



Lay-off and short-time

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When recruiting employees, it is generally an employer's intention to retain them in a full-time capacity. However, situations do arise where normal working is no longer possible and the employer is faced with the problem of reducing working hours. Rather than make employees redundant, an employer may wish to examine the option of introducing temporary lay-off or short-time working in such situations.

What is lay-off?

Lay-off occurs when normal working is interrupted and the employer is unable to retain employees in their normal capacity. The situation is of a temporary nature and advance notice has been given to all concerned. This could occur for a number of reasons, for example:

- shortage of orders;
- sudden and unforeseen shortage of work;
- fire at premises;
- storm or flood damage;
- shortage of supplies or fuel;
- industrial action in another company.

If one such eventuality arises, employees are laid off for a specified period of time, until trading conditions improve, or until the reasons behind the lay-off no longer exist.

Patterns of lay-off

There are many patterns of lay off. Lay-off can be a period where no work is performed or the employees may work one week on, one week off. Other patterns could include working three out of four weeks or one week in each four week period. These patterns could be worked using teams of employees alternating the working weeks between them.

Right to lay-off employees

A lay-off is a temporary suspension of a contract during which an employee receives no work and, more importantly, receives no payment from the employer. The employer has no right in law to lay-off employees for whatever reason unless this is provided for in the contract of employment.

How then can an employer who has not reserved the right to lay-off in the contract of employment do so without being in breach of same? The answer to this is by agreement with the employee that he or she will accept the lay off. A lay-off situation will only arise where there has been a decrease in the available work. The vast majority of trade unions and employees accept lay off in preference to immediate redundancy in the hope that the work requirement will build up again and the employment can continue as before. It is important to note that lay-off is really only a valid option

where the employer has a reasonable expectation that he or she will be able to offer reemployment in the future.

What is short-time?

Short-time working is defined under the Redundancy Payments Acts as:

- where an employee's working week decreases to less than half of his or her normal weekly hours, or his or her pay is less than half of his or her normal take home pay; and the situation is not considered to be permanent and advance notice is given.

Patterns of short-time

The general pattern of short-time working is the 'three day week' where employees work three days and claim social welfare for the remaining working week.

When employers realise that normal working will be interrupted the decision must be taken as to which option is the more suitable to his or her circumstances, i.e., lay-off or short-time working.

Right to a redundancy payment

Lay-off and short-time are viewed as being temporary situations, so employers should be aware that if either the lay-off or short-time working lasts for a certain length of time, the employee may be entitled to seek a redundancy payment.

This occurs when the employee has been laid off or kept on short-time (or a combination of both) for either, at least four consecutive weeks or, within a 13-week period, for a series of at least six weeks of which not more than three were consecutive.

Any time after either of these situations has occurred, the employee could decide to claim redundancy.

The claim must be made on form RP9. Once the employer receives this form he or she has two options:

- accept it and pay the redundancy lump sum thereby accepting that there is a termination of employment; or

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- give a counter notice within seven days to the employee contesting their claim for redundancy

Counter notice

An employer must give written counter notice within seven days of receipt of the employee's redundancy notice. By issuing a counter notice, the employer is effectively promising that not later than four weeks after the date the employee notified them of their intention to claim redundancy the employer will be in a position to provide work lasting 13 consecutive weeks.

If this does not happen, the counter notice is invalid and the employee is entitled to a redundancy payment. The employee is entitled to statutory redundancy only. He or she is not entitled to a notice payment as he or she is the party terminating the employment.

The following timetable summarises the above points:

Week 1 - 4:

Lay-off/short-time

Commencement of week 5:

Employee claims redundancy (on form RP9). If disputing the redundancy, the employer issues counter notice before commencement of week 6.

Week 6 - 9:

Employee still on lay-off or short-time

Week 10 - 23:

Employee resumes normal working with normal pay and normal hours, and there is no entitlement to a redundancy payment.

Protective notice

This is not a legal term, it has no legal standing and it has never been tested in law. It is an industrial relations concept and a practice used to give employees notice of pending lay-off or short-time working. Where there is a real risk of lay-off or short-time being necessary 'protective notice' should be given to employees.

Notification does not have to be in writing but it is advisable that it should be. The length of protective notice will be dependent on whether or not the cause and the appropriate date of the interruption of normal working are known in advance and, if so, how long in advance.

When the cause or approximate date of intended lay off is known well in advance, the employees or union representatives should be briefed informally as early as possible and protective notice of not less than the normal payment period (a week or a month) should be issued to each employee concerned.

Lay-off and short-time

In some emergency cases, notice given to expire at the end of the working day in question may be all that it is possible to give. There is no standard form of protective notice.

However, such notice should:

- (i) be addressed to each employee likely to be affected (care should be taken to contact all employees affected eg, those on sick leave, on rest days etc.);
- (ii) specify the date of issue and the time and date of expiry;
- (iii) indicate that employment will be on a day-to-day basis from the time of expiry;
- (iv) explain briefly the circumstances which necessitate it;
- (v) assure those employees concerned and their union representatives, that they will be kept informed of relevant developments and that a return to normal operations (by way of formal withdrawal of the protective notice) will be made as soon as circumstances permit.

As the issuing of protective notice and the act of laying employees off can cause industrial relations problems, the possibility of redeploying employees to other productive work should always be examined fully before issuing such notice.

Selection

Some company/union agreements incorporate a clause outlining the procedure to be used in the selection of employees in a lay-off or short-time situation. The maintenance of the most efficient and economic running of the organisation should also be taken into account. Regard should be taken for specialised or highly skilled employees whom it is impossible to replace with less qualified employees.

However employers should be aware that it is illegal to discriminate in lay-off or short-time situations on any of the nine grounds set out in the Employment Equality Acts (See Guideline 6).

Social welfare

Employees on lay off may be entitled to Jobseeker's Allowance or Jobseeker's Benefit, provided they are available and capable of work and satisfy the PRSI contribution requirements outlined by the Department of Social Protection.

Short-time working and social welfare

Employees on short-time may be entitled to claim Jobseeker's Allowance or Jobseeker's Benefit provided they are unemployed for three days in a period of six consecutive days. Saturday is included in the Social Welfare week, but Sunday is not. If a claimant who originally worked a five day week is placed on a three-day week he or she can claim unemployment benefit/assistance for the days not worked. The payment received would be two-fifths of the unemployment flat rate benefit.

For further information on social welfare entitlements, employers should direct employees to their local social welfare office or the website of the Department of Social Protection (www.welfare.ie).

The employer must inform local social welfare office directly of the workers being put on lay-off or short-time, or alternatively, a note should be given to the employee concerned which can then be presented to the local employment exchange, stating the following particulars:

- i. name and address of employer (headed notepaper will suffice);
- ii. name and address of employee;
- iii. employee's PPS number;
- iv. date of lay off or systematic short-time;
- v. possible duration of lay-off or systematic short-time.

The following information should also be given:

In the case of employee going on lay off

1. gross earnings from previous 1st January to last date of employment prior to lay-off;
2. amount of income tax paid by employee during the period from previous 1st January to last date of employment prior to lay-off;
3. amount of PRSI paid by employee during the period from previous 1st January to last date of employment prior to lay-off.

In the case of employee going on short-time

Details of short-time working arrangement i.e., state days to be worked each week.

Note: a list of names of the employees concerned should be sent to the manager of each local employment exchange, stating that they are about to go on lay off or short-time.

Companies with large numbers of employees (50 or more) in a lay off or short-time situation may make special arrangements with the manager of the local social welfare office and have the matter dealt with on a personal level.

Annual leave and lay off or short-time

An employee on lay off or short-time may be entitled to annual leave under the Organisation of Working Time Act 1997. The amount of annual leave is dependent on the hours physically worked during the leave year.

For example, employees, by working a 39-hour week for a period of nine months within 12 months will gain their full holiday entitlement as long as 1,365 hours have been worked in the leave year and providing they do not leave the job before the leave year has elapsed.

Under previous legislation part-time or casual staff had to qualify for annual leave by working a certain number of weeks. This is no longer the case and all employees, regardless of status, qualify for annual leave depending on the hours they physically work.

Some companies have an agreement, at local level, to a discretionary annual leave entitlement in excess of the statutory entitlement. In a lay off or short-time situation they are entitled to a pro-rata entitlement to such leave calculated on the same basis as the legal entitlement.

Public holidays and lay-off/short-time

Employees on lay-off or short-time may retain the benefit of any public holidays which occur during periods of interrupted working, within certain time limits. There is still an employment relationship between the employer and the employee and as such the onus rests with the employer to decide which of the four entitlements defined under the Organisation of Working Time Act 1997 the employee will receive.

The four entitlements defined under the Working Time Act are as follows:

1. a paid day off on the day;
2. a paid day off within a month;
3. an extra day's annual leave;
4. an extra day's pay.

The employer decides what benefit will apply.

Entitlements to public holidays are not indefinite and prolonged absences from work will eventually result in the entitlement ceasing. The limits are as follows:

- Absence in excess of 52 weeks by reason of an occupational injury.
- Absence in excess of 26 weeks by reason of illness or injury.
- Absence in excess of 13 weeks by reason not referred to above but being an absence authorised by the employer, including lay off.

Therefore for lay-off periods lasting up to 13 weeks employees retain the right to be paid for public holidays falling during this timeframe.

Conclusion

This guideline outlines the salient points of lay-off and short-time working. Difficulties may arise which are not answered or addressed in this document. In that instance you can contact an IR/HR Executive at the Knowledge Centre at (01) 605 1542.

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