

**View from the Chair; Business Newsletter; Tuesday 27 April 2020  
by Geraldine McGahey OBE, Chief Commissioner, Equality Commission NI**

**Protecting your staff and your business during Covid 19 pandemic**

As things are at the moment, it is difficult to predict with any certainty how a tribunal or court will interpret some of the employment issues arising during the Covid-19 pandemic and specific to its circumstances. The existing equality laws are there as a base line and we have used them to develop guidance to help keep businesses on the right side of the law.

Over the past three weeks, more than three-quarters of calls to our discrimination advice line have been about employment, and more than half of those are directly related to our current Covid-19 situation.

These are challenging times for business owners and employers who are doing their best to navigate a way through for their staff and their businesses, to keep some sort of service going or to safeguard the business so that it will be in shape to re-open when that is possible.

We know from talking to employers that they are concerned about fair ways of making decisions about staffing, and as a result we have issued two short and I hope helpful pieces of guidance for employers.

The first looks at the equality aspects of furlough leave. There are discrimination law implications for employers, mostly in the area of deciding who should be selected for furlough leave. This is most likely to present a problem if you are keeping your business going, but with fewer staff, so not all will be selected for furlough leave.

This is noted in the Government's guidance too, but to summarise: if you follow a fair selection procedure, similar to one you ought to follow if selecting employees for redundancy, then you are more likely to reach a fair, reasonable and lawful decision. Our guidance flags up the most obvious pitfalls, and we also have some suggestions for objective criteria you could consider.

The second looks at ways employers can be sure they are safeguarding the health and wellbeing of pregnant workers while staying the right side of the equality law.

Pregnant women are on the NHS list of people at increased risk from the coronavirus and the Government's guidance on social distancing recommends that they are to "work from home, where possible".

If pregnant workers are expected to come in to work, employers must assess the health and safety risks that they may be exposed to and must take action to remove or avoid any such risks that are found. Furthermore, if the employer has work available for a pregnant worker to do and if the only reason why she cannot do it, or cannot be allowed to do it, is due to unavoidable health and safety risks inherent in the workplace, there is a strong argument that the employee should be suspended from work on full pay in accordance with a number of statutory health and safety at work provisions. These are noted in our guidance.

Both advice notes are available for download as pdf publications:

- [Furlough leave – advice note for employers](#)
- [Protecting pregnant employees during the Covid-19 pandemic](#)

For advice on employers' obligations under equality and discrimination law, contact the Equality Commission's helpline on **028 90 500 600** and ask for our **Advisory Services Team**. Alternatively, you can email [information@equalityni.org](mailto:information@equalityni.org) or [edenquiries@equalityni.org](mailto:edenquiries@equalityni.org) and your query will be answered as soon as possible.