



VOISIN LAW

Lay offs

Should a business take the decision to temporarily close any or all of its establishments in response to a decline in trade following the Covid-19 pandemic provisions regarding layoffs will apply.

Lay off is when employers do not provide any work to their employees and the situation is regarded as temporary i.e. a short-term cessation of work. Should layoffs arise the following should be noted and/or actioned:

1. Unless the contract of employment provides otherwise, employees will need to be paid for the duration of the closure. In order for a business to lay off their employees without pay there needs to be an express contractual right to do so or an agreement between the company and a trade union, or a national agreement for the industry which is incorporated into the employment contract. Alternatively, there may be an implied right to lay off staff without pay if it can be clearly shown that this has been an established practice over a long period of time.
2. Businesses are not required to pay employees on zero hours contracts for the duration of the closure unless the contracts state otherwise.
3. Employees should be advised of:
 - the duration of the closure
 - who, if anyone, will continue to have access to any of the properties;
 - who is the point of contact within the business during the closure;
 - whether there are any rules such as to whether or not they require agreement from the business to work for another employer during the closure and whether they must remain on the Island.

Working from Home

Where businesses are closed in response to government advice and/or in order to safeguard employees, those whose jobs can be performed remotely may be asked to work from home.

Using Annual Leave

Unless the provisions of the employment contract and/or staff handbook say otherwise, businesses have the right to tell employees when to take annual leave if necessary. For example, they may close for a week and employees have to take that time as annual leave.

Redundancy

A redundancy situation will arise if a business needs to dismiss employees due wholly or mainly due to the following:

- (a) the fact that the business has ceased or intends to cease -
 - to carry on the business for the purposes of which the employee was employed, or
 - to carry on that business in the place where the employee was so employed; or



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(b) the fact that the requirements of that business -

- for employees to carry out work of a particular kind, or
- for employees to carry out work of a particular kind in the place where the employee was employed,

have ceased or diminished or are expected to cease or diminish.

Where there has been a reduction of trade, paragraphs (b)(i) and (ii) are most likely to be applicable.

“Cease” and “diminish” mean cease and diminish either permanently or temporarily and for whatever reason.

Any redundancy procedure/provisions in the employment contract and/or staff handbook should be followed.

Those with 2 years or more continuous service will be eligible for a redundancy payment under the employment law.

Redundancy - Collective Consultation Requirements

1. In the event that a business proposes to make 12 or more employees redundant within a period of 30 days or less, the business has to consult any appropriate representative of the employees at least 30 days before the first of the dismissals takes effect although if there are special circumstances which mean that it is not reasonably practicable for the business to comply with this requirement, the business should take all steps towards compliance with that requirement as are reasonably practicable in the circumstances. An appropriate representative may be a trade union official or a representative appointed or elected by the affected employees.
2. The consultation shall include consultation about ways of -
 - avoiding the dismissals;
 - reducing the numbers of employees to be dismissed; and
 - mitigating the consequences of the dismissals,

and shall be undertaken by the business with a view to reaching agreement with the appropriate representatives.

3. For the purposes of the consultation the business shall disclose in writing to the appropriate representatives -
 - the reasons for the employer’s proposals;
 - the numbers and descriptions of employees whom it is proposed to make redundant;
 - the total number of employees of any such description employed by the employer at the establishment in question;
 - the proposed method of selecting the employees who may be dismissed;
 - the proposed method of carrying out the dismissals, with due regard to any agreed procedure, including the period over which the dismissals are to take effect; and



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- the proposed method of calculating the amount of any redundancy payments to be made to employees who may be dismissed.

4. The above information is to be given to each of the appropriate representatives by being delivered to them at an address that they may specify.

5. If the employees fail to elect a representative within a reasonable time, the business can provide the information set out in paragraph 3 above to the affected employees.

Special consideration should be given to how a business will communicate with its employees in such circumstances given the current lockdown and social distancing rules.

Related links:

- [Covid-19: Coronavirus Government Co-Funded Payroll Scheme](#)
- [Insolvent Companies and Redundancy Payments](#)

For further information on this subject please contact [Dexter Flynn](#) or [Stephanie Habin](#) at Voisin Law.