



COVID-19

Q&A

CORONAVIRUS

A free guide from Citation's
HR & Employment Law experts

Citation

COVID-19: managing risks, protecting employees and guidance on self-isolation

In the last few weeks, the news has rapidly been filling with reports on the outbreak of confirmed cases of a new strain of coronavirus, known as COVID-19, first identified in Wuhan City, China

One of the biggest issues for businesses arising from COVID-19 is how to manage the need for employees to self-isolate.

Here are our top 13 frequently asked questions and answers about how to navigate the HR issues arising from this public health crisis.

1. *Should I consider homeworking for my employees?"*

If employees have received medical advice to self-isolate, you may want to consider whether it would be possible for them to do their job from home. Some businesses may already have a business continuity plan and the capacity for many of their employees to work from home, which will be a great help in minimising business disruption. For others, this may be the first time they have considered home working. In these cases, consideration should be given to the fact that if homeworking is to take place for an elongated period of time, an assessment should be carried out to ensure that employees have the equipment necessary for such activities and to review other health and safety considerations.

For any advice on how to introduce home working, please call our experts on 0345 844 4848.

2. *"My employee has been medically advised to self-isolate for 14 days, what should I pay them?"*

This has been an area of great confusion for employers because employees in isolation are generally fit for work and therefore some have argued that they should receive full pay. However, on 26 February 2020, the Health Secretary Matt Hancock made it clear that those who were staying away from work as a result of medical advice to self-isolate were doing so for 'medical reasons' and therefore should receive sick pay. We would advise that the approach advocated by the government is correct and employees who have been advised to self-isolate in line with government guidelines, should be treated as on sick leave and paid accordingly.

3. *"My employee has been advised to self-isolate but says he is fine and is insisting on coming into work. Can I send him home and what will I have to pay him?"*

If he has been advised that he must self-isolate, then you can tell him that he must not come into work as by doing so he could potentially be putting the rest of your employees at risk. The government position is that self-isolation absence from work is absence for medical reasons and should be treated as sick leave. The employee should therefore be paid accordingly.

4. *"My employee has been advised to self-isolate, but I don't want them to lose out on pay. Can I pay them full pay?"*

As an employer, you can of course exercise your discretion to pay full pay in these circumstances and this can be very helpful to retain employee engagement at a difficult time. However, you should be aware that should you exercise your discretion in this way, you should do so consistently and there is a good possibility that the need for self-isolation amongst your workforce may increase over time. If you are not consistent on this, and give full pay to some but not others, this can not only cause

resentment amongst employees but could also give rise to discrimination claims if employees feel that they have been treated differently because of a protected characteristic.

5. *“My employee has recently returned from an area where there have been confirmed cases of COVID-19. Although they do not fall within the guidelines of people who are required to self-isolate, I don’t want to take any chances and I would like them to stay at home to protect the rest of my workforce. Can I force them to stay at home and if so, what do I pay them?”*

As an employer, one of your most fundamental duties is to safeguard the health and safety of your employees. This should be achieved by following government guidance on COVID-19. This is reviewed regularly, and the guidance is updated at 2pm every day. If this guidance does not require your employee to self-isolate, they should pose no realistic risk to your other employees. If in any doubt, it would be reasonable to ask them to check the position by calling 111.

However, if you want to be extra cautious, you can ask them to self-isolate, but you would have to pay them full pay as there is no evidence to suggest that there are medical reasons for doing this. If the employee is unwilling to self-isolate, even with full pay, please contact us for advice as an unreasonable demand that an employee self-isolate could give rise to an employment claim against the business.

6. *Do I need to change how I pay my employees Statutory Sick Pay?*

The government has announced plans to introduce emergency legislation that enables employees to be paid Statutory Sick Pay from day one rather than after three days. Although it has not been specifically confirmed, it is anticipated that this will only apply to coronavirus related sickness absences. The government have stated that this will be a temporary measure which will lapse when it is no longer required. We do not have an implementation date for this change and until this is known, employers are under no obligation to change their SSP payments.

7. *I often use casual workers on zero hours contracts who are not employed by the business. Do I have to pay them SSP?*

Workers may be entitled to SSP if they have average weekly earnings of at least £118 (before tax) calculated over a pay reference period of at least 8 weeks. To check whether someone meets this threshold, take the last normal pay date before the first complete day of sickness absence and count back to the last normal payday falling not less than 8 weeks from that date. Calculate all earnings within this period and calculate the weekly average on that basis (i.e. for a weekly paid employee this would mean dividing the figure by 8 and for a monthly paid employee it would be dividing the figure by 2, multiplying by 12 and then dividing by 52 weeks). If this figure is at least £118, they will be eligible for SSP. Further details on calculating average weekly earnings can be found at <https://www.gov.uk/guidance/statutory-sick-pay-manually-calculate-your-employees-payments#calculate-average-weekly-earnings-awe>

8. “My employee has been off ill with COVID-19 but I have not received a fit note. Do I have to pay them, and should I take action against them for breaching our sickness absence policy?”

Employees can self-certify sickness absence for the first 7 days (including non-working days) but after that period an employer can require them to produce a fit note from their doctor confirming they are unable to work. However, in respect of COVID-19, government advice is that employees should isolate themselves for 14 days and should not attend their doctor’s surgery during that time, thus making it impossible for them to obtain a fit note.

BEIS Guidance is that employers should exercise their discretion and not require a fit note to cover this period. We agree with this stance and would advise that sick pay should not be withheld in the absence of a fit note in these particular circumstances as to do so would seem unreasonable.

If you believe self-isolation is not the genuine reason for the absence, please contact us for advice.

9. “An employee/ customer/ supplier with a confirmed case of COVID-19 has recently been in the workplace. What should I do?”

Current government advice is that closure of the workplace in these circumstances is **not** recommended. In cases of confirmed cases of COVID-19, Public Health England’s local protection team will be in contact with the employer to discuss the case, find out who has been in contact with the individual and advise on actions which should be taken including any quarantine arrangements which may be necessary and cleaning of communal areas which may need to be undertaken.

10. “An employee/ customer/ supplier with an unconfirmed case of COVID-19 has recently been in the workplace. What should I do?”

Government guidance at the moment states that there is no need to do anything while test results are pending. At present, most tests do come back negative, and therefore no action needs to be taken while a case remains unconfirmed.

11. “My employee travelled to a restricted area contrary to government guidance and now needs to self-isolate upon his return, do I have to pay him?”

Although government guidance to employers is that self-isolation is for medical reasons and therefore should be treated as sick leave, some employers may feel that this is unfair if the employee chose to put themselves in this risky position by not following government advice. There is an argument that in those circumstances the employee has deliberately put themselves in a position where they are unable to attend work and therefore the absence should be unpaid. Some could even argue that this behaviour is a potential disciplinary issue.

If you are considering taking such an approach, please contact us for advice before taking any action as this situation is very complex. One of the most difficult aspects may be proving that the employee has deliberately put themselves in this position rather than having done so unwittingly.

If you are considering taking up this stance, the best policy would be to communicate to all your employees regular updates regarding travel risks, the consequences of travelling to an ‘at risk’ area and how the company would propose to deal with a period of self-isolation arising in these circumstances. For example, the company could make it clear in advance that travel to certain areas would result in a medically necessary 14 period of self-isolation and this would be treated as unpaid if

the employee decided to travel knowing that this would make them unable to attend work upon their return. Again, taking advice is essential to ensure that you can show your actions are reasonable.

If your employee becomes ill as a result of deliberately travelling to an area against government advice (as opposed to having to self-isolate), they would still be entitled to statutory sick pay as they would be medically unfit to work.

12. “What if I am advised to close my business to prevent the spread of infection?”

If you are advised to close your business, you should do so. Although there is no general obligation that an employer must provide work to their employees, this is usually a fundamental term of their contract and if the employer is unable to provide work, they must usually pay their employees in full. However, if you have a contractual right to lay off without pay, you could rely on this which would mean that your employees would only be entitled to payment of statutory guarantee pay for the first 5 workless days. This is pro-rated for part-time employees and therefore if they work 3 days, they would receive statutory guarantee for the first 3 workless days.

Statutory guarantee pay will be their normal rate of pay subject to a statutory maximum of £29 per day.

If you do not have a lay off provision in your contract, you could ask your employees to agree to a temporary variation of contract to allow this. However, it is highly unlikely they would agree to this in these circumstances given that the alternative would be receiving full pay.

Some contracts do not stipulate that the employer will provide a specific number of hours of work per week (such as variable hours contracts). However, even in those cases it may be the case that in practice the business has provided regular hours of work, leading to a potential contractual entitlement and therefore advice should be sought on what would be the appropriate pay arrangements in those cases.

13. “What if my employees are unable to work because a client’s business has had to close down to prevent the spread of infection?”

In this situation the rights of employees will depend on the terms of their contract of employment.

If the closure of the client’s business means that you are unable to offer them any work (for example, you provide school catering services and the school has been closed), you will be able to lay off your employees until such time as the school reopens provided your contract provides you with the right to do this. If so, the employee will receive statutory guarantee pay for the first 5 workless days. This is pro-rated for part-time employees and therefore if they work 3 days, they would receive statutory guarantee for the first 3 workless days. Statutory guarantee pay will be their normal rate of pay subject to a statutory maximum of £29 per day.

If you do not have a lay off provision in your contract, you could ask your employees to agree to a temporary variation of contract to allow this. However, it is highly unlikely they would agree to this in these circumstances given that the alternative would be receiving full pay.

It may be that the closure of your client’s business will only reduce the number of hours of work you can offer to your employees. For example, you offer school cleaning services and only one of the two schools your employee works in has been affected. In such circumstances you may be able to invoke any short-time working provisions you have in your contract.

If your contracts do not say that you will offer a specific number of hours of work per week to your employees, take advice on what should be paid to your employees if you are unable to offer any or reduced hours of work

14. “My employee is unable to come into work because their school/ nursery is closed. Do I have to give them the time off and what should I pay them?”

Employees have a legal right to take time off to deal with emergencies relating to their dependents and this includes the unexpected disruption of arrangements for the care of a dependent. In this particular context, a dependent could be the employee’s:

- spouse or civil partner
- child
- parent
- a person living in the same household (but not a tenant)
- any person who reasonably relies on the employee for the provision of care

Usually this time off is unpaid unless your business provides additional contractual benefits to employees in these situations.

The amount of time off which can be taken is what would be reasonable to make alternative care arrangements. This will depend on a number of factors including the nature of the disruption, the alternatives available and financial considerations. Whilst in many cases a day or two is all that will be required, given the situation around COVID-19 it may not be feasible for a parent to make alternative arrangements in a short period of time. It has been held that an absence of 16 days was necessary in the circumstances of that particular case and therefore employers would be expected to act reasonably in these situations.

If you are in any doubt as to whether the period of absence is exceeding what would be reasonable, please take advice.

15. “No one in my business has been affected. Is there anything I should be doing as an employer to keep my employees safe?”

It would be sensible to review your current hygiene practices to make sure that you are taking all reasonable steps to reduce the risk of people spreading illness at work. This will include reminding staff that they should:

- Cover their mouth and nose with a tissue or their sleeve (not their hands) when they cough or sneeze
- Put used tissues in the bin immediately
- Wash hands with soap and water often (or sanitizer gel where this is not available)
- Avoid close contact with unwell people
- Avoid touching their eyes, nose or mouth with their hands if they are unclean

You may also want to step up cleaning practices within the business and supply additional alcohol-based hand sanitizers.