



Latest Employment Advice on Covid-19 Coronavirus

This advice has been taken from various sources, Employment Lawyer & Employment QC Newsletters and Bulletins, HR/CIPD Websites, Acas Website and Gov Websites.

As information changes I will amend and resend to keep you as up to date as possible.

**This document is for your guidance only. Professional advice should be sought.
We are hopeful for clearer guidance from the government in the coming days.**

Coronavirus - online isolation notes launched...

Isolation notes will provide employees with evidence for their employers that they have been advised to self-isolate due to coronavirus, either because they have symptoms or they live with someone who has symptoms, and so cannot work.

For the first seven days off work, employees can self-certify so they don't need any evidence for their employer. After that, employers may ask for evidence of sickness absence. Where this is related to having symptoms of coronavirus or living with someone who has symptoms, the isolation note can be used to provide evidence of the advice to self-isolate.

The government says the notes can be accessed through the NHS website and NHS 111 online. It does not yet seem to be live, but presumably will be going live later today.(Friday 20th March)

According to Matt Hancock, the Health & Social Care Secretary, if an employee does not have an email address, they can have the note sent to a trusted family member or friend, or directly to their employer. The service can also be used to generate an isolation note on behalf of someone else.

Do I pay SSP to those classed as 'vulnerable' to the virus? If so, is it for the full 12 weeks?

You do not pay SPP unless, they become infected or someone in the household is infected. They would get SPP for 7 days or 14 days respectively.

For Clarity:

The vulnerable should be considering as much 'social distancing' as possible. Social distancing measures are steps you can take to reduce the social interaction between people.

Unfortunately there is confusion out there that vulnerable people are being advised to self-isolate, but that is not the case, as it stands right now. For employment terms it is Social Distancing so SSP is not payable.

This is the ACAS advice below is the link for the gov.uk advice which is useful.

Vulnerable people

The government has issued guidance that strongly advises people who are at a higher risk of catching coronavirus ('vulnerable people') to take strict social distancing measures.

Employers must be especially careful and take extra steps for anyone in their workforce who is in a vulnerable group. They include, but are not limited to, those who:

- have a long-term health condition, for example asthma, diabetes or heart disease, or a weakened immune system as the result of medicines such as steroid tablets or chemotherapy
- are pregnant



- are aged 70 or over
- care for someone with a health condition that might put them at a greater risk

Find out more about social distancing and vulnerable people on GOV.UK.

<https://www.gov.uk/government/publications/covid-19-guidance-on-social-distancing-and-for-vulnerable-people/guidance-on-social-distancing-for-everyone-in-the-uk-and-protecting-older-people-and-vulnerable-adults>

Do I have to pay my staff if they self-isolate?

Under new legislation passed quickly by the Government, employers should pay Statutory Sick Pay to all employees that are self-isolating, providing they are doing so in accordance with guidance published by Public Health England.

The right to SSP starts from day 1 of their absence, not day 4 as usual. Legislation is expected that will allow smaller employers (under 250 employees) to re-claim this from the Government.

If your employee is actually ill and you have a contractual sick pay scheme in place, do remember that they may also be entitled to that contractual sick pay as well.

Can I make changes to contractual sick pay as a result of the coronavirus SSP rules?

Taking such an action will be a variation of contract. To do this, you will first need to seek the consent of your workforce. Although they may be hesitant at agreeing to this change, they may decide differently if such a change is crucial to the survival of the business and maintaining their employment.

If staff will not agree, you may then consider dismissing and re-engaging them on the new contract, although bear in mind that this could result in an unfair dismissal claim. Also to dismiss employees contracts you would need to give them notice, so this would likely not resolve the current problem.

You could also seek to unilaterally impose the change although you should be mindful for the potential of claims for unlawful deductions from wages or constructive dismissal. If employees are sick as they have the virus it would be advisable to pay them as per their contracted sick pay. If you decide to make a unilateral change the it would be worth considering this for self-isolation only. However the same risks apply for the potential of claims for unlawful deductions from wages or constructive dismissal.

You also risk employees coming to work rather than self-isolating if they will only receive SSP.

The situation with self-isolating and sick pay is one of the most common questions being asked by employers presently, hopefully the government will clarify the position in the coming days.



Can I require my staff to take annual leave if our site is closed due to Covid-19?

This is something you can ask your staff if they want to do. They may say yes given that this would mean their full salary is paid and not just SSP which is currently £94.25 per week.

Under Reg 15(2) of the Working Time Regulations 1998 you may also give notice requiring a worker to take some of their 5.6 weeks statutory holiday on specified dates. The notice for this must be twice as long as the length of period of leave that the worker is being ordered to take. You should check if your contract or holiday policy says anything about how this will be exercised. Although there is the legal right to do this, be aware that some staff may not like it as they consider holiday to be their right, to take as they will.

Also be aware that if someone was actually sick when being asked to go on annual leave, they can seek to notify of their sickness (in the usual way) and so take the day as sick leave and not holiday.

Will I be reimbursed if I have to pay SSP as a result of the coronavirus?

If your company has less than 250 staff, the government has announced that it will cover the payment of statutory sick pay (SSP) for a minimum of two weeks per employee.

Will I need to pay my staff if the Government shuts down Schools and Nurseries and my staff need to be at home to care for children?

The quick answer is that you don't have to pay them, unless of course they are doing some kind of work from home at the same time.

You just need to be careful with bonus' to ensure that they don't create an inadvertent potential claim for sex discrimination, in view of the fact more women than men may take the leave.

There are 2 possible rights that apply here:

Parental Leave

For parents of (or those with responsibility for) children under 18, they can take up to 18 weeks unpaid leave per child. This should be taken in blocks of a week and would usually be limited to 4 weeks per year although you can agree to more of these weeks in a year if you wish.

Time off for Dependants

If an employee has to take leave due to caring for dependants (which can mean any dependant), they are entitled to do so under s57A and 57B of the Employment Rights Act 1996.

You may have a Time off for Dependants policy which you should have a look at which helps govern this.

Usually it is for time off to make care arrangements for a dependant or to deal with unexpected end of care arrangements.

There is no set period that they can have off – it is what is reasonable, which given the global crisis is probably going to be thought to be a fairly long period.

**Can I ask my employees to take a temperature check each day before coming onto our site?**

Usually, such an option would be difficult to enforce without an employee's consent and could even result in claims of constructive dismissal or assault. However, if the nature of the business means it cannot risk the pandemic spreading across the workforce and would need to close in this situation unless it undertook health checks, consent may not be an issue.

Taking such measures may actually be well-received by a workforce and help to reassure them that the organisation is protecting their health and safety.

You would need staff consent for this, so would need to get either a signed form or confirmation return email. You would also need a thermometer that is 'non-contact' so you don't spread the virus.

Also you would need a Policy on controlling the risks of infectious diseases in the workplace (available on the Kernow HR Toolkit) ensuring you add temperature checks to your list of procedures.

For GDPR purposes it would be best practice to set out how you will record, process and monitor the information. This would be personal information and allowing other employees to know the results of colleagues would be a clear breach of GDPR. If employees choose to share their own results that is their choice.

If an employee does not want to go home but I think they should, can I insist they do so?

Yes. One of an employer's fundamental duties is to protect the health and safety of its employees in the workplace. If an employee becomes infected with Covid-19, or there is a chance they have been infected (for example if they have returned from an infected area abroad), the employer would have a duty to take reasonable steps to protect its employees. Asking the affected employee to stay at home may be a reasonable step to prevent the virus spreading to other employees.

Be aware that if you insist, they go home you may have to pay them full pay as you are medically suspending them, rather than SSP.

My business is being impacted and I'm worried about my ongoing staff costs when my income is slowing. What options are there to reduce or manage my staff costs going forward?

The following are options to consider before considering a redundancy exercise:

- Speak to your employees to explain the situation and to see if they would voluntarily agree to reduce benefits, hours or pay at this difficult time. Often staff will agree temporary measures to get the business through this difficult time. Make sure you are clear and set out in writing on what you are agreeing and the timescales for the change.
- See if you have terms in your employment contracts that allow lay off or short term working. If you do reduce your employees hours unilaterally, be aware that after a period your employees may be able to claim redundancy. **You must check your contracts to see if you have this option available, plus you must give notice of doing this.**



- If you have made job offers to new staff who have not yet started, consider whether it is appropriate to withdraw these. If the job has been accepted this could be a breach of contract which could mean you owe the employee for any loss they have suffered as a result. Again it is best to discuss with the new person before just pulling the plug on new roles.
- Freeze pay rises and promotions for a temporary period.
- Ask your staff if they would be prepared to take a sabbatical, annual leave or a period of unpaid leave. This may be less attractive to people at this time when they cannot or don't want to travel.

If someone with coronavirus comes to work

If someone with coronavirus comes to work, the workplace does not necessarily have to close.

The local Public Health England (PHE) health protection team will get in contact with the employer to:

- discuss the case
- identify people who have been in contact with the affected person
- carry out a risk assessment
- advise on any actions or precautions to take

However with cases rising it is doubtful PHE will be able to respond to all workplace requests. New guidelines about what to do are expected soon. In the meantime still contact PHE.