



Short-time working,
lay-offs & guarantee pay

Definitions

- Your employer might be able to ask you to stay at home or take unpaid leave if there's not enough work for you.
- A **lay-off** is if you're off work for at least 1 working day.
- **Short-time working** is when your hours are cut.



Can my employer “lay me off” or put me on short-time working?

- This is determined by your existing contract of employment.
- Check your contract to see if there is a provision for allowing your employer to do this – and, if so, if it is with or without pay.
- Lay offs and short-time working can also be facilitated by collective agreement as an alternative/attempt to prevent permanent job loss through redundancy.



Can my employer “lay me off” or put me on short-time working?

- If your contract does not provide for this, and there is no collective agreement your employer needs to get your agreement to do this.
- Many employers will be looking to do this at the moment to protect jobs in the longer term.
- You will need to think through the immediate impact of loss of wages in the balance with the attempt to protect jobs longer term.



What if there isn't a provision allowing them to lay me off or put me on short-time and I don't agree to it?

- If your contract does not have a clause allowing your employer to lay you off or put you on short-time you might, potentially, have an unlawful deduction from wages claim.
- You need to be aware that if you do have such a claim this is heard at the Employment Tribunal and will not be a quick process especially in the current situation.
- You will need to take specific advice from your Unite Regional Officer as there is a very specific process you must follow with very tightly defined time limits for lodging your claim (3 months less one day from the date of the deduction).



How long can I be laid off or put on short time?

There is no limit to how long you can be laid off or put on short time working. You could apply for redundancy and claim redundancy pay if it's been:

- 4 weeks in a row
 - 6 weeks in a 13 week period
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- Write to your employer to claim redundancy within 4 weeks of the last day of the lay-off or short-time period.
 - Your employer has 7 days to accept your claim or give you a written counter-notice.
 - If your employer does not give you counter-notice, you can assume they've accepted your redundancy claim.
 - A counter-notice means your employer expects work will soon be available - it must start within 4 weeks and must last at least 13 weeks.
 - Your employer can withdraw their counter-notice in writing



Claiming redundancy pay

- You must resign to get redundancy pay. The timing is crucial - you have 3 weeks to hand in your notice, starting from:
 - 7 days after you gave written notice to your employer (if you did not get a counter-notice)
 - the date your employer withdrew their counter-notice

What money can I get?

- You should get your full pay unless your contract allows unpaid or reduced pay lay-offs. Please see above for where the contract does not allow for non-payment but your employer enforces this. If you are not paid you can claim 'guarantee payments'



- See LRD *Law at Work* – Chapter 11 Redundancy: redundancy pay linked to lay-offs and short time working



What are 'guarantee payments'?

A guarantee payment is a 'fall back' payment which an employee may be able to claim in respect of a day on which they would normally be required to work, if their employer has not provided work (and is not contractually obliged to pay the employee in respect of a day on which it does not provide work) because there has been:

- A diminution in the requirements of the employer's business for work of the kind which the employee is employed to do; or
- any other occurrence affecting the normal working of the employer's business in relation to work of the kind which the employee is employed to do.
([Employment Rights Act 1996, section 28](#) [1]).



What are 'guarantee payments'?

- The rate for guarantee payments is currently (2020) set at £30 per day, for up to five days in any three month period.
- It is a fall back position used historically mostly in the manufacturing industry, but has been seen more frequently throughout the economic downturn.
- The key provisions with regards to guarantee payments are found in [Part III off the Employment Rights Act 1996](#) [1]
- To qualify for a guarantee payment, an employee must have been continuously employed for one month or more, ending with the day before that in respect of which the guarantee payment is claimed.



Is the employer entitled to lay off employees?

The right to a Guarantee Payment does not indicate that the Company automatically has the right to 'lay off' its employees and to not provide work to do.

This will depend on the contractual terms and conditions of employment for that individual. The specific contractual right to lay off is likely to be necessary for a company to make a lay off.



Is the employer entitled to lay off employees?

Additionally, the employer may be obliged to provide the employee with work.

- In [*Craig v Bob Lindfield & Son Ltd UKEAT/0220/15*](#) [2], the EAT upheld the ET decision that a contractual term regarding the length of a lay off was not subject to a test of reasonableness. The case does, however, turn on its facts. There may be instances where an employer has behaved in such a way as to destroy the duty of mutual trust and confidence.
- In the absence of a right to 'lay off' employees, and/or if the employer is obliged to provide the employee with work, the imposition of lay off is likely to be a breach of contract, and could give an employee a claim for constructive unfair dismissal.



Guarantee pay: lay-off period, part-time workers, amount and offsetting

Period of lay off

- The period for which an employer can lay off an employee will depend on the terms of the employee's contract of employment (whether implied or express). In the absence of any terms, the right is to a 'reasonable period' of lay off only.

Part Time workers:

- Part time workers can also claim for guarantee payments, but only for days on which they could expect to be working. They are subject to the same qualifying criteria, as set out above.

Amount and offsetting:

- The entitlement is to Guarantee Payments in respect of five workless days in any three month period. It is offset against any contractual remuneration. So, if the employee received full pay for five or more workless days in any three month period, he or she could not claim the Guarantee Payment for workless days in excess of this number.



Guarantee pay: refusing alternative work. partial workless day, availability of services

Refusing alternative work

- There is no right to a Guarantee Payment for a workless day if the employee has refused alternative work which is 'suitable in all the circumstances whether or not work which the employee is under his contract employed to perform'.

Partial workless day

- There is no right to a Guarantee Payment or a pro rata Guarantee Payment if the employee is asked to do some, but not all, of their usual amount of work.

Availability of services

- There is no right to a Guarantee Payment in respect of a workless day if the employee doesn't comply with the reasonable requirements of his or her employer with a view to ensuring that his services are available.



Guarantee pay: exclusions, opting out

Exclusions

- If the failure to provide work is a consequence of a strike, lock-out or other industrial action, then there will be no right to a Guarantee Payment. Employees based overseas, share fishermen, police, crown employees and staff of the House of Commons and House of Lords are excluded from the right to a guarantee payment.

Opting out

- Workers can opt out of receiving Guarantee Payments if there is a collective agreement or a wages order under the Agricultural Wages Act 1948. They must be approved by the relevant minister (Secretary of State for Trade and Industry/Minister of Agriculture). The minister will need to satisfy themselves that the alternatives to the opt out are at least as good as those provided by the statutory scheme before making the order. Such orders are not common!



Guarantee pay: fixed-term contracts, claiming & notification

Guarantee payments for workers under fixed term contracts

- Workers under a fixed term contract of any length have the same right to a Guarantee Payment as any permanent employee, subject to the same qualification criteria.

Presenting a claim for an unpaid guarantee payment

- There is a three month time limit for bringing a claim for non or under payment of a guarantee payment. The Complaint must be brought to the Employment Tribunal. The Tribunal has the discretion to extend the time limit in circumstances in which it is just and equitable to do so.

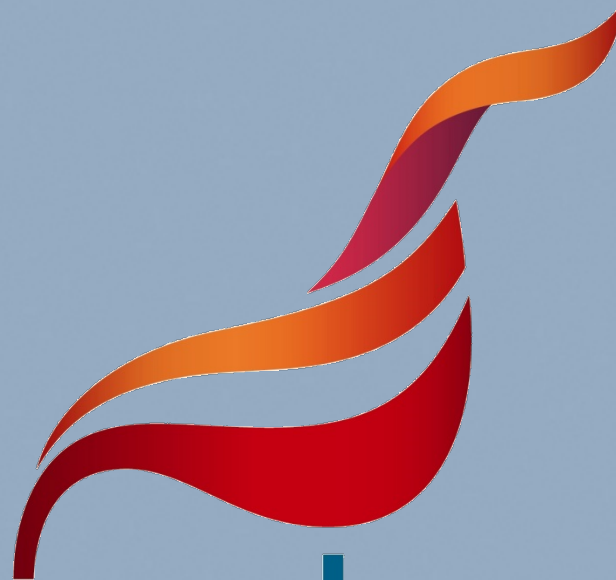
Notification

- There is no obligation for an employer to notify the employee of his or her right to a Guarantee Payment or a statutory redundancy payment.



Any questions?





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