



BSDHT

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Thanks to FTA-Law for their help in answering employment queries received, in advance of, and during our member only webinar on

"Legal Advice around Returning to Practice ... or not!"

(24th June 2020)

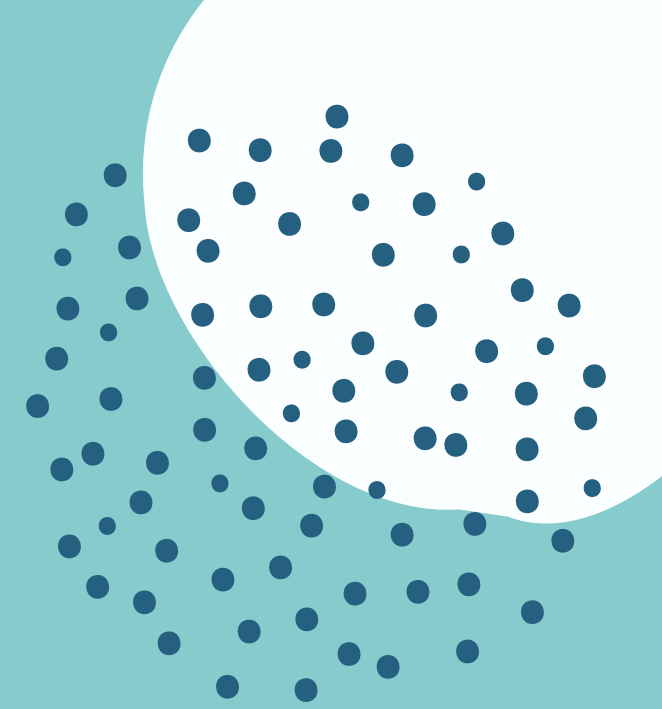
Q & A

Advice for Self-Employed
Dental Hygienists & Dental Therapists

QUESTION

Scottish: self-employed, per hour, mixed nhs/private

I work as a self-employed hygienist 2 days per week and have a three-month notice period. I have received a new term of service as my pay is expected to drop by 40%/>. I do not wish to return; do I have to provide 3/12 notice?



ANSWER

Generally speaking, if the terms of your contract stipulate that you must provide 3 months' notice, this must be done in accordance with the terms.

However, if you want to be released from the contract early, an amicable discussion with the Practice Owner/Principal explaining your concerns and that you are unwilling to accept the new terms may result in a mutual agreement to release you from the contract early.

Alternatively, you can serve immediate notice to terminate the contract and not return to the Practice, but there is a risk (albeit a small risk) that the Practice may pursue you for breach of contract.

QUESTION

I am a self-employed Hygiene Therapist working between two practices which has been the case since I qualified 32 years ago. Due to the present climate I may now only have work in one practice. Will I still be able to remain self-employed when only working in one place?

ANSWER



Yes. If you continue to manage your own income and tax affairs, then there is no reason you cannot remain self-employed.

This would also depend on the working arrangements with the remaining practice, but if your agreement explicitly states that you are self-employed, then there is no reason you would not continue to attract this status.

QUESTION

I work at a practice where I am self-employed but the other hygienist is employed, does the practice have an obligation to her more than I in regard to returning to work currently.

ANSWER



Practices will have to make decisions about the level of work that is coming in and the need to bring in staff to attend to patients. It is unlikely to be a matter of obligation, but the Practice will have to start contributing to employees pay in line with the current furlough scheme. If they are required to do this in any event, the Practice may utilise employees before those that they are only required to pay as and when they work i.e self-employed.

QUESTION

Hi, i am self-employed and two of my practices are not anywhere near ready for me to return. To be blunt my surgeries have been stripped of all my equipment 'during a deep clean' (which I was not part of - I haven't been allowed in since March), and are now used for donning/doffing. They have hinted I cannot return until November. I appreciate being self-employed I am not entitled to pay when I am not there, but I am willing to go back asap they just cannot accommodate me, any help? thanks.



ANSWER

Unfortunately, you cannot require the Practice to bring you back in if the work is not there. It may be worth having a discussion with your Practice Owner/Principal to see if you can return with slightly varied hours. You may also want to consider looking for alternative roles in the meantime, as you should not be precluded from working at alternative practices

QUESTION

As a self-employed hygienist who has had very little communication from the practice I work for since March. How much notice do they need to give us for a return date? The (employed) nurses got less than 24 hours warning. I'm very worried about finding childcare at short notice.



ANSWER

It may be advisable to contact your Practice Owner/Principal in the first instance and explain that if you are required to return to the Practice, you will need 'x' amount of notice.

This is unless your contract has provisions which dictate what would happen in these circumstances.

QUESTION

I'm a self-employed hygienist, have been with the practice 25 years, and have always been paid on a hourly rate sessionally. The practice owner has said I now have to be paid per patient.

Where I had 30 mins/patient the appointment will now be 45 mins to allow extra time due to Covid. There is no extra fee to the patient and I am to take the reduced income. Associates and nursing staff have had no reduction in their income.

ANSWER

You do not have to accept any new terms to vary your contract, however you may run the risk that the Practice Owner/Principal may serve notice to terminate your agreement.

It may be worth a discussion with the Practice Owner/Principal and explaining how the changes will affect you and if there is an alternative arrangement that could be agreed.

Alternatively, you may wish to consider an employment route. If you can satisfy some certain tests, you may be able to attract an 'employee' status in which case more options are available to you. If you do not accept the terms and notice is served, this may amount to a constructive dismissal claim. However, we would need further information regarding your role and a copy of your contract before we can advise further. This would also involve instructing solicitors on a private basis and there is no guarantee that the outcome would be favourable.

QUESTION

I work in a private practice. I am self employed and receive 40% of what the patients are paying the practice. I will go back to work at the beginning of August. I stopped working in March due to COVID. I will see much less patients than I did before due to changes required to work safely. The owner of the practice said that I will have to absorb some of the cost of PPE and obviously she won't be able to pay me as much as she did before. She asked me to come up with a proposal for remuneration and I just feel out of my comfort zone and I don't know what I can legally ask for. I have always only been self employed. Can you advise me? Thank you

ANSWER

This is not an uncommon query during the current situation. All practices will be required to adopt new PPE requirements and it will be for the Practice to decide whether this cost is passed to the patient or service provider. It will also depend on previous arrangements as in what is contained within your Agreement.

It is encouraging that the Practice Owner is asking for your input as in many circumstances hygienists are either being forced to accept the changes or risk their contracts being terminated.

Work out what you can afford and explain your reasoning, hopefully a sensible agreement can be reached.

QUESTION

I was due to join a large corporate practice as self employed in April, but couldn't start due to covid. Am I entitled to any pay from them ?

ANSWER

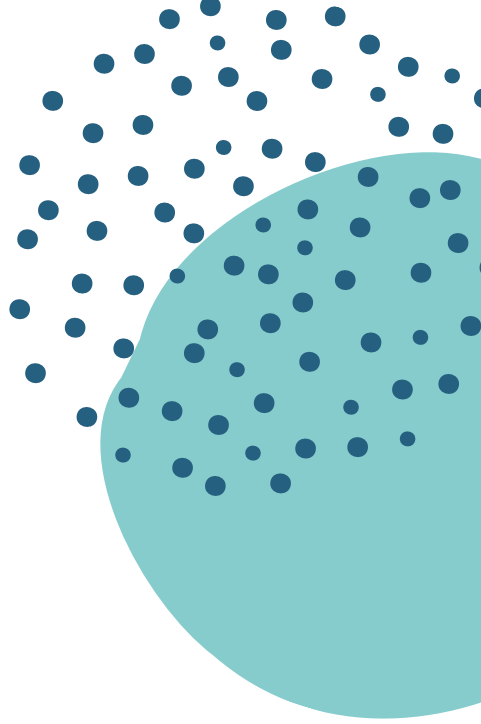
It depends on your contract. Was it terminated or suspended? If you have a signed contract that doesn't include a force majeure clause then technically you should be provided with 3 months' notice and/or 3 months work before being terminated.

QUESTION

Where do we stand with fallow, if self employed? I work for large corporate.

ANSWER

If you get paid a day rate, it should not affect you. The impact will be if you are paid per patient and then it will depend on the terms of your contract.



QUESTION

As a self-employed hygienist. Can the owner dictate my holiday time and length of holiday?




ANSWER

This will depend on the terms of your contract. It is likely that your contract will include clauses which refer to what notice the practice will need to receive of your holidays and how they will accommodate them. In the first instance, you will need to refer to the terms of your contract.

If there are no terms which set out how your holidays are to be agreed, then you may want to have a sensible discussion with the Practice Owner. Provided that enough notice is given, there should be no reason why an agreement cannot be reached.

QUESTION

I am self-employed with no contract & work in an NHS practice. When I return to work can the practice reduce my hourly rate of pay?



ANSWER

Ideally, you should have an agreement in writing. If you work on the NHS contract, you are currently required to be paid at the pre-covid level. On your return to the Practice, they cannot reduce your hourly rate of pay without serving notice to do so, the industry standard for this is 3 months' notice.

QUESTION

I'm self employed. My boss says that if I take anymore than 5 weeks holiday a year then I have to provide the practice with a locum hygienist. Can he do this?

ANSWER

Please refer to the terms of your contract in the first instance. This will usually contain provisions regarding the notice you are required to give to take holidays, how many holidays are permitted within a certain period, if you are away for a certain amount of time who will be responsible for providing a locum etc.

QUESTION

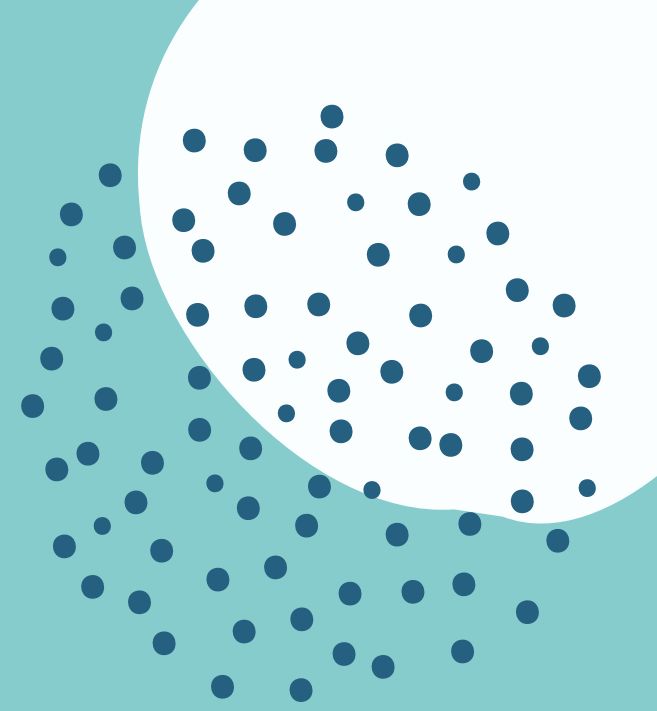
Whose responsibility is it to find cover if the practice continues to keep the appt book open during your absence (self-employed).

ANSWER

Please refer to the terms of your contract in the first instance. This will usually contain provisions about who will be responsible for engaging cover in the event that you are unable to attend the Practice.

QUESTION

If I have a self-employed contracted for 830-530 x4 days a week on an hourly rate. Can my practice ask me to leave early if there are no patients without paying me, e.g. if they ask me to leave at 4pm should I still be entitled to be paid until 5.30pm if that is in my contract? My practice manager keeps saying she is doing me a 'favour' any time she pays me when I don't have a patient in my chair.



ANSWER

Based on the level of control that the Practice has over your working arrangement, you may attract an employee status. If you can be classed as an employee, the only time an employer can make lawful deductions from your pay is whenever it is specified in the contract or by statute.

Alternatively, if you are self-employed, you will have to consult your contract and determine if there are any clauses which permit the practice to make deductions from your pay.

QUESTION

Il pay a surgery rental fee. Does this help in determining my self-employment status? I've worked at the practice for 20 years.

ANSWER

This is the equivalent of a licence fee and is a factor which would determine a favourable self-employed status. There are other factors to consider but this would carry weight.

QUESTION

I am self-employed for a practice for 20 years without a contract I haven't heard from them yet and I intend to talk to them to negotiate. Presume no rights if no agreement?



ANSWER

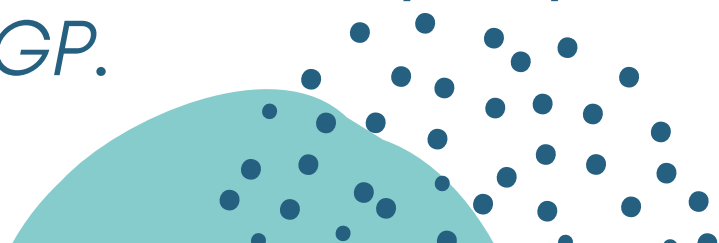
Not necessarily. There are certain tests that you would be required to meet but there is a possibility that you could engage an 'employee' status. This would depend on the level of control that the Practice exerts over you amongst other factors.

QUESTION

I am self-employed and can I ask my practice to provide me new hand instrument as they say we can only do non AGP.

ANSWER

Please refer to the terms of your contract in the first instance. This will contain any terms regarding the provision of equipment. Alternatively, you may wish to discuss this with Practice Owner and see if an agreement can be reached.



QUESTION

NHS pay for Self-employed DH & DT in all the devolved nations

ANSWER

NHS Pay: Must continue to be paid at the same pre-covid levels.

QUESTION

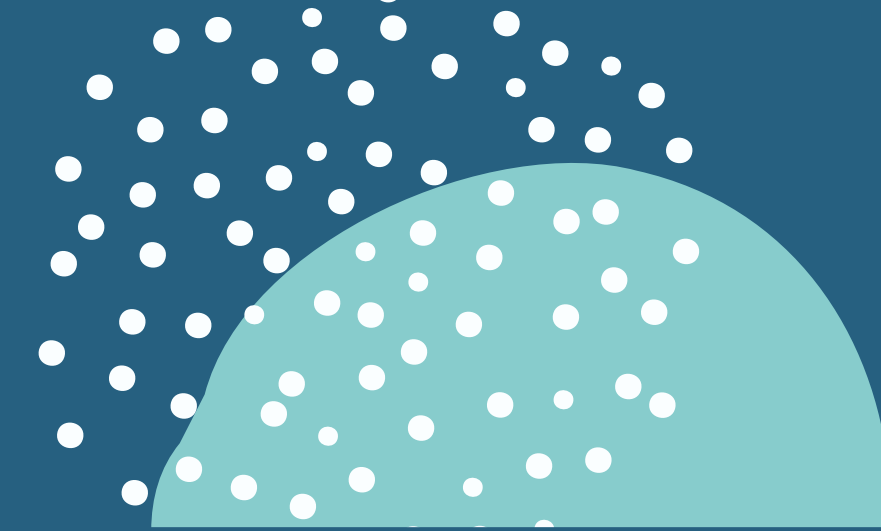
Notice period if don't want to return - how long do they have to give or work?

ANSWER

Notice Period: Please refer to the terms of the contract in the first instance. If you do not wish to return, you can serve immediate notice to terminate but there is the risk that the Practice Owner/Principal may pursue for breach of contract if you fail to work the requisite notice period.

QUESTION

*Changing how they will be paid from **hourly rate** to percentage basis.*



ANSWER

Changing hourly rate: The contract cannot be unilaterally varied. Any amendments to the contract must be agreed by both parties. If you do not wish to agree to the variations there are effectively 3 options:

1. Agree to the amendments and look for another role once the market begins to pick up.
2. Have a sensible discussion with the Practice Owner/Principal and highlight any concerns and how the amendment will affect you. There may be some room for variation.
3. Do not accept the amendments and risk the Practice Owner/Principal serving notice to terminate the contract.

It is advisable to approach the Practice Owner/Principal and attempt to get a written agreement in place. There are a number of resources available online providing guidance on what should be included in an agreement/contract.

QUESTION

Working without an agreement/contract

ANSWER

No Contract/Agreement: It is always important to outline the terms of your working arrangements, best practice is to have the terms included in a written contract so that both parties are aware of their obligations.

For those who continue to work without an agreement/contract, there is a possibility that they may attract an 'employee' status, putting Practice Owners/Principals in a precarious position.

Conversely, this can also put the self-employed person at risk as there are no set terms defining their obligations.

It is advisable to approach the Practice Owner/Principal and attempt to get a written agreement in place. There are a number of resources available online providing guidance on what should be included in an agreement/contract.

QUESTION

My practice want me to go back at the beginning of August working 3 days a week employed. They want me to work on a rolling rota including a 7 day week. This will mean working different days each week on a relatively short notice rota. I am happy to fit in with them to get the practice up and running again, but this could be a long term system. Obviously this makes any other work impossible and impacts hugely on my home life. I've been employed by the practice 15 years.

ANSWER

As an employee you have the right to request a fixed working pattern after 26 weeks of employment. You should speak to the practice and explain whilst you are happy to help whilst the practice is up and running, you require sufficient notice and a regular work pattern. You should also ask for any changes to be in writing, and stated to be temporary.

QUESTION

I was made redundant, employed over 13 years, no written contract. I was paid in full for 12 weeks (only because I looked up employment law). Owner tried to tell me I would get the Government recommended lay off money). Worked 7 weeks of those (not doing dental hygiene therapy, mostly taking temperatures, wiping handrails etc.) I was given options to sit in surgery and wait for any suitable emergencies, sit in surgery doing nothing, or do other duties in the practice. So I chose to be there to see any emergencies if they arose within my remit + other jobs in between as I prefer to stay busy. However, I was not involved in the fit testing procedure, so I couldn't see the emergencies within my remit even if they arose. I was then told by the practice owner's son not to go in for the rest of my notice - but will still be paid in full. I have been paid but there are still other dental hygiene therapists (one trainee going in doing same as I was) and another self employed who is not in the practice at the moment. If other therapists are still working there does that mean that my role is not really 'redundant'? I was the only employed hygiene therapist and paid more than any of the others, yet no pay rise since April 2007. Was this just a convenient way for him to let me go?

ANSWER

A redundancy situation arises where there is a workplace closure, a business closure or a diminution for employees to do work of a particular kind. If there are other employees doing the same role as you, you should have been included within a pool and consulted with. I would advise you to contact our Employment team for further advice.

QUESTION

Hello, would you be able to clarify what flexi furlough is? I am an employed hygienist and was furloughed at the end of March. I'm going to have a meeting tomorrow with the view to getting back to work, with possible reduction of hours, thank you

QUESTION

Can you be forced to use some holidays if on furlough?



QUESTION

I have been furloughed and my employer has made my wages up to 100% but has said I will lose 1 weeks holiday for every month I'm furloughed. Is he able to enforce this?

ANSWER

Flexible furlough allows you to return to work on less than your contracted hours, and you will be paid for those hours worked, and still receive furlough pay for the contracted hours that you do not work.

ANSWER

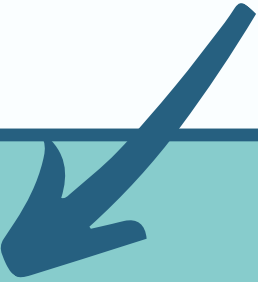
Employers can request that employees take holiday at any time by giving twice as much notice as the period you are required to take, this also applies whilst on furlough.

ANSWER

An employer can require you to take annual leave at any time by giving you twice as much notice, so if he provides you with two weeks notice, he can require you to take one weeks annual leave, but you are not losing it.

QUESTION

I had 2 week holiday booked for May. I am employed. At the end of March I gave my employer notice (5-6 weeks) to cancel my time off, as my holiday was cancelled by the company I had booked with, due to COVID. My employer refused to allow me to cancel my time off from work with them. Is this fair/allowed?




ANSWER

An employer can determine when you take holiday throughout the year, and whilst it may seem unfair that the cancellation was not allowed when your holiday was cancelled, many employers required employees to use holiday whilst the practice was closed to prevent employees having a large amount of holiday remaining at the end of the year.

QUESTION

Re: holidays. A nurse was furloughed and had holiday booked - she was paid in full for the holiday days, however her pay statement said all of the month as furlough and the days she had booked as holiday were topped up to reflect full pay for those days. I worked it out for her and she wasn't out of pocket - but we did wonder if this was allowed for claiming furlough pay in a holiday period.



ANSWER

Employees can be furloughed and take holiday at the same time, providing that the hours taken as holiday are topped up to 100%, therefore the furlough period is not interrupted and the employer can claim for this.

QUESTION

I am an employee and recently found out that a colleague, also a hygienist with same qualification, has been employed on an hourly rate £2/hour more than me. We both do the same job - I have more experience. Is this legal or should we be on the same rate?

ANSWER

Employers can determine their employees salary at their discretion, and differences can be based on various factors not just experience. Providing that employers do not discriminate on the basis of a protected characteristic, there is no issue with paying employees different amounts.

QUESTION



If you are redeployed within the practice, what happens if you don't feel confident with the new role?

ANSWER

If you have concerns, you should speak to your manager in the first instance to address any concerns that you have and see whether you can resolve these.

QUESTION

Can I hand my notice in whilst I am on furlough? I am an employee.

ANSWER

Furlough does not prevent you from resigning from your employment, you just need to ensure you comply with the provisions of your employment contract.

QUESTION

Hi, in May I was made redundant. I was furloughed prior to this and I have asked my employer if I will still receive the furlough payment from the government until July 2020. They have not got back to me despite having asked the question twice now. What would your advice be?



ANSWER

If you have been made redundant you may be entitled to three payments – statutory redundancy pay, notice pay and holiday pay. Providing that you were paid sufficient notice in accordance with your contract, the employer is not obliged to keep you on furlough.

QUESTION

If practice stop my furlough leave, can I go back on if it needed later on?



ANSWER

Employers will determine when the furlough scheme needs to be utilised and for which employees, if you have concerns about being at work you should speak to your employer in the first instance.



QUESTION

I was due to join a corporate practice in April 2020, but due to covid was unable to do so. Am I entitled to any furlough pay even though I've not actually started with them?

ANSWER

Employers can only furlough employees that were on their payroll as of 19 March 2020, it is unlikely that you will have been on their payroll and therefore they would not be able to claim through the scheme for you.

QUESTION

I am employed and have been furloughed and starting back to work in August with reduced hours to start. My employer is saying he will not furlough the remaining hours of my contract hours, I thought this could be done up to the end of October?

ANSWER

You are correct that from 1 July until 31 October employers can benefit from the flexible furlough scheme where you work some hours, and are furloughed for the remainder of your contracted hours.

