



### **FAQ's re: Small Business in Gibraltar – Employment Concerns.**

The GFSB has received a very large number of calls and emails from understandably concerned members regarding the impact of the Covid-19 Pandemic on their business. This is an evolving situation and we are trying to address these concerns as they are being presented to us and in line with the guidelines and provisions being made by the Government on a daily basis.

**The Government is urging businesses that have been closed to the public for protective measures to investigate ways to continue economic activity and to ensure their staff are being paid. The Government has introduced measures to take other financial responsibilities away from employers to enable them to focus on continuing to pay staff. (Please see the note on this on our covid19 update page)**

**We urge our members to consult with their staff about innovative and creative ways to maintain economic activity and to endeavour to work to the best of their abilities in the present circumstances to treat staff fairly and in line with current employment law.**

Please continue to communicate with us and send your experiences and we will continue to communicate the concerns, worries and experiences of the local business community to the Government.

At the same time if you have come up with innovative and creative ways to continue your economic activity or have positive experiences to share about how you are keeping your staff employed and engaged during this time, please share them with us and we will share them with the membership.

### **GFSB advice for local employers (up to date as at 18<sup>th</sup> March 2020).**

1. Please keep your staff clearly updated with all of the Government Guidance which is being provided every day through official sources. Encourage staff not to be influenced by what they are reading about on social media or in the international press. The way this issue impacts Gibraltar will be localised and handled by our own local Government in accordance with the guidelines and recommendations they are receiving from established healthcare sources and the UK Government.
2. If your staff are required to self-isolate because they are following the current public health guidelines and meet one of the requirements as advised by the GOG; the GHA or the 111 telephone line, then they are entitled to receive sick pay from you as usual. Sick pay regulations:

<https://www.gibraltarlaws.gov.gi/legislations/employment-sick-pay-order-16>

3. If your staff are required to stay home to care for a family member who is sick with the virus they are entitled to 5 days of unpaid special leave (see the “time off for dependant’s” provisions contained in s29(1) of the EMPLOYMENT (Maternity and Parental Leave) Health and Safety Act  
<https://www.gibraltarlaws.gov.gi/legislations/employment-maternity-and-parental-leave-and-health-and-safety-regulations-1996-29>
4. If your staff choose to voluntarily self-isolate but have not met any of the requirements of the Government’s guidelines for self-isolation, they do not have to receive sick pay. Ideally, if they still wish to be paid they can take this leave as holiday. Otherwise, they can take it as unpaid leave, provided it does not negatively impact your business for them to do so.
5. If your staff are able to continue to provide services to you (their employer) from their homes (such as working on laptops, sending emails, making telephone calls, updating social media etc.) they should be encouraged to do so provided that the nature of the work they are undertaking does not contravene any restrictions on running a business that may be contained in the deeds to their home or any rental agreement they may have.
6. If your staff are nervous about continuing to work, provide them with reassurances and where possible provide them with protective gloves and masks. Provide adequate hand washing facilities and where possible provide hand sanitisers.
7. If you employ someone who is over 70, pregnant or otherwise in the vulnerable category and is currently able to come to work (as per the current government guidelines) takes steps to provide them with protective clothing, minimise their contact with the public where possible and ensure that they follow all government precautions and self-isolate should it become appropriate.
8. If an employee is refusing to perform their duties without due cause and this is impacting your business negatively, in the first instance identify any concerns they may have and provide them with the appropriate reassurance or health and safety support. Failing this, you may need to consider applying your company’s disciplinary procedure. **This position may change if the government changes its current position regarding who needs to self-isolate.**
9. In the event that businesses are required to be closed (by Government guidelines) and employees are required to remain at home because there is no work, this is called Lay off. In Gibraltar, there is no statutory guidance in respect of situations in which staff are laid off. The Employment Act deals *inter alia* with terminations, redundancies and dismissals but does not provide detailed guidelines for maintaining a workforce that currently has no “work”. We appreciate that permanently terminating staff’s employment at this time or making staff redundant is a very last resort for businesses. If

you have a written contractual entitlement to lay your staff off temporarily and that contract specifically states that you do not need to pay them while they are laid off, you can lay them off temporarily for a reasonable time.

10. If you do not have an existing contractual entitlement to lay your staff off, they must be paid for the time they are not working. Their holiday pay can be used to the extent that it is available, but it is advisable that you give them notice that holiday pay will be used. When you are exploring options with staff regarding continuing payment and economic activity you may wish to raise with them the possibility of using their holiday pay to cover enforced absences. As an employer, you are entitled to specify when they do take holiday time, when necessary.
11. Alternatively, you can ask your staff to agree to receive no remuneration during this time (or delayed payment). It is important that you appreciate that your staff will be required to agree to this and enter into a written contractual arrangement with you to confirm their agreement and to outline for how long they are prepared to agree to this. You can explain this to your staff that this is an alternative to having their employment terminated. **Please note staff must be in agreement when asked to receive no, delayed or reduced pay and any reduced pay must not go below the minimum wage.**
12. If your business is not able to remain solvent you may need to consider terminating the employment of some or all of your employees and/or making them redundant. In such circumstances, they are still entitled to receive notice or a payment in lieu of notice, their outstanding holiday pay and they may be entitled to redundancy pay, provided you have sufficient funds available to pay these.
13. If you are making 5 or more people redundant you are required to consult with them and consider alternative ways of avoiding the redundancies. The process is set out in detail in the Employment Act at part VIA.

<https://www.gibraltarlaws.gov.gi/index.php/legislations/employment-act-9>

14. The consultation process is expected to start at least 60 days before the redundancies are due to take place. It is possible that during this consultation process your staff will have ideas and proposals to try and save the business. It is good practice to consult staff, even if you are making less than 5 people redundant. ***We recommend that during the current pandemic, whether you are contemplating redundancies or not, begin a process of consultation with your staff about the future of your business and ways in which the business can continue during this unusual time and how they can continue to remain in meaningful employment with an income.***
15. In the worst case scenario, Section 56 of the Employment Act enables an employer to dismiss an employee without notice **if there is good and sufficient cause**. Likewise, it enables an employee to abandon their employment if there is good and sufficient cause.

56 (1) *Notwithstanding the provisions of section 54 and 55 an employer may dismiss an employee and an employee may abandon the service of an employer without giving notice and without any liability to make payment as provided in subsections (1) and (2) if there is a good and sufficient cause for such dismissal or abandonment of service:*

*Provided that an employer shall not be entitled to set up as good and sufficient cause under this section –*

- a) That the employee's lack, loss of impairment of skill ability or efficiency make the fulfilment of the contract of services impossible: or*
- b) That the employee no longer enjoys the employer's confidence*

2) *Notwithstanding that an employer has given an employee the appropriate notice required by section 54 he may still be liable to compensate the employee for unfair dismissal under sections 59 to 73*

As current conditions are extraordinary we cannot advise whether the circumstances caused by the pandemic related closures will be good and sufficient cause to enable termination to be given with notice, but we feel that there is a good chance that where there is evidence of dire global economic circumstances, and enforced business closure on a large scale this will be considered good and sufficient cause. **This would only be in the case where the business can clearly demonstrate that there were no funds available to pay notice or redundancy pay.**

Likewise, if you have an employee who is not currently working and is not being paid, it is possible that this would be considered to be sufficient cause for them to abandon their employment without notice, provided this is not as a result of their performance or a break down in confidence between the employer and the employee. This would not exclude them from bringing any claim against their employer in the Employment Tribunal and therefore we encourage our members to keep lines of communication with their employees open at all times and give your staff good and clear reasons based on evidence of any decisions you are making.

### **DO's AND DON'T's:**

DO make staff retention your first priority. A good balance of business sense and ethics needs to be applied.

DO make any short term decisions with the agreement and support of your staff.

DO keep the dialogue, regular, open and honest with staff and to consult with them about their ideas and suggestions.

DO make (as a matter of urgency) a clear economic plan/business plan, considering your overheads and expenses, and review any capital your business may have/be capable of making

with a view to prioritising staff salaries and retention. **Please contact the GFSB if you require assistance with this.**

DO inform your staff openly and honestly about the economic capability of the business.

DO check what insurances you have in place to cover your losses, or to consider speaking to your bank regarding obtaining emergency loans to cover staff salaries.

DO keep up to date with guidance from official sources on how best to protect your business.

DO remember that your staff will have mortgages/rents/outgoings and will want to keep their incomes and their jobs in these uncertain times.

DO explain to your staff that it is the businesses responsibility to maintain their incomes to the best of their ability and at present there is no Government assistance for this other than the measures announced on the 16th March 2017.

DO encourage staff to continue to think of and suggest ways that the business can remain profitable.

DO not make impulsive decisions in these early days of the pandemic response. The measures are not permanent and will be kept under constant review by the GFSB who will continue to report our findings and raise concerns with the Government.

DO not hesitate to contact the GFSB with your questions and concerns.

#### **VITAL STEPS FOR BUSINESSES TO TAKE:**

- A. Make sure you and your staff keep updated with official announcements and guidelines;
- B. check your insurances and speak to your bank about emergency funding and consider putting in place sensible and effective measures to reduce expenditure in other ways within the business.
- C. Make a clear emergency business contingency plan and keep updating/reviewing it.
- D. If there are innovative and workable means of keeping your businesses operating then these should be actively explored with staff. Consider retaining staff to undertake stock checks, deep cleaning/tidying your premises; run Facebook campaigns, arrange deliveries etc.
- E. Make staff retention a priority. Dismissing staff must be an absolute last resort as although this may save money in the short term, it will have a more detrimental impact in the long run on the business community at large.

## **QUICK GUIDE TO PAYMENTS EMPLOYEE'S ARE ENTITLED TO:**

1. If you are required to reduce or delay payment your staff must be in agreement with this, evidenced by written agreement.
2. They **must not** be paid less than the minimum wage (currently £7 per hour)
3. If they are self-isolating because they are following the government guidelines pertaining to self-isolation, they must be paid sick pay.
4. If they are caring for a dependent who is sick they are entitled to 5 days unpaid leave.
5. If they are required to stay home because your business is closed or operating at reduced capacity they are entitled to be paid unless you have a pre-signed contractual agreement to the contrary.
6. You can ask staff to take time spent at home as holiday, if the time is not a reason for illness or suspected illness.
7. If your business has a clear economic case to reduce staff numbers you will need to follow the usual employment procedures. Staff are entitled to receive a notice (or a payment in lieu of notice). Relevant employees will be entitled to redundancy pay.
8. If there are **good and sufficient reasons** to dismiss an employee without notice these should be stated clearly. The reasons cannot include the employee's performance or conduct or a breakdown in trust and confidence.

For further advice please ask the GFSB directly and check the following resource:

<https://www.acas.org.uk/coronavirus>