The Jamaican Employer and Employee's Rights and Responsibilities when dealing with coronavirus (COVID-19)

a webinar by

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MF&G

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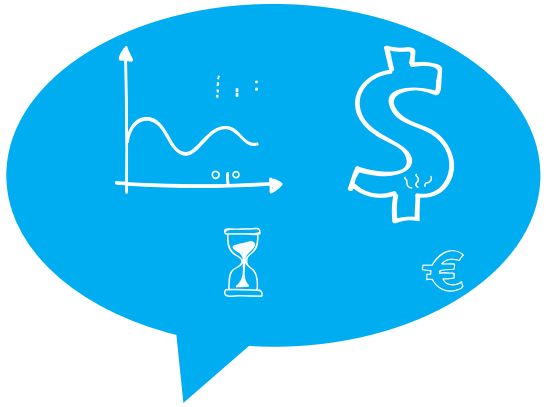
We’re talking about

- Laws on sick leave and vacation leave
- Self-imposed and mandatory quarantines
- Remote work policies
- Using flexitime to keep afloat
- Lay-offs and redundancies; and
- Dismissing an impacted worker

Key Legislation

- **Holidays with Pay Act** (vacation & sick leave)
  - **Holidays with Pay Order**
- **National Minimum Wage Act** (overtime)
- **Employment (Termination & Redundancy Payments Act)** (layoffs & redundancy)
  - **ETRPA Regulations**
- **Public Health Act** (quarantine & closure)
- **Labour Relations Code** (dismissal)

Healthy Business



Sick Leave

2 normal working weeks
Not intended for quarantines
Usually has no cash value
Can’t be accumulated
Difficult to verify
Not subject to approval
Annual qualifying period

Vacation Leave

Minimum 2-3 normal working weeks
Useful for any purpose
Has a cash value
Can be saved or forfeited
Can’t be forced to take it
Subject to approval
Initial qualifying period

Healthy Business

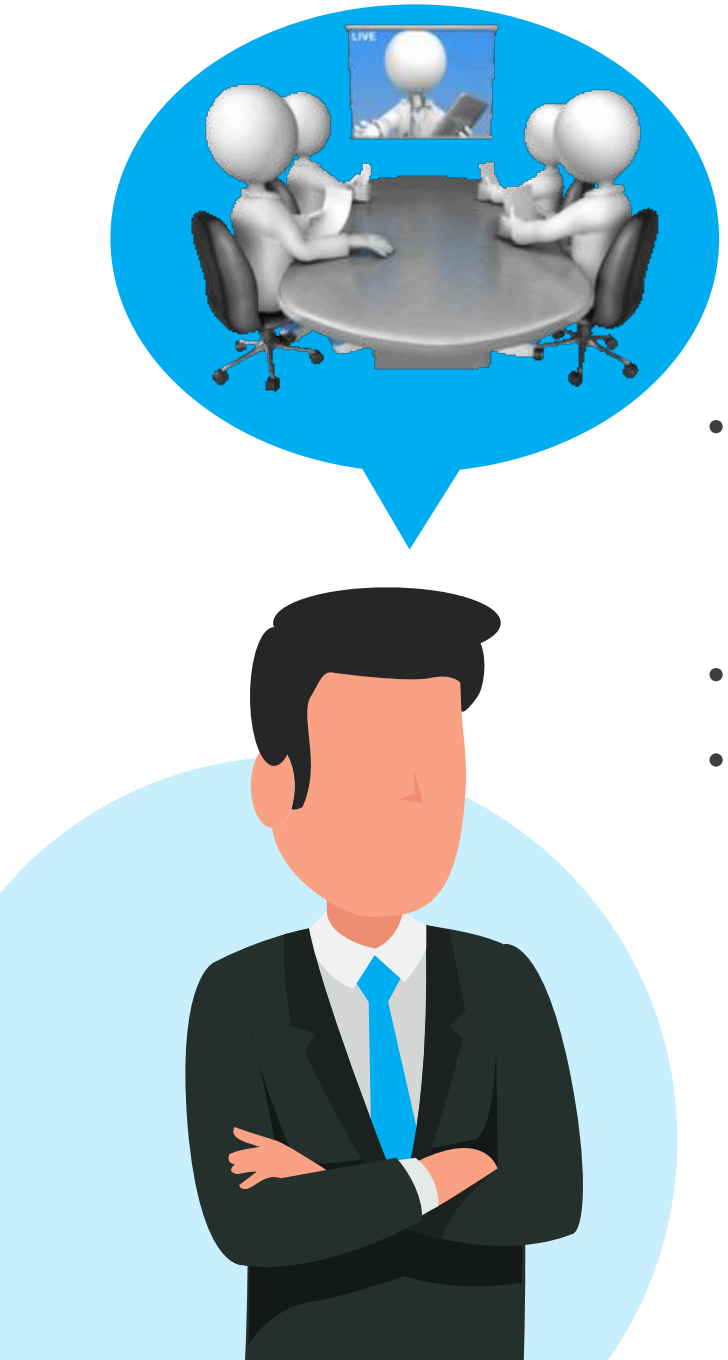
Paid vs Unpaid Time Off

- Legally, an employer has no duty to **pay** an employee for time away from work unless the employee is:
  - actually sick & has sick days available;
  - on approved paid vacation leave;
  - on some other approved type of leave (e.g. departmental leave, personal leave, compassionate leave, etc.).
- An employee can be granted any amount of **unpaid** leave at the employer's discretion, which should be exercised reasonably and responsibly.

Vacation leave

- An employer cannot legally compel an employee to apply for or use his or her vacation leave. However, it may be in the employee's best interests to use their vacation leave if they (a) are not sick (b) have no other available type of paid leave and (c) can't afford to not be paid for the time away from work.
- Many employees have accumulated more vacation leave than the maximum permitted by law and could forfeit those days anyway.

- Just because your boss insists that you stay away from work does not mean that you're entitled to be paid for the day(s). An employer has a legal and moral duty to protect the workplace and everybody within it.
- Likewise, workers owe each other a duty to stay away from the job even if they have exhausted/ are not entitled to take paid sick leave or vacation leave.



Remote Work

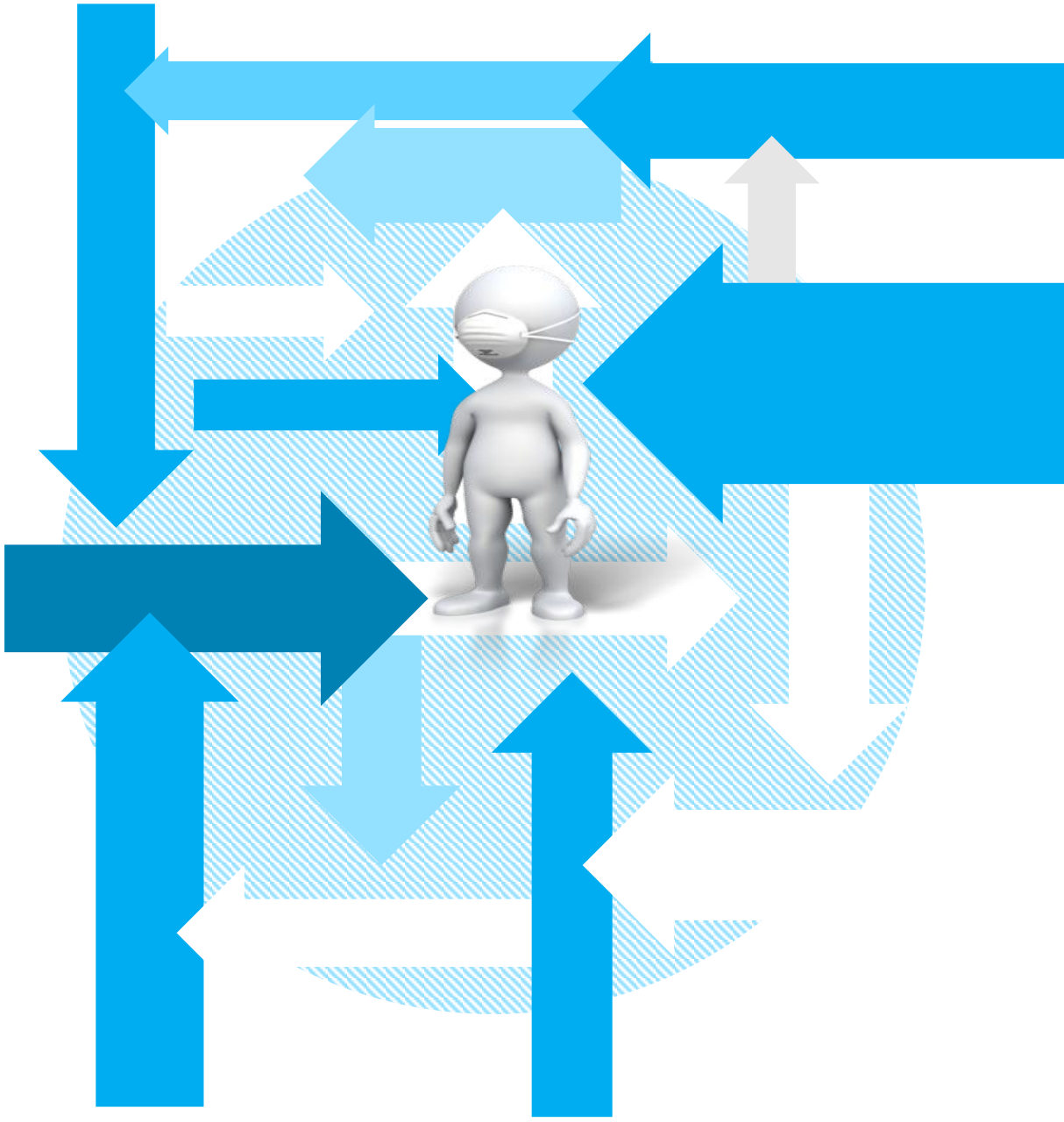
- An employee who works remotely is not on leave. Assuming they are approved to work remotely in keeping with company policy, they should be paid.
- Challenge to monitor productivity & overtime remotely.
- There is no law in Jamaica that governs working remotely. It is entirely up to the workplace to create such a policy.

Remote Work (Cont'd)

- Having a remote work policy is the best way to deal with quarantines, whether self-imposed or mandated by the company or the public health officials.
- Company has a duty to ensure reliable remote access by employees, but not necessarily to purchase smartphones, laptops or desktop computers.
- Good idea for the company to absorb certain costs (e.g. data plans, CUGs, software licensing fees).

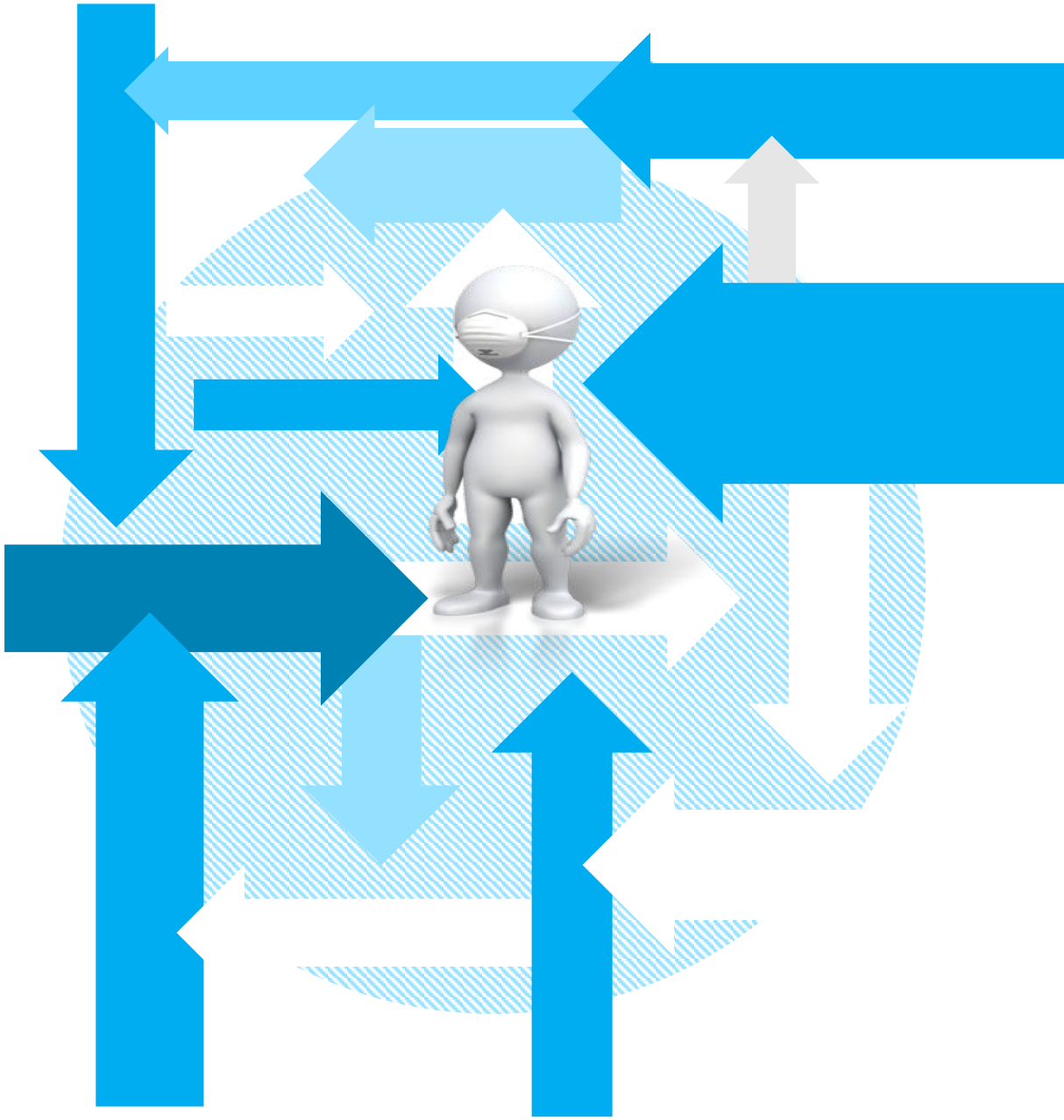
Duty to keep workers safe

- Employers have a duty to keep workers safe from all material, foreseeable harm. This would include:
  - Restricting non-essential overseas travel;
  - Maintaining consistent water supply;
  - Providing hand sanitation stations;
  - Banning sick employees from work;
  - Providing masks, gloves, protective clothing as appropriate.
  - Granting time off above what the law requires.

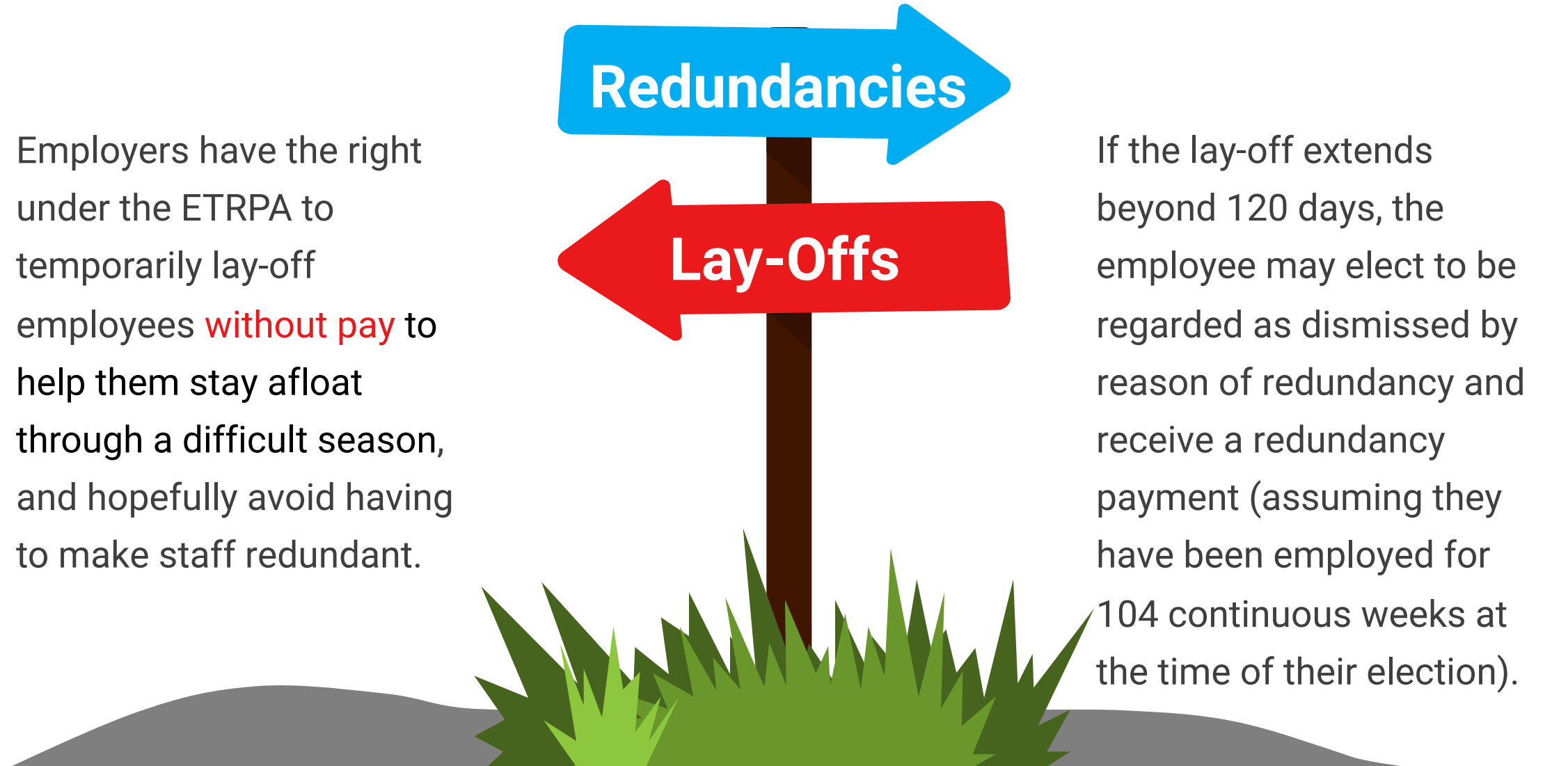


Employee's Responsibilities

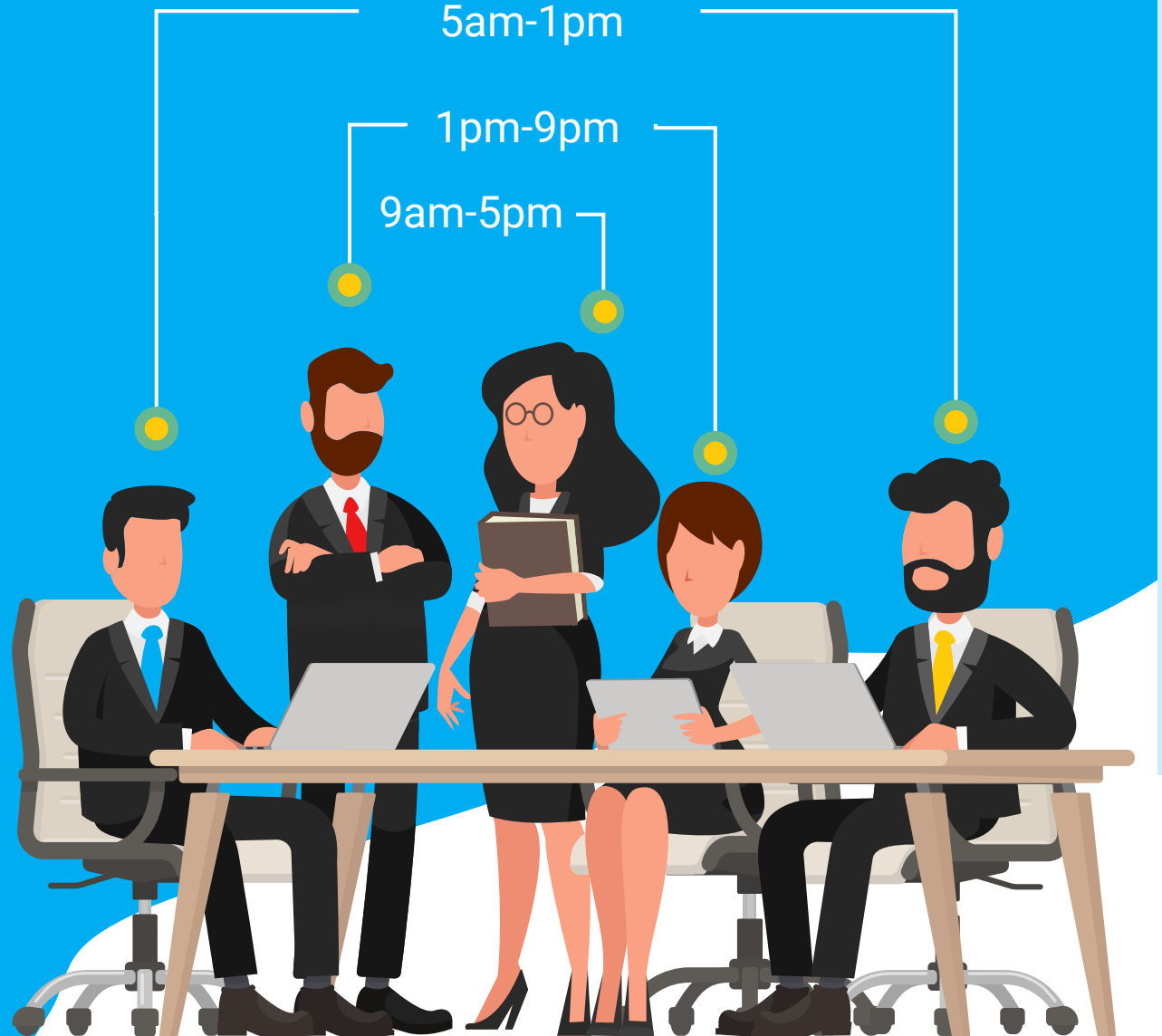
- Employees have a responsibility to:
  - Help mitigate loss of productivity;
  - Cooperate in setting up remote access;
  - Be open & honest about their health;
  - Look out for each other & the business;
  - Report risks and gaps;
  - Not abuse any relaxation in policies;
  - Be reasonable



Employers have the right under the ETRPA to temporarily lay-off employees without pay to help them stay afloat through a difficult season, and hopefully avoid having to make staff redundant.



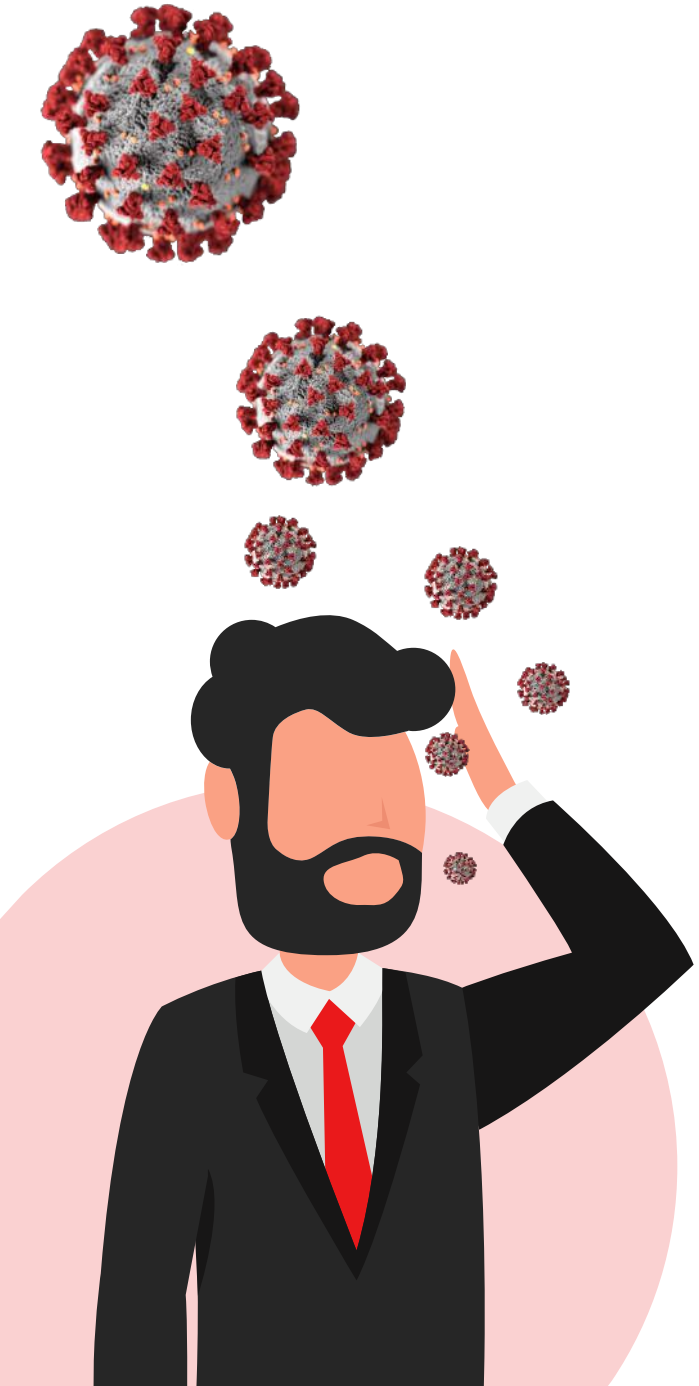
If the lay-off extends beyond 120 days, the employee may elect to be regarded as dismissed by reason of redundancy and receive a redundancy payment (assuming they have been employed for 104 continuous weeks at the time of their election).



Flexitime

Implementing work shifts wherever possible will reduce the number of employees who must come in close proximity at any given time, thereby reducing the risk of community spread, IF the workplace is disinfected after each shift.

Dismissal



Right not to be unjustifiably dismissed

Duty to be reasonable & use dismissal as a last resort

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Q & A

1. Questions should be asked using the Q&A feature in Zoom (not the chat feature) or by posting to Twitter or FaceBook
2. Please remember to keep all questions general and don't call names
3. Specific questions can be emailed to gavin.goffe@mfg.com.jm but please do not include confidential information until I've confirmed that we have no conflict of interest