

SECOND SUPPLEMENT TO THE GIBRALTAR GAZETTE

No. 4709 GIBRALTAR Thursday 7th May 2020

LEGAL NOTICE NO. 178 OF 2020

APPROPRIATION ACT 2019

APPROPRIATION (BUSINESS EMPLOYEE ASSISTANCE TERMS COVID-19) (AMENDMENT) REGULATIONS 2020

In exercise of the powers conferred on him by section 8(1) of the Appropriation Act 2019, and after having consulted with the Leader of the Opposition, the Chief Minister has made the following Regulations—

Title.

1. These Regulations may be cited as the Appropriation (Business Employee Assistance Terms Covid-19) (Amendment) Regulations 2020.

Commencement and expiry.

2. These Regulations come into operation on the day of publication and shall continue for the Relevant Period.

Interpretation.

3. In these Regulations—

“Minister” means the Minister with responsibility for Finance;

“Relevant Period” means the period commencing on the date of publication of these Regulations up to the earlier of the date announced by the Minister stating that the Covid-19 pandemic is over by Notice in the Gazette or 30 June 2020 (or such later date as the Minister, in consultation with the Leader of the Opposition unless it is not practicable to do so, may determine by Notice in the Gazette).

Amendment of the Appropriation (Business Employee Assistance Terms Covid-19) Regulations 2020.

4.(1) The Appropriation (Business Employee Assistance Terms Covid-19) Regulations 2020 are amended in accordance with this regulation.

(2) In regulation 4(5), in the first place it occurs after “calendar month” insert “(or such other date as Government may announce)”.

(3) In regulation 7(b), 11(b) and 15(b) for “28 days in the 6 months preceding 15 March 2020” substitute “28 days in the 9 months preceding 31 March 2020”.

(4) After regulation 29 insert—

“Partially-Active and Fully-Inactive Employees.

30.(1) For the purposes of this regulation—

“Fully Inactive Employee” means an Inactive Employee that has been designated as being inactive by their employer for the whole calendar month during which an application for a BEAT COVID-19 Contribution is made in respect of their inactivity.

“Partly Inactive Employee” means an Inactive Employee that has been designated as being inactive by their employer for an aggregate period of half of the calendar month during which an application for a BEAT COVID-19 Contribution is made in respect of their inactivity.

“Partly Inactive Period” means, in respect of a Partly Inactive Employee, the period of inactivity that is determined by their employer during the calendar month that the Partly Inactive Employee is designated as being inactive, and which period can be determined by the employer on a half-day, daily, weekly or bi-weekly basis as the employer deems necessary, provided that the aggregate period of inactivity shall be 50% of the period that the employee is contracted to work in accordance with their contract of employment.

(2) An employer shall designate each Inactive Employee as a Fully Inactive Employee or a Partly Inactive Employee when making their application for a BEAT COVID-19 Contribution.

(3) An employer who designates an Inactive Employee as a Partly Inactive Employee shall pay that Partly Inactive Employee 50% of their salary in accordance with their contract of employment and the employer shall have no right to receive any contribution from Government or its COVID-19 Response Fund in connection with this payment.

(4) These regulations shall only apply to a Partly Inactive Employee during their Partly Inactive Period.

(5) Any BEAT COVID-19 Contribution or BEAT COVID-19 Payment attributable to a Partly Inactive Employee shall be reduced by the sum of 50%.

(6) An employer shall not be liable to PAYE in respect of any Partly Inactive Employee for such part of the Partly Inactive Employee’s salary that is paid by the employer in accordance with subregulation (3).

(7) Any claim for allowances made in accordance with the Provisions of the Income Tax (Allowances, Deductions and Exemptions) Rules 1992 shall be reduced by 1/24 for each month in which a Partly Inactive Employee receives a BEAT COVID-19 Payment.

Private Sector Funded BEAT for Excluded Sector.

31.(1) For the purposes of this regulation—

“Furlough Period” means a period of up to one calendar month during the Relevant Period or such lesser alternate or other periods as may be agreed with the Director of Employment where the Director of Employment believes this to be fair and reasonable in the circumstances for the purposes of rotating Inactive employees, provided that the aggregate period in days does not exceed 35 days, unless a longer aggregate period is agreed with the Financial Secretary, where the Financial Secretary believes this to be fair and reasonable in the circumstances;

“Furlough Salary” means the amount to be paid by an employer to an employee under subregulation (6) or (7);

“Inactive Employee” means any employee who:

- (a) is registered with the Department of Employment or the Income Tax Office as an employee of an employer from an Excluded Sector;
- (b) does not provide any services to their employer during the relevant period of inactivity; and
- (c) is designated as an Inactive Employee in accordance with subregulation (2) with the consent in writing of the Director of Employment.

(2) An employer from an Excluded Sector who wishes to designate an employee as an Inactive Employee for a Furlough Period, shall make an application in writing to the Director of Employment who shall determine with the approval of the Financial Secretary whether it is fair and reasonable in the circumstances on a case by case basis for such employee to be so designated.

(3) An employer who seeks to designate an employee as an Inactive Employee in accordance with the provisions of subregulation (2) shall first notify the relevant employee in writing.

(4) An Inactive Employee shall not provide any services to their employer during the Furlough Period.

(5) An Inactive Employee shall have a new status in law whereby they shall retain all their employment rights and obligations during the Furlough Period, save for their right to be paid their salary in accordance with their contract of employment and for their employment rights to accrue on their contracted salary, as such rights and

obligations may need to be suspended for the purposes of carrying into effect this regulation.

(6) An Inactive Employee shall have a right to receive at least the sum of 50% of their contracted salary or £1,155 over a calendar month period, whichever is the higher, from their employer throughout the Furlough Period.

(7) An employer that designates any of its employees as an Inactive Employee and who is desirous of paying their Inactive Employee a sum that is higher than 50% of their contracted salary set out in subregulation (6) throughout the Furlough Period shall be able to make such additional payment to their Inactive Employee under this regulation, provided that the payment exceeds £1,155 over a calendar month period.

(8) An employer that designates any of its employees as an Inactive Employee shall pay the sum required to be paid under subregulation (6) or, where applicable, subregulation (7), to the relevant Inactive Employee.

(9) An employer who is required to make a payment under subregulation (8) shall have no right to make an application under regulation 4(1) or to receive any contribution from Government or its COVID-19 Response Fund.

(10) Subject to subregulation (11), the maximum number of employees that may be designated as Inactive Employees by an employer from an Excluded Sector shall not exceed 25% of such employer's total workforce.

(11) An Employer from the Excluded Sector may make an application in writing to the Financial Secretary to designate as inactive a number of employees that exceeds 25% of their workforce, provided that the Financial Secretary is satisfied that this is fair and reasonable in the circumstances and in the public interest.

(12) Any payment made by an employer to an Inactive Employee under subregulation (8) of up to a maximum of £1,155 over a calendar month period shall be deemed to be a BEAT COVID-19 Payment for the purposes of regulations 19 and 20.

(13) An employer shall be liable to PAYE in respect of any Inactive Employee for such part of the Inactive Employee's salary that exceeds the sum of £1,155 in accordance with subregulation (7).

(14) An Inactive Employee who is ordinarily required to work less than 37.5 hours a week by their employer or under their contract of employment with their employer shall have the amount of £1,155 pro-rated against the average number of hours that they ordinarily work per week before 15 March 2020 for the purposes of this regulation.

(15) An employer shall have no right to any BEAT COVID-19 waiver measures paid from the BEAT COVID-19 Response Fund that may be announced by Government as being available to Relevant Sector businesses by reason of the employer's designation of any Inactive Employees under this regulation.

(16) Any employee or their representative body, who is proposed to be designated as an Inactive Employee under this regulation shall have the opportunity to make representations in writing to the Financial Secretary and/or the Director of Employment within 48 hours of the notice referred to in sub regulation (3), and such representations shall be taken into consideration prior to any determination being made by the Director of Employment or the Financial Secretary under this regulation.”.

Dated: 7th May, 2020.

F R PICARDO,
Chief Minister.

EXPLANATORY MEMORANDUM

These Regulations amend the Appropriation (Business Employee Assistance Terms Covid-19) Regulations 2020.