

Employment - Information Booklet

Employer & Employee • GUIDE •

HOW BEAT
COVID-19
GRANT
MEASURES
AFFECT YOU



Department of Employment

HM Government of Gibraltar

Introduction

This Employment Information Booklet has been produced to give employers and employees an overview of the BEAT COVID-19 Grant scheme and the various business measures announced by Her Majesty's Government, as well as fundamental information from redundancy provisions to changes to an employee's terms and conditions of employment. This booklet is not intended to be an exhaustive guide or an alternative to the applicable employment law but instead a quick reference tool.

Collective Redundancies

Duty of employer to notify Director of certain redundancies

Section 77E (1) of the Employment Act (the 'Act') imposes a legal obligation on employers to notify the Director of Employment (the 'Director'), in writing, when proposing to dismiss as redundant five or more employees at one establishment within a period of 90 days or less. The employer's written proposal to the Director (the 'Notice') must be given:

- (a) before giving notice to terminate an employee's contract of employment in respect of any of those dismissals; and
- (b) at least 60 days before the first of those dismissals take effect.

The Notice must include, among other things, the information set out in section 76(7) of the Act, which includes: the reasons for the employer's proposals; the number and description of employees whom it is proposed to dismiss as redundant; the total number of employees of any such description employed by the employer at the establishment in question; and the proposed method of selecting the employees who may be dismissed. Please note that the foregoing is not an exhaustive list of the information that employers are legally obliged to include in the Notice. Further, on receipt of the Notice, the Director may require the employer to provide further information. In any case where there are special circumstances where it is not reasonably practicable for the employer to comply with any of the requirements set out in section 77E of the Act, the employer must take all such steps towards compliance with those requirements as are reasonably practicable in the circumstances.

Duty of employer to consult employee representatives

Similarly, where an employer is proposing to dismiss as redundant five or more employees at one establishment within a period of 90 days or less, section 76 of the Act imposes a statutory obligation on employers to undertake a consultation process with the appropriate employee representatives. This consultation process must begin at the earliest possible opportunity and, in any event, at least 60 days before the first of the dismissals take place. Terminations by way of redundancy should not occur during the 60-day consultation period.

The consultation process must include consultation about ways of avoiding the dismissals, reducing the number of employees to be dismissed, and mitigating the consequences of the dismissals. In all the circumstances, the consultation process must be undertaken by the employer with a view to reaching agreement with the appropriate representatives.

For the purposes of the consultation, the appropriate representatives can seek the assistance of the Department of Employment.

An employer who gives Notice to the Director of his proposal to dismiss as redundant five or more employees at one establishment under section 77E of the Act and who also has a duty to consult the employees' representatives under section 76 of the Act must inform the Director, in writing, of the result of the consultations as soon as reasonably practicable. Please ensure that the Director is kept informed on how the consultation is progressing by submitting interim reports as and when they become available.

In the event that there are no employee representatives, the employer must give to each affected employee the information set out in section 76(7) of the Act, which includes: the reasons for the employer's proposals; the number and description of employees whom it is proposed to dismiss as redundant; the total number of employees of any such description employed by the employer at the establishment in question; and the proposed method of selecting the employees who may be dismissed. Please note that the foregoing is not an exhaustive list of the information that employers are legally obliged to include in the Notice.

In any case where there are special circumstances where it is not reasonably practicable for the employer to comply with any of the requirements set out in section 76 of the Act, the employer must take all such steps towards compliance with those requirements as are reasonably practicable in the circumstances. The law addressing the obligations of employers in the event of collective redundancies can be found in Part VIA of the Act.

Please note that any provision in any agreement, whether it be a contract of employment or not, is void if it purports to exclude or limit the operation of Part VIA of the Act. In other words, employers are legally unable to contract-out of the statutory requirements imposed on them in respect of collective redundancies. An employer who fails to comply with any of the requirements of section 76 or 77E of the Act commits an offence under the Act. An offence under section 76 or 77E of the Act may render an employer liable on summary conviction to a fine not exceeding level 5, which, at the date of publication of this information pamphlet, is £10,000.

How to calculate compensation by reason of redundancy

The following table shows how an employer must calculate an employee's redundancy compensation.

Length of Service	Redundancy Pay
For each of the first 5 completed years of service	2 weeks' pay
For each of the next 5 completed years of service	3 weeks' pay
For each additional completed year thereafter	4 weeks' pay
In respect of an employee aged 41 years and over, for each completed year of service after the age of 40	2 weeks' pay

The total amount of redundancy pay made to any person shall not exceed the equivalent of 1 year's pay. Further, no redundancy compensation is payable to an employee who has not completed 1 year of service. Regulations covering compensation by reason of redundancy can be found in the Conditions of Employment (Redundancy Pay) Order, 2001 (the 'Order'). Employers are advised to check the Order to ensure that the Order applies to the employees that are proposed to be dismissed by reason of redundancy.

BEAT COVID-19 and Redundancy Payment Calculation

Inactive employees will retain all their employment rights and obligations during the period between April 2020 and 30 June 2020, save for the following:

- (a) the right to be paid their salary; and
- (b) the accrual of any holiday and any leave entitlement in accordance with their contract of employment.

The rights at (a) and (b) above may be suspended in certain circumstances. Her Majesty's Government of Gibraltar notes that employees' rights at (a) and (b) above would only be suspended in circumstances where the employee continues in employment following their return to activity.

Where an employer seeks to make an employee redundant on the employee's return to activity, the employee's redundancy compensation calculation should take into account all holiday and leave entitlement that the employee would have accrued during the period that the employee was inactive and in receipt of BEAT COVID-19 payments.

Self-isolation Leave Scheme

Government will shortly be announcing the details of its new self-isolation leave scheme. This scheme is intended to assist employees when they have had to self-isolate and been unable to work. The scheme is also being rolled out for self-employed people. Ordinarily, an employee who is issued with a Certificate of Self-Isolation would be able to claim their statutory sick pay and receive their contracted salary whilst self-isolating. However, if an employee has exhausted their statutory sick pay and is then advised to self-isolate, they will be able to waive their right to their contracted salary and instead receive a Self-Isolation Pay rate per day of self-isolation.

This scheme will also apply to an employee who has previously received a Certificate of Self-Isolation, used their statutory sick leave to comply the self-isolation, but then falls sick and has no statutory sick pay left to use. That individual would also be able to claim the Self-Isolation Pay rate for each day that they are sick, up to the prescribed maximum. Although the employee who receives this the Self-Isolation Pay rate waives their right to a contracted salary, they avoid going onto half-pay, and instead receive the Self-Isolation Pay rate from their employer.

The Self-Isolation Pay rate will be set at £52.50 per day. This is calculated using the maximum monthly BEAT COVID-19 payment of £1,155 divided by a 22 day working month.

The employer is then able to make a simple claim to Government who will pay out the employer for each valid claim. A self-employed person will be able to make a claim if they receive a Certificate of Self-Isolation and self-certify that they are unable to work from home. The other terms and conditions applicable to this self-isolation scheme will be set out in the legislation that is to be published shortly.

Changes to an employee's terms and conditions of employment

Generally, employers who wish to change a worker's terms of employment can only do so with the employee's express consent. Such a change includes, for example, any reduction in the number of contracted hours that an employee is required to work over a given period; even, if the reduction is temporary. Any employer who unilaterally changes the employee's conditions of employment without having their employee's express consent could be exposed to legal proceedings. This could be especially the case if the employee's consent is not evidenced in writing.

Employers who are consulting their employees or employee representatives and jointly agree to changes to employment conditions in order assist the business and maintain employment should ensure that the terms to these changes and any agreements reached are clearly stated in writing.

Employees affected seeking alternative employment

The Employment Services at the Department of Employment remain available to any affected employees by way of assistance. Services include, amongst other things, supporting affected employees seek alternative gainful employment. These services can be reached by contacting findajob.employment@gibraltar.gov.gi or via telephone on 20011030, 20011062 or 20011093, and WhatsApp on 54083189.

BEAT COVID-19 GRANT – Terminations of Employment

As from 1 July 2020, all businesses who did not benefit from BEATCOVID-19 payments, including businesses from the excluded sector under Schedule 2 of the Appropriation (Business Employee Assistance Terms COVID-19) Regulations 2020, are able to process terminations through the Department of Employment in the normal manner. Employers who benefited from BEAT COVID-19 payments for any of the months of April, May, or June 2020 ('**Qualifying Business**') are able to terminate employment contracts as from 1 July 2020.

Please note that any Qualifying Businesses that have received a BEAT COVID-19 Grant must not terminate the employment of more than 30%* of its total number of employees (as registered with the Department of Employment as at 30 June 2020) between 1 July 2020 and 31 March 2021 (the '**Relevant Period**'). Any Qualifying Businesses that have received a BEAT COVID-19 Grant that terminates the employment of more than 30%* of its total number of employees (as registered with the Department of Employment as at 30 June 2020) during the relevant period will:

- (a) cease to receive any further BEAT COVID-19 Grant payments; and
- (b) have all BEAT COVID-19 Grant payments received up to the date of their non-compliance automatically converted into a BEAT COVID-19 interest bearing loan.

It is important to note that the Director has a discretion to temporarily suspend the requirement for a Qualifying Business not to terminate the employment of more than 30% of its total number of employees in exceptional circumstances where the Director is satisfied that any termination of employment arising during the Relevant Period is promptly filled by the Qualifying Business. In these circumstances, the Director also has the discretion to temporarily suspend the consequences set out in (a) and (b) above. Qualifying Businesses that exceed the 30% threshold should bring this to the attention of the Director when giving notice to the Director of the proposed terminations.

* 30% (being the applicable threshold at the time of publication) or such other rate as may be prescribed by Government.

The information provided in these guidelines do not, and are not intended to, constitute legal advice.

Notice of Termination to the Director of Employment

A Qualifying Business must notify the Director, in writing, of all proposed terminations at least 7 days prior to submitting a Notice of Termination to the Department of Employment. Notice can be made by submitting the Notice of Termination of Employment to **employment.officers@gibraltar.gov.gi**

For further information, please contact the Labour Inspectorate on mobile numbers: 58740000 and 57329000, or alternatively via email on: **labour.inspectorate@gibraltar.gov.gi**

Further Information and Useful Contacts

Links to employment legislation

<https://www.gibraltar.gov.gi/department-employment/employment-legislation>

Department of Employment PDF Fillable Forms

<https://www.gibraltar.gov.gi/department-employment/employment-service-employer-application-forms>

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