

# How to .... Lay off or Short Time Working

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## Overview

- Lay-offs and / or short time working can be a useful way of handling temporary work shortages.
- There is no right for a Company to unilaterally lay an employee off or put them on short time working, unless there is an express term in the employment contract.
- An employee who is wrongfully laid off or put on short time working may:
  - resign and claim constructive dismissal
  - claim that an authorised deduction from wages has been made
  - sue for damages for breach of contract.
- An employee who is laid off or put on short time working may be entitled to statutory guarantee payments for up to five 'workless' days in any three-month period.
- Statutory redundancy payments may become due to employees who serve notice after being laid off or kept on short time working for specified periods of time.

## What is a Lay-Off or Short Time Working?

Lay-offs and short time working are useful ways of handling temporary work shortages and adverse trading conditions without having to resort to redundancy.

An employee is 'laid off' during a particular week if the employer is unable to provide any work for them for that week and as a result the employee is not paid.

An employee is considered to be on 'short time working' for a week where they work for some of the week but are laid off for the remainder of the week. In this instance, they will be paid for the hours they have worked.

## Can a Lay-Off or Short-Time Working be Imposed?

An employer is only entitled to lay off an employee or put them on short time working if the contract of employment contains an express provision allowing them to do so.

Where there is no such contractual right, the express consent of the employee is required. The employee should be made fully aware of what exactly he or she is consenting to and it is recommended that any consent be obtained in writing. If the employee's consent is not obtained, you will be in breach of the employee's contract of employment entitling them to claim (in an Employment Tribunal) that they have been constructively and unfairly dismissed if they subsequently resign as a result of your actions.

An employee can generally claim constructive dismissal if they have been employed for two years or more. Your employees should, of course, bear in mind that if they do not consent to be laid off or put on short time, you may well have to consider redundancy as an alternative course of action.

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If you need any assistance with any of the issues raised in this document, please email us using [support@dohr.co.uk](mailto:support@dohr.co.uk)  
Please be aware that a fee may be charged if you are not a DOHR retained client.

## Guarantee Payments

Most employees are entitled to a statutory guarantee payment for any complete day of lay off or short time working (a 'workless day'). This is limited to a maximum of five days' payment in any three-month period. If the employee is normally required to work less than five days a week, the entitlement cannot exceed the number of days the employee is required to work per week under their contract. For example, if the employee works three days a week, they are entitled to a maximum of three days' payment in any three-month period.

An employee has the right to present a complaint to an Employment Tribunal where you have failed to pay the whole or any part of a guarantee payment to which an employee is entitled to. If an employee is dismissed because s/he tries to assert their statutory rights to a guarantee payment, the dismissal will be automatically unfair, whatever the length of the employee's service.

If you provide some work, although not the usual amount of work, during a particular day, that day is not considered a day for which an employee is entitled to a guarantee payment.

Employees are entitled to guarantee payments:

- For up to five days of lay-off or short time in any three-month period.
- The amount per day is based on the employee's normal daily rate of pay up to a statutory maximum of £29.00 per day, giving a maximum guarantee payment of £145.00 for five workless days. This rate is rising in April to £30 per day, providing a maximum of £150 for five workless days.
- Any remuneration which the employee is paid in respect of a workless day because of a contractual agreement with you can be off-set against any liability to make a guarantee payment.

## Exclusions

The following are not entitled to a guarantee payment:

- Any employee who has been employed for less than a month ending with the day before the workless day.
- Any employee who unreasonably refuses an offer of suitable alternative employment for the workless day or days, whether or not it is work which the employee is employed to perform under their contract of employment.
- Any employee who fails to comply with reasonable requirements to be available for work.
- Any employee who is not provided with work because of a strike or industrial action.

## Redundancy Payments

An employee may be entitled to claim redundancy payments if they are laid off without pay, or put on short time working (which, for these purposes, means where they are on less than half a week's pay), for four consecutive weeks, or for six weeks within a block of thirteen weeks.

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A redundancy payment may only be claimed if:

- the employee provides notice in writing to the Company of their intention to claim a redundancy payment
- the claim is submitted within four weeks of either the end of four or more consecutive weeks of lay-off or short time working or the end of six or more weeks of lay-off or short time working within the thirteen-week block
- the employee terminates their contract of employment by providing the Company with contractual notice, or one week's notice, whichever is the greater.
- the employee serves their notice to terminate within specified time limits.

Within seven days of being served with notice, you may either agree to pay redundancy, or refuse to do so and serve a counter-notice contesting liability to make a redundancy payment. This may be done on the grounds that you reasonably expect to be able to provide at least thirteen weeks' continuous employment, without further resort to lay-offs or short time working, within four weeks of the date on which the employee served notice of their intention to claim redundancy.

If an employee wishes to pursue their claim after the service of a counter-notice by the Company, an Employment Tribunal must be asked to determine whether the employee is entitled to the redundancy payment they were seeking.