detrimental impact - performance
7. Insufficient work
8. Planned structural changes



Refusal of flexible working

- Discrimination claims
- Increased grievances
- Constructive dismissal



Health & Safety in the Workplace

- Both employers and employees have duties with regard to Health and Safety
- Employers should:
 - Consult with staff
 - Carry out risk assessments
 - Implement measures to reduce those risks
- Even if working from home, carry out risk assessments – these can be reworked if and when workforce returns to the workplace



S44(1) of the Employment Rights Act 1996:

44 Health and safety cases.

- (1) An employee has the right not to be subjected to any detriment by any act, or any deliberate failure to act, by his employer done on the ground that—
 - (d) in circumstances of danger which the employee reasonably believed to be serious and imminent and which he could not reasonably have been expected to avert, he left (or proposed to leave) or (while the danger persisted) refused to return to his place of work or any dangerous part of his place of work, or
 - (e) in circumstances of danger which the employee reasonably believed to be serious and imminent, he took (or proposed to take) appropriate steps to protect himself or other persons from the danger.

....will apply to **workers** from 31 May 2021.



Wellbeing

- Fostering employee wellbeing has many benefits:
 - Increased employee engagement
 - Resilience
 - Prevent stress
 - Reduce sickness
 - Increased productivity
- What to consider:
 - Framework to support both physical and mental health
 - Offer sources such as counselling and occupational health services
 - Ensure managers have training/guidance/support
 - Encourage employees to have a good-self care routine



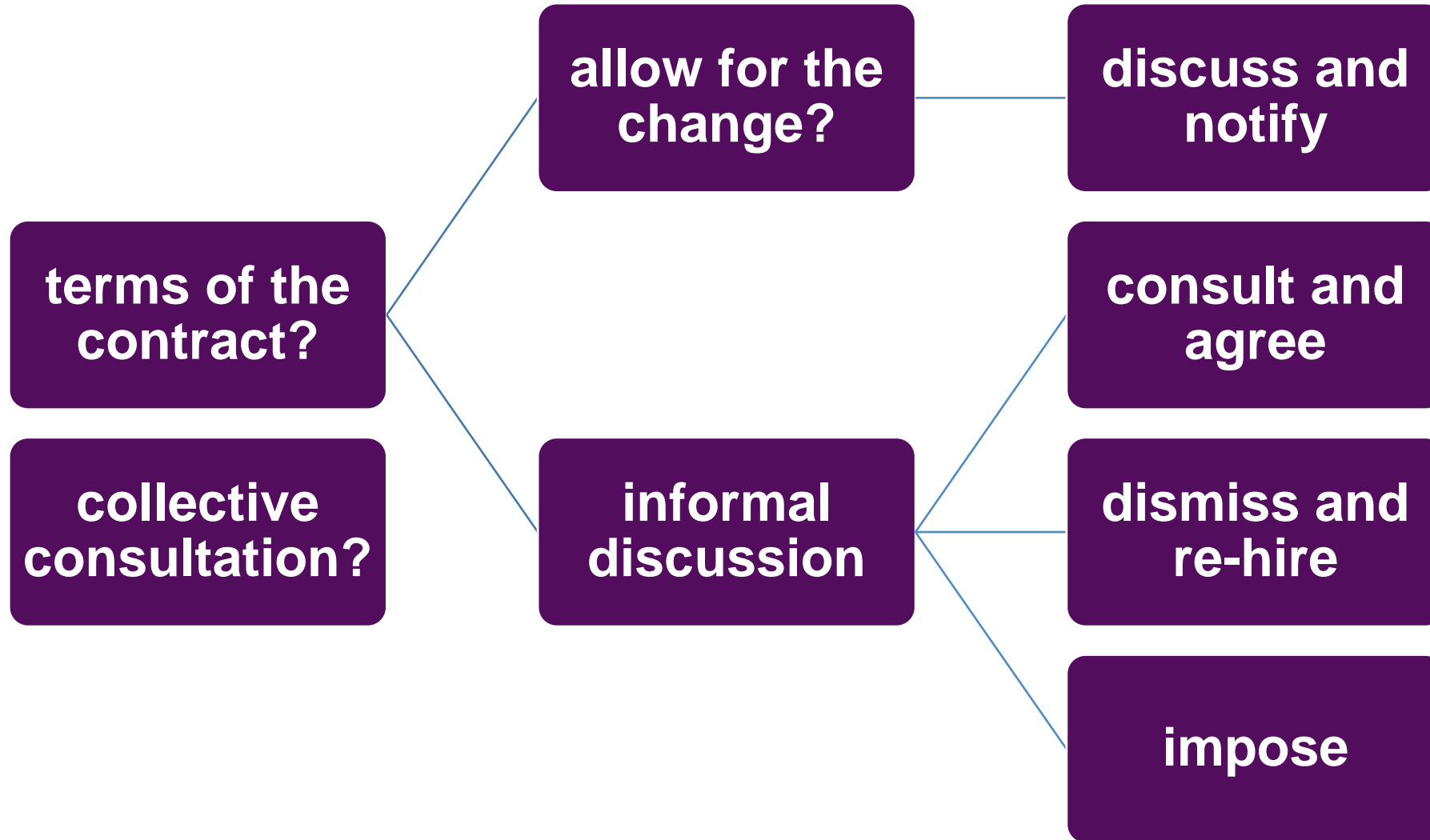
Things to look out for – potential indicators of mental health issues

- Employee appears tired, anxious or withdrawn
- Increase in sickness absence or lateness
- Changes in standard of work
- Changes in focus
- Being less interested in tasks that were once enjoyable
- Changes in usual behaviour and mood

Be proactive... don't let issues fester.



Changing terms and conditions of employment



Tesco v USDAW, Court of Session, 2021

'The judgement, which applies to the Livingston site only, means that Tesco are legally prohibited from unilaterally withdrawing entitlement to retained pay and/or terminating the contract in order to re-engage the worker on new terms which do not include retained pay.'



Redundancy and procedures

1

is there a redundancy situation?

2

preparation

3

collective consultation (20+ employees)

4

group meeting

5

first letter

6

carry out scoring

7

second letter

8

first individual meeting

9

follow up

10

second individual meeting

11

dismissal letter

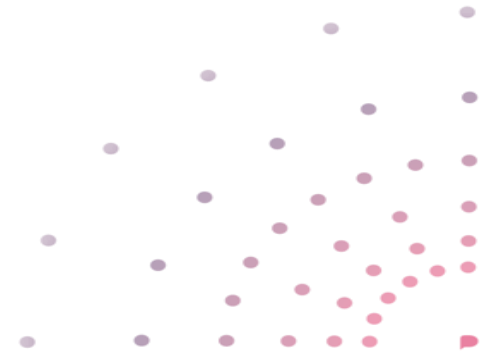
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appeal



Furlough

- ends on 30 September 2021?
- 80% salary capped at £2,500 per month and employer pays employers' NIC and pension contributions
- from 1 July 2021 70% salary capped at £2,187.50 p/m and employer contribution 10% (£312.50) plus employer NIC and pension contributions
- from 1 August 2021 60% of salary capped at £1,875 p/m and employer contribution 20% (£625) plus employer NIC and pension contributions
- not be under notice



Right to work checks

- Amended right to work checks have been in place since 30 March 2020 allowing employers to carry out checks over video call and accept copy documents.
- These measures were due to end on 16 May 2021, meaning that the original procedure had to be used from 17 May 2021.
- Government has now confirmed that amended measures will remain in place until **21 June 2021** and reiterated there will be no requirement to carry out **retrospective checks**.



Upcoming branch events

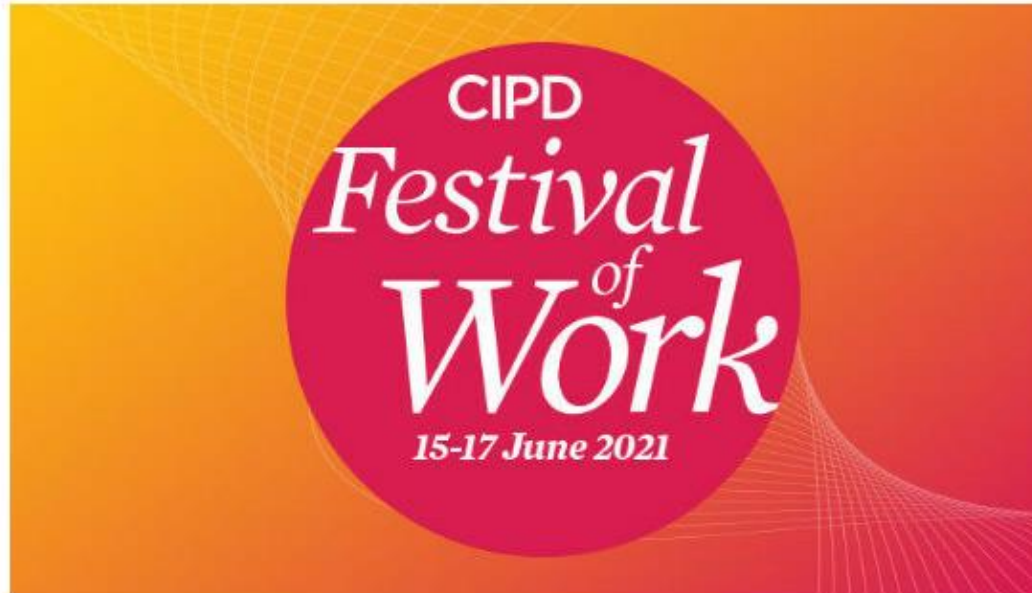
<https://www.eventbrite.co.uk/o/cipd-essex-and-ipswich-branch-7902997427>

- Annual meeting and How to become a strategic thinker
- 26 May 2021



Upcoming CIPD events

Conferences and exhibitions



Festival of Work

15-17 June 2021



Annual Conference and Exhibition

3-4 November 2021



Surveys



- **Future events**
 - <https://www.surveymonkey.co.uk/r/8VSQ8MB>
- **This event**
 - <https://www.surveymonkey.co.uk/r/76Q33N3>

Copy of notes ...



Questions and thank you!

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