

JOB SUPPORT SCHEME -

Further extension for businesses which remain open

Following much pressure to provide additional support, Chancellor Rishi Sunak has announced a second expansion of the Job Support Scheme (JSS).

The Chancellor has announced in the House of Commons and through a press release that the government will significantly increase the winter support schemes. The Chancellor recognised that "even businesses which can stay open are facing profound economic uncertainty".

The headlines from the announcement are as follows:

JOB SUPPORT SCHEME - OPEN

The original JSS announced on 24 September 2020 required employees to work a minimum of 33% of their normal hours and employers required to pay a third of their employees' wages for hours not worked. The announcement from the Chancellor reduces employer contribution to those unworked hours to just 5% and reduces the minimum hours requirement to 20%. Full time employees working one day a week will be eligible.



Key details include:

- The JSS will operate from 1 November 2020 across the UK. For every hour not worked, the employee will be paid two-thirds of their usual salary.
- The government will provide up to 61.67% of wages for hours not worked, up to £1,541.75 per month.
- The cap is set above median earnings for employees in August at a reference salary of £3,125 per month.
- Employers will continue to receive the £1,000 Job Retention Bonus for eligible employees (please see our Legal Update for further information). Taking the JSS-Open and the Job Retention Bonus together, an employer could receive over 95% of the total wage cost of their employees if they are retained until February.
- There has been no amendment to the local lockdown element of the JSS. Please see our previous Legal Update for an outline of the scheme.

With a focus on the hospitality, accommodation and leisure sectors, further funding is available to provide cash grants of up to £2,100 per month. The funding is primarily aimed at those adversely impacted by the restrictions in high-alert areas. The Chancellor announced that these grants will be available retrospectively from August for areas which have already been subject to restrictions.

The support offered recognises the knock on impact of the pandemic on businesses which can remain open but have suffered significantly due to the restrictions. The JSS-Open alleviates much of this pressure and may help to reduce the number of redundancies.

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The raising of the state pension age for women from 60 to 65 did not give rise to unlawful age or sex discrimination

On 15 September 2020 the Court of Appeal dismissed an appeal in *R (Delve and another) v Secretary of State for Work and Pensions* against the High Court's refusal to grant a judicial review on the rising state pension age for women.

The appeal was made by the "Backto60" campaign who campaign for the state pension age to revert to 60 for women. The claim challenged how the government increased the state pension age for women from 60 to 65 between 2010 and 2018 and argued that the lack of notification about the increase has meant many women did not have enough time to adjust to the extra years without a state pension. In addition, it argued that raising women's pension age constituted unlawful discrimination on the grounds of age, sex and both combined.

The High Court dismissed the claim on all grounds on the basis that there had been no discrimination but even if there was, it could be justified because the legislation had a legitimate purpose. As to notification, successive governments (since 1995) had engaged in extensive consultation with interested bodies before the legislation was made. The court also commented that, in the circumstances, its role was limited as it was a matter of primary legislation which is "very much within the area of discretion for the policy-maker".

The campaign group appealed against the High Court's refusal to grant a judicial review and the appeal has subsequently been dismissed by the Court of Appeal.

GENDER FLUID / NON-BINARY INDIVIDUALS COVERED BY SECTION 7 EQUALITY ACT 2010

In September, the Birmingham Employment Tribunal upheld claims for harassment, direct discrimination and victimisation on the ground of gender reassignment brought against Jaguar Land Rover Ltd (JLR) by one of its engineers who identifies as gender fluid/non-binary.

The employee who usually dresses in women's clothing, claimed that they were subjected to insults and abusive jokes at work, and suffered difficulties with the use of toilet facilities and managerial support.

A person has the protected characteristic of gender reassignment if they are proposing to undergo, are undergoing or have undergone a process (or part of a process) for the

purpose of reassigning their sex by changing physiological or other attributes of sex. JLR argued as gender fluid / non-binary, did not fall within the definition of gender reassignment under the Equality Act 2010.

Noting that the question of whether a gender fluid/non-binary person fell within the definition of gender reassignment under the Equality Act 2010 was a novel point of law, the tribunal held that employee was protected.

The Tribunal held it was "clear... that gender is a spectrum" and that it is "beyond any doubt" that the Claimant fell within the definition of gender reassignment. The implication of this judgment is that other complex gender identities such as "a-gender" and "gender queer" may also fall within the definition of gender reassignment under the Equality Act 2010, where individuals propose to undergo a process of moving their gender identity away from their birth gender.

This judgment recognises that the rights of individuals with complex gender identities are protected by the Equality Act 2010.

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