



Guidance Note for Employers - Coronavirus

Current as at 2pm on 24 March 2020

The advice provided in this note is based on information available as at 2pm on 24 March 2020. Guidance will be subject to change as the situation continues to develop and you should ensure that you keep up to date with latest advice from the government, Public Health England and the Foreign and Commonwealth Office.

This update is of a general nature and is not a substitute for professional advice. No responsibility can be accepted for the consequences of any action taken or refrained from as a result of the content of this note.

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1 Background

COVID-19 is a novel strain of the coronavirus family, which also includes viruses such as Middle East Respiratory Syndrome (MERS) and Severe Acute Respiratory Syndrome (SARS). The primary symptoms of COVID-19 are a continuous cough, fever and shortness of breath. The majority of those infected have mild symptoms and many have no symptoms at all. However, some individuals, including the elderly and those with underlying health conditions, are at a higher risk of developing complications. In a small number of cases, these complications can lead to death.

2 Relevant duties of employers

2.1 There are a number of duties that employers should keep in mind when assessing their response to the virus, including:

2.1.1 Duties under the Health and Safety at Work etc. Act 1984, principally:

(a) The duty of employers to ensure the health, safety and welfare of their employees. This includes taking all steps which are reasonably practicable to keep the workplace free from infection.

(b) The duty of employees to take reasonable care of their own health and safety and of other persons who may be affected by their act or omissions at work.

2.1.2 The common law duty of employers to take reasonable care of the health and safety of the workforce.

2.1.3 Express and implied duties under employment contracts, particularly the implied duty of mutual trust and confidence between employers and employees.

2.1.4 Duties in relation to discrimination under the Equality Act 2010.

3 Compliance with government guidance

3.1 The government has issued a guidance note for employers and businesses on COVID-19. To view the guidance, visit <https://www.gov.uk/government/publications/guidance-to-employers-and-businesses-about-covid-19/>

3.2 Employers should be aware that employees are not mandated to follow any public health guidance so employers should consider introducing rules and policies on coronavirus, including procedures in relation to self-isolation and hygiene. This will allow employers to discipline employees, where appropriate, if they do not adhere to the employers rules.

3.3 As an example, an employer might create a rule prohibiting employees from returning to work for 14 days after travelling from a Category 1 country. If an employee were to break this rule by returning to work immediately, they could be subject to disciplinary action.



4 Lockdown

- 4.1** On 23 March 2020, the government announced a state of lockdown for the United Kingdom. Along with restrictions on personal activity, the Prime Minister also stated that people should only travel to and from work where 'absolutely necessary' and where the work cannot be done from home. Guidance suggests that this means individuals are permitted to travel where their work cannot be done from home and does not only apply to key workers.
- 4.2** All those who are required to attend work should observe the '2 metre' social distancing guidance. The government have prohibited gatherings of more than 2 people, with the exception of work gatherings that are 'essential'. Workers should minimise all other meetings and gatherings in the workplace.

5 Practical steps to reduce risks in the workplace

- 5.1** The government has recommended that employers implement the following practical steps in their workplaces, which include encouraging staff to:
- 5.1.1** wash their hands regularly for at least 20 seconds;
 - 5.1.2** cough and sneeze into a tissue and dispose of the tissue in a bin straight away; and
 - 5.1.3** clean surfaces (such as desks, keyboards and phones) frequently.
- 5.2** Taking all reasonably practicable steps to keep the workplace free from infection should be sufficient to discharge an employer's duties under the Health and Safety at Work etc. Act 1984.

6 Employee absences and pay

- 6.1** Employers are likely to see employee absences increase, which will include employees who are unwell or self-isolating and those who are caring for dependents (for example, if schools close). The information reflects the statutory position but employers are, of course, able to offer enhanced pay provisions. A summary table showing how employers should treat employee absences and pay is set out at Appendix 1.
- 6.2** To assist with employment costs, the government have announced a number of measures to support employers, which include the following:
- 6.2.1** For employers with less than 250 employees, the government will reimburse statutory sick pay paid for up to 2 weeks per employee where an employee is unable to work because of coronavirus;
 - 6.2.2** For all UK employers, the government will pay 80% of employees' salaries for staff that would otherwise have been laid off.

For further information, please refer to the government guidance on support for businesses (see link under 'further information' below).

6.3 Sickness absence



The government have made it clear that employees should receive sick pay during periods of self-isolation and have recently announced their plans to amend the statutory sick pay (SSP) scheme so that employees receive SSP from their first day of absence. The government intend the legislation enacting this to apply retrospectively from 13 March 2020 but this is not yet in force. For the moment, therefore, the position remains that employees are paid SSP from the fourth day of absence but employers should be aware that they may need to pay backdated SSP once the legislation is passed.

6.4 Where an employee is diagnosed with or has symptoms of COVID-19

Clearly, employers should pay contractual and statutory sick pay in the usual way to employees who self-isolate because they have developed symptoms of COVID-19.

6.5 Where a medical expert instructs the employee to self-isolate or the employee is self-isolating in line with guidance published by Public Health England (or other relevant bodies in Scotland or Wales)

6.5.1 The government have issued 'stay at home guidance' which sets out the circumstances in which an employee should self-isolate (see link under 'further information' below).

6.5.2 The government have advised that SSP is payable where an employee is advised by NHS 111, their GP or another medical professional to self-isolate. Whether an employer is required to pay contractual sick pay will depend on their contractual sick pay provisions but where employers offer contractual sick pay, it would be good practice to pay during periods of medically advised self-isolation. Otherwise, there is an increased risk that they will attend work and, if infected, spread the virus.

6.5.3 The Statutory Sick Pay Regulations have been amended to provide that, if an employee isolates themselves in accordance with guidance published by Public Health England, they will be deemed incapable of work and so eligible for statutory sick pay. This applies regardless of whether they have a written notice or have been ordered to self-isolate by their employer.

6.5.4 NHS 111 or the employee's GP may provide employees with a written notice, certifying that they are deemed incapable of work, however, where the employee is self-isolating in line with guidance from Public Health England, they will not require a medical note and should still receive SSP.

6.6 Where an employee self-isolates voluntarily, without instruction from a medical expert or employer or not in line Public Health England guidance

However, if the employee self-isolates against the advice of Public Health England, and without a written notice from a medical expert, the employee will be deemed capable of work so would not be eligible for either contractual or statutory sick pay. Voluntarily self-isolation would therefore need to be treated as unpaid leave or



taken as holiday, if the employer wishes to offer this option. In some circumstances, this may be a disciplinary offence.

6.7 Where an employee is quarantined abroad

6.7.1 If an employee is stranded in quarantine overseas, and is able to work remotely, they should be paid as normal. However, if they cannot work remotely, either because they have no such facility or because the work cannot be undertaken in that manner, then the employee has no right to sick pay. In the absence of any provision in the employee's contract or policy, employers are not required to pay the employee for this period. However, it may be good practice to pay if they are stranded in quarantine after they have returned from a work assignment abroad.

6.7.2 The employer may consider asking the employee to take the quarantine time as annual leave. Employers can mandate this, but must provide twice as much notice as the period of annual leave they are mandating. If this is not feasible, an employer may introduce some other 'special' leave in light of this unique situation. However, they should consider how this leave may be used again if a similar situation arises in the future.

6.8 Where the employer instructs an employee to self-isolate

The employee should be paid in full in this situation, unless their contracts allow for suspension on no pay (which would be rare). ACAS likens this instruction to a form of suspension.

6.9 Discretionary sick pay policies

Where an employer has a discretionary sick pay policy and wish to limit the amount of sick pay paid or not pay contractual sick pay at all, they should consider their position carefully before electing not to pay. As always, the key is consistency. If the employer chooses to pay sick pay in the first few cases of self-isolation, they may then not be able to refuse to pay it to other employees in future. Employers should also consider whether these discretionary schemes are legitimately discretionary. For example, if the employer has always chosen to pay 6 weeks' sick pay in the past, this may have become an implied term of the employee's contract and the employer will have to pay.

6.10 Reporting illnesses

In most cases, employees should report illness or self-isolation in the usual way, but employers should consider what would happen where line managers or HR staff are absent. Employers should ensure they have policies in place to provide back-up in case those responsible for recording absences are taken ill.

6.11 Trigger systems

Some employers may have sickness absence review procedures when an employee takes a certain number of days' sickness absence. If this is the case, employers may wish to disregard sickness arising from COVID-19 to avoid discouraging employees



from self-isolating or having to deal with a large number of sickness absence procedures.

6.12 Certifying absences

6.12.1 The government advise employers to use their discretion not to insist on medical evidence after 7 days' sickness absence, where the employee or a co-habitant is unwell and has been advised to stay at home in line with public health advice.

6.12.2 If the employer decides to insist on evidence, either for sickness or that the self-isolation is valid, then employees can contact NHS 111 online or use the NHS website to obtain an isolation note. Employers should accept these isolation notes as valid evidence of incapacity to work.

6.13 Agency workers

Agency workers are not employees of the end-user and so employers looking to prevent agency workers attending the workplace will only need to contact the agency to inform them of this. The situation will be different if the employer is in a contractual agreement with the agency to take a certain number of agency workers.

6.14 Leave to care for dependants

6.14.1 Some employees may need to take time off to help a child or other dependant if they become unwell or if schools close. In this scenario, employees are entitled to take a reasonable amount of time off as dependents leave. Employees have no right to pay during this time unless provided for in their employment contract or in the workplace policy.

6.14.2 Employers may have a policy setting out the procedure for taking leave for dependants.

6.14.3 Employees must contact their employer as soon as reasonably practicable to inform them about the reason and likely length of their absence. This does not permit the employee to take an indefinite amount of time off but should be permitted to take a few days off to look after the dependant/make arrangements for their ongoing care. Employers may allow staff to work from home where that is possible, in which case they would be entitled to full pay. Any further absence could be taken as holiday or unpaid leave.

7 Where an employee refuses to come to work

7.1 In light of the recent lockdown, many employees will no longer be attending work, particularly if they are able to work from home. However, some types of work cannot be conducted from home, and so some members of staff are likely to be needed to attend the workplace. Many employees will now be wary about coming to work. For example, there may be employees who refuse to attend work for fear of catching the virus, rather than where they are self-isolating. Employers should



listen to the concerns of these employees, and make efforts to accommodate them where those concerns are legitimate.

- 7.2** As an example, if an employee is elderly or has an underlying health condition that would make them vulnerable, employers should consider their duty of care and their obligations to make reasonable adjustments for disabled employees. This may include arranging for them to work from home if possible. If the disabled employee cannot work from home, the employer should consider whether there is any other work they can do at home whilst they are absent and if not, it may be appropriate for them to be suspended on medical grounds and receiving full pay.
- 7.3** If the employee refuses to engage with the employer's attempts to resolve the matter, the employer is entitled to take disciplinary action against the employee. In most cases, dismissal is unlikely to be a reasonable response (certainly at the first stage).
- 7.4** In some cases, the absent employee may be concerned about the lack of hygiene of their co-workers. Employers should introducing hygiene rules for the employees to follow which may assist in encouraging attendance, as the employer can assure an anxious employee that any employee who does not follow the hygiene rules may be subject to disciplinary action. The rules will also help to reduce any potential liability for breach of the employer's duty to ensure the health and safety of their employees.

7.5 Vulnerable family members

Employees may not wish to attend if they live with a vulnerable person, for fear that they may spread the virus to them. In this case, they will not be able to claim statutory sick pay, and unless the contract makes provision for this (which is unlikely) they will not be entitled to contractual sick pay either.

7.6 Pregnancy

As at the date of this note, no evidence has been found that pregnant mothers are at an elevated risk as a result of the virus. However, employers have a duty to carry out a risk assessment to ensure the health and safety of the workplace. If the risk assessment concludes that pregnant women are not safe at work due to their pregnancy, they should be put on maternity suspension, during which they will be entitled to full pay.

8 Homeworking

- 8.1** The government have now recommended that employees should work at home if possible. In any case where an employee can work from home (and are in fact doing so) they should be paid in full.
- 8.2** If an employee is ordered to work from home by an employer, they might ask that the employer reimburse their utility bills for the period in which they would usually be at work. Employers should review their existing policy in these situations, e.g. for when employees are unable to attend work due to heavy snow, and should apply



their previous decisions consistently, unless there is a good reason for departing from them.

- 8.3** Given the obvious potential for distraction, particularly for those who are working at home with young children, employers should be clear with employees as to what is expected from them (particularly in terms of working hours and productivity).

9 Response to suspected cases of coronavirus in the workplace

- 9.1** If an employee becomes unwell at work, and there is reason to believe that the cause may be coronavirus (for example, because they have been to an affected area in the last 14 days or have come into contact with an individual with a confirmed case) the government has issued advice on the recommended response. The employee should be sent home immediately and follow the stay at home guidance (see link under 'further information' below).

- 9.2** If they need medical advice, they should be advised to go online to NHS 111 or call 111 if they do not have internet access. If urgent assistance is required, the employer should call 999.

- 9.3** Any member of staff who has helped someone with an ill member of staff need not be sent home unless they also develop symptoms. However, they should be told to wash their hands thoroughly for 20 seconds in line with government hygiene guidelines.

- 9.4** Closure of the workplace is not currently recommended if a case of coronavirus is identified.

9.5 Cleanliness and rubbish disposal

- 9.5.1** The government do not have any active guidance on rubbish disposal for employers. However, guidance for households recommends that, where there any tissue or other waste item that has been in contact with an affected person should be put in a plastic rubbish bag, which should be tied when full. This bag should be placed into a second bin bag, tied and put aside for at least 72 hours before it is disposed of (unless the suspected case is confirmed to have tested negative for the virus). If this is not practicable, the employer should arrange for collection of the bin bag as Category B infectious waste.

- 9.5.2** The government have advised that, where possible, areas where someone with suspected coronavirus has been should be closed and secured for 72 hours until it is cleaned. When it is cleaned, disposable/washing up gloves and aprons should be worn. Disposable cloths should be used to clean hard surfaces with warm soapy water. Then normal household disinfectants should be used on the area. Particular attention should be paid to areas which are frequently touched. If an area shows evidence of heavy contamination, for example visible bodily fluids, cleaners should use protection for the eyes, mouth and nose.



- 9.5.3 The cleaner should wash their hands for 20 seconds after removing protective apparel.
- 9.5.4 Public areas, including corridors, need not be subject to special decontamination unless body fluids are visible. Cleaning cloths used on contaminated areas should be disposed of in accordance with the rubbish disposal procedure above.
- 9.5.5 If laundry is carried out in the workplace, items should be washed on the warmest water setting and allowed to dry completely. Dirty laundry should not be shaken. See link under 'further information' below.

10 Employee travel

10.1 Whilst some airlines are cancelling flights, there are still a large number going ahead. Employers should therefore give consideration to travel by employees: both professional and personal.

10.2 Work assignments abroad

10.2.1 The government have advised against all non-essential travel overseas, initially for a period of 30 days. Where work-related trips are necessary and are still able to go ahead, the World Health Organisation recommend that employees should first be briefed by a health professional and the employer should take steps to safeguard the employee's health and mitigate any risks involved with the trip. The government offer travel advice on every country here <https://www.gov.uk/foreign-travel-advice>.

10.2.2 It would also be advisable for employers to purchase good travel insurance for any work assignment. However, it is unlikely that travel insurance will extend to areas which the Foreign and Commonwealth Office advises against travelling to. If insurance has already been purchased, employers should check with the travel insurance company about any restrictions in place against the destination. The employer should also make checks on all those people that the employee will be meeting as part of the work assignment.

10.2.3 Before the employee leaves, it would be prudent to ensure that they have a laptop or some other facility to allow them to work remotely, in case they are quarantined on their return. This should limit potential issues around sick pay whilst in quarantine.

10.3 Employees' personal travel

10.3.1 Some employers may also wish to prohibit employees using their personal annual leave to travel to certain countries. Employers should be cautious about doing this, and should only consider it if: 1) the employment contract permits; or 2) where it can be justified by the employer's duty to ensure the health and safety of their employees. It is likely to only be justifiable if employees work in a sector such as health or education, which may require more strict restrictions. Employers



should also avoid doing this in relation to any countries which are not advised against travelling to by the Foreign and Commonwealth Office.

10.3.2 If an employee is insisting on using their annual leave to travel to a high risk area, employers have a number of options:

- (a) They could order the employee that, on their return, they must self-isolate and work from home.
- (b) If their work cannot be carried out remotely, the employer should insist that the employee take the self-isolation period off as unpaid leave. The employer should check their sickness absence policy to confirm that they can withhold company sick pay in these circumstances and it is likely that employers will need to issue a notice to all staff to confirm the position prior to enforcing it.
- (c) Alternatively, the employer could cancel the employee's annual leave. In this situation, employers must give the employee twice as much notice as the planned period of annual leave. However, if flights have already been paid for, employers may have to consider compensating the employee for the costs they have incurred.

11 Discrimination

11.1 Employers should be careful to ensure that they are not directly discriminating against any race, nationality or disability, and that any indirect discrimination can be justified. As such, when considering the process of employment, restrictions on personal travel and instructing employees to self-isolate, employers should avoid blanket rules against employees of a particular race or nationality. Employees should be considered on an individual basis, and employers should take legal advice before imposing any rules which could be potentially discriminatory.

11.2 There has been a number of cases of assault and harassment of people of Chinese origin as a result of coronavirus. Employers should inform employees that any maltreatment of any member of the workforce based on their nationality or race will not be tolerated. Should such maltreatment occur in the workplace, employers may be liable for harassment or discrimination, particularly where they have not implemented appropriate policies, training or if they have failed to deal with these issues.

12 Lay-off and short-term working

12.1 In some cases, it might be necessary for an employee to introduce short-term working (i.e. providing employees with less work and pay) or even lay-off staff (i.e. providing them with no work or pay for a short period but retaining them as employees). The rules around short-term working and lay-off will depend on whether the employee has a contractual right to do it.

12.2 Contractual right



In some sectors, lay-off and short-term working clauses are common and these will usually state that the employer can lay-off staff without pay or reduce pay in line with a reduction in work. An employer is entitled to rely on this clause if it forms part of the contract. In some cases, there may be an implied right to introduce short-term working or lay-off but this will be rare.

12.3 No contractual right

Employees should not lay-off staff or introduce short-term working where there is no contractual right to do so as this is likely to be breach of contract and could entitle employees to resign and claim constructive dismissal.

12.4 Employees are entitled to statutory guarantee payments if employers do not provide them with work they would normally be required to carry out, as long as the employment contract does not exclude laying-off pay. The statutory payment will be the lower of 1) the employee's usual daily pay or 2) £25 a day (currently) and is payable for five days in any 3 months.

12.5 In the event that an employee is laid off or put on short time working for a long period, they may claim a redundancy payment from their employer.

13 Disciplinary issues

13.1 The number of sickness absences which are likely to result from COVID-19 may, in a small proportion of cases, lead to exploitation by some employees.

13.2 For those employees who falsely claim to be ill, this could be a matter of gross misconduct. However, care should be taken to investigate the full circumstances, as it could be that the employee believed they were ill as a result of some false information they had read or been told.

13.3 If employees have been ordered by their employer or a medical professional to self-isolate, and continue to attend work, this may be a misconduct matter.

13.4 Any employee who fails to work from home when they are otherwise able should be dealt with in the same way as one who fails to work in the workplace.

14 Data Protection

14.1 Employers should be aware of their ongoing confidentiality obligations. If an employee is diagnosed with COVID-19, the employer has no right to tell anyone else about the identity of the person diagnosed. All line-managers and HR representatives (or other employees responsible for recording sickness absences) should be reminded of this.

14.2 During a crisis, an employer's standards of data protection might slip, given the amount of information that will have to be shared in a short period of time. The ICO have stated that they will not penalise organisations that they 'know need to prioritise other areas or adapt their usual approach'. They also acknowledged that there is likely to be increased levels of homeworking and that staff can use their own device or communications equipment to work from home. However, employers will still need to consider the same kinds of security measures as they would in an



normal workplace setting. If employers have specific data protection questions, they should contact the ICO on 0303 123 1113.

15 Closing the workplace

15.1 It is not currently recommended that employers close the workplace, even if a person who has tested positive for coronavirus has entered the office. Nevertheless, employers should plan for a worst-case scenario which may include ensuring that staff can work from home as soon as possible, as it may prove difficult to implement such systems during a crisis.

15.2 Employers should be aware that, should the business itself close down temporarily, all employees will still need to be paid as normal, unless their contracts provide otherwise or lay-off provisions apply.

16 Suppliers, customers and visitors to the workplace

16.1 Employers may need to consider taking other steps to comply with their duty to ensure the health, safety and welfare of their employees in respect of third parties (such as suppliers, customers and visitors). This may include:

16.1.1 asking visitors to wash their hands when they first arrive at employer premises; and

16.1.2 asking visitors not to visit premises if they are feeling unwell or have recently returned from an affected area.

Employers may wish to consider issuing a statement (either by email, on their website or at their premises) to reassure customers what the organisation is doing as a precaution (such as cleaning and disinfecting procedures and their frequency etc.) We can assist with any press statements.

17 Further information

For further information and to ensure that you are up to date with development, you should refer to the following:

Government Guidance - COVID-19: guidance for employers and businesses

<https://www.gov.uk/government/publications/guidance-to-employers-and-businesses-about-covid-19>

Government Guidance - COVID-19: support for businesses

<https://www.gov.uk/government/publications/guidance-to-employers-and-businesses-about-covid-19/covid-19-support-for-businesses#support-for-businesses-through-the-coronavirus-job-retention-scheme>

Government Guidance - Stay at home guidance

<https://www.gov.uk/government/publications/covid-19-stay-at-home-guidance/stay-at-home-guidance-for-households-with-possible-coronavirus-covid-19-infection>



Government Guidance - Decontamination in non-healthcare settings

<https://www.gov.uk/government/publications/covid-19-decontamination-in-non-healthcare-settings/covid-19-decontamination-in-non-healthcare-settings>

Government Guidance - Staying at home and away from others

<https://www.gov.uk/government/publications/full-guidance-on-staying-at-home-and-away-from-others>

Acas Guidance - Coronavirus: advice for employers and employees

<https://www.acas.org.uk/coronavirus>

Government action plan

<https://www.gov.uk/government/publications/coronavirus-action-plan>

Information Commissioner's Office Guidance

<https://ico.org.uk/for-organisations/data-protection-and-coronavirus/>



Appendix 1

Situation	Payment
Employee is diagnosed with coronavirus	Contractual sick pay/SSP as normal
Employee is self-isolating due to notice given by a medical practitioner (e.g. GP or NHS 111 helpline) or in line with Public Health England (PHE) guidance	If the employee is fit and able to work from home, pay as normal. Contractual sick pay/SSP as normal
Employee is self-isolating with no notice from a medical practitioner and not in line with PHE guidance	No contractual or SSP. Employers may allow staff to take unpaid leave/holiday.
Employee is quarantined abroad	If the employee is able to work, they should be paid as normal. If the employee is unable to work, they will not be entitled to contractual sick pay or SSP. Where employee has travelled on business, it would be good practice to pay. Employers may allow staff to take unpaid leave/holiday.
An employee is asked to stay away by employer	Full pay, unless 'short-term working' or 'lay-off' provisions apply.
All employees are isolated by the government	Where employers are able to work from home, they should be paid as normal. If not, employees will be incapable of work and therefore entitled to SSP and possibly contractual sick pay (depending on policies).
Employee has to care for child who is unwell/due to school closures	If the employee is working from home, pay as normal. Otherwise, holiday or unpaid dependant's leave should be taken.
Employee refuses to go to work unreasonably	Conduct issue - can be dealt with under disciplinary policy
Employee travels on a personal trip to an area that is considered 'safe' and subsequently becomes unwell/has to self-isolate as a result	If the employee is unwell or self-isolating with medical notice, contractual sick pay/SSP applies as normal. If the employee is self-isolating with no notice from a medical practitioner, they should take unpaid leave/holiday.
Employee travels on a personal trip to an area which is not recommended for travel and becomes unwell and/or has to self-isolate as a result	Refer to contractual sick pay provisions. SSP will still be payable when an employee is unwell or is self-isolating on medical advice.