

# **COVID-19 HR Issues to be Considered**

We have produced an FAQ guide to provide you guidance on dealing with HR issues during the current COVID-19 outbreak.

## General Advice

Now that we have had more severe restrictions put into place, employers should do the following:

- Keep communication flowing. This is an ever-changing situation so it's important to keep talking about the actions you are taking. Ensure daily communication (where possible) with your team to discuss workload and find out how they are coping.
- Review and update all employee contact numbers and emergency contact details.
- Remain current with government advice regarding self-isolation.
- Advise employees experiencing even mild symptoms of COVID-19, such as fever and/or a new continuous cough to stay at home for seven days. If symptoms worsen to contact 111 for medical advice. If a member of an employee's household has contracted it, the employee should self-isolate for 14 days. However, if they then become ill themselves during that 14-day period, they must stay at home for 7 days regardless of where they were in the original 14-day isolation period.
- Have a homeworking policy and enable as many employees as possible to carry out their work from home.
- For those people who are not working from home now and continuing to attend the workplace:
  - Managers should be informed on how to spot symptoms of COVID-19.
  - Have a clear process to follow if someone is diagnosed with COVID-19.
  - Ensure that you provide clean places for people to wash their hands with hot water and soap. Encourage your staff to wash their hands regularly.
  - Think about protective resources. For example, hand sanitisers/gel and tissues should all be made available.
  - Increase general cleaning routines for handrails, door handles etc
  - Think about planned business travel and question whether it is essential.
- Have a business continuity plan.



## Statutory Sick Pay

### *Q. What are the latest statutory sick pay rules and how do we claim it back?*

The Government has published the Coronavirus Bill which states that Statutory Sick Pay from day one will be retrospectively applied back to 13th March 2020 for those who are off sick with Covid-19 or its symptoms. There is no clear instruction on how that is to be reclaimed but it has been made clear that employees will not be required to submit a fit note. However, NHS111 can provide a self-isolation note via their online system, so encourage employees to do this when required. You will be able to reclaim a maximum of two weeks per employee if you employ fewer than 250 employees.

### *Q. Who is entitled to statutory sick pay?*

The bill is clear that the following circumstances attract statutory sick pay if the employee is unable to work from home:

- Employee who has a high temperature and/ or a new and continuous cough.
- Employee who has a person in their household with a high temperature and/or a continuous cough.
- Those diagnosed with COVID-19
- Those who are unable to work because they are self-isolating in line with medical advice.

### *Q. Who is not entitled to statutory sick pay:*

Those who live with a member of a high-risk group when neither have symptoms.

### *Q. If we have a company sick pay provision in our employment contracts with our staff, do we have to pay it even when the employee is not showing symptoms?*

Statutory Sick Pay rules have changed to allow SSP to be paid by employers to those who the Government have advised to self-isolate or be quarantined. This does not affect the employment contract so we do not advise that you pay company sick pay to employees who are not sick.

If they start getting symptoms and become sick themselves, then you could revert to company sick pay to ensure compliance with your employment contracts.

You might want to consider declaring to your employees that you will not be paying company sick pay to anyone who is self-isolating where there is the option for management discretion. You might also want to consider withdrawing your sick pay scheme, if the contract allows, on a temporary basis until this crisis is over.



***Q. What do we pay an employee who is self-isolating even though they are not unwell but someone in their household is and the guidance advises the whole household isolates?***

Our advice is that you pay Statutory Sick Pay to these individuals because the definition of sickness for the purposes of SSP has been extended to account for this situation. However, this does not mean that it is extended for the purposes of contractual sick pay, so unless there is a contractual provision requiring sick pay where the individual themselves is not sick but must stay away from work, then you don't need to pay company sick pay.

## **Self-Isolation**

***Q. How long should employees self-isolate for?***

Please refer to the Public Health England website for latest guidance.

***Q. My employee has returned to work after being in self-isolation but is still coughing. Should I send them home?***

No. If the employee has followed medical and government advice and self-isolated, they can return to work as they will be deemed no longer contagious. The cough might seem unsettling for their colleagues, but you can reassure them that the cough might persist for a few weeks afterwards and they are not contagious.

***Q. What if my employee is saying that they still feel unwell after the isolation period?***

Contact NHS 111

***Q. Can an employee choose to self-isolate for 7 days or should they have been advised by 111 to do this?***

If they don't have symptoms but want to self-isolate for preventative reasons because they are worried, then please contact your local HR Dept office for advice because this is a complex situation and each case will be different.

***Q. How do our employees obtain evidence that they need to isolate?***

They need to visit [111.nhs.uk/isolation-note](https://111.nhs.uk/isolation-note) and follow the online instructions. The online certificate should be forwarded to you as their employer.

Some employees who are particularly vulnerable will have received a letter from Public Health England or the NHS advising them to 'shield', They should send you a copy of the letter.



## Working from home

***Q. The Government has said we all need to work from home but I have staff who cannot do that. Do I have to pay them to stay at home and do nothing?***

No. They can still attend work. The Government advice is that employees should work from home where possible. It is not mandatory working from home for all if it is not possible.

***Q. An employee has said that they don't want to attend work because they are worried about catching COVID-19. They want to work from home and are citing health and safety reasons. What do I do?***

If they can work from home then you should allow that because that is the government guidance. If they can't work from home, then reassure them that you will always follow government guidance and that they should attend work as usual. If they still refuse to attend work, contact us for advice.

***Q. What if you think people that are meant to be working at home but you don't think are actually working?***

Communication is key. If you have a suspicion that the employee isn't being as efficient as they would be in the office, then ask what's distracting them. Maybe they just don't have the right equipment at home or are struggling with distractions such as childcare or elderly parents to look after as they are at home. Talk about it and agree how you are going to move forward. If someone hasn't worked from home before, we would advise having a morning and end of day call as a minimum. This helps to catch up on what's been completed and what needs to be carried over to the next day. This also provides an opportunity for you to raise concerns if work isn't being completed at an acceptable rate.

***Q. We are in the care sector, so it is not really possible to allow employees to work from home. What would you advise we do when an employee needs to be quarantined or self-isolate?***

You have a number of options:

- If they are on zero hour contracts you simply do not offer them shifts.
- You could suggest that employees choose to take holiday rather than receiving SSP during this period.
- You could find projects for them to work on at home so that they still receive pay. These projects may well be outside the scope of their usual role but would be within their capabilities. If they agree, this could meet the needs of the business.
- If they start getting symptoms of COVID-19 then you would revert to your sickness absence policy, as they would now be technically off sick.
- You could offer sick pay in line with ACAS best practice advice.



If you would like guidance on managing home-workers, dismissing staff, absence queries, lay-offs or short time working or any other issue mentioned above, please contact your local HR Dept office and we will help you.

***Q. If there are not enough laptops for everyone to work from home, but we decide to ask everyone that has a laptop to work from home, can we ask one employee to work in the office?***

Yes, you can ask people who have appropriate equipment to work from home, but where this is not possible, those employees can remain in the office. Workplaces must have adequate hygiene facilities and the ability for staff to be able to keep a safe distance from others.

***Q. Surely working from home would ask questions regarding a breach of GDPR?***

You would need to consider this in a risk assessment for working from home and incorporate any rules/guidance into your working from home policy.

***Q. If the Government decides that all employees need to work from home, would employees be entitled to full pay if working from home is not viable?***

Boris Johnson has declared that working from home is advisable where possible. If it is not possible, continue to allow these employees to work from the company premises.

If the Government decide to enforce working from home for all then those who can't work from home will be forced to self-isolate which means that they will likely be entitled to SSP. However, you may want to consider furloughing those staff if you have no work for them to do on a temporary basis.

## **Employee Conduct**

***Q. An employee is refusing to attend work even though they are well and have no reason to self-isolate. What do I do?***

Discuss the reasons they are giving for not wanting to come to work and try to resolve them. Ultimately though, you can discipline them for their unauthorised absence from work. Please contact your local HR Dept office for advice before taking such action.

***Q. Do people have to work if they are self-isolated?***

If they feel well and you want them to work from home then you can pay them in full to work from home.

If they don't feel well, then they are off sick and don't need to do any work and they are paid statutory sick pay unless your contract of employment states otherwise.



If they feel well and you want them to work from home but they refuse, then you could potentially take disciplinary action for refusing to follow a reasonable management request. This is a Gross Misconduct offence. Please contact your local HR Dept office before taking action.

***Q. With growing worries about COVID-19, if staff phone us to say that they are self-isolating, how can we check that this is legitimate?***

You can ask them to contact 111 for a sick note after 7 days. Our advice is that, like any other situation, you trust your employees unless proven otherwise. If you have evidence of anything fraudulent then you can conduct an investigation. In this type of situation, as a rule, it would be difficult to prove that someone is misleading you about their symptoms or who they have been in contact with. If you have a suspicion and feel that you have evidence of any potential fraudulent action though, please get in touch with your local HR Dept.

## **Annual Leave**

***Q. What do we do when an employee has booked time off for holiday, but their holiday is cancelled because of a situation outside of their control (e.g. flight cancellations or the destination country status means they are advised not to travel there or their destination hotel has cancelled the booking on government advice)? Can the employee cancel their annual leave and take it again at another time?***

This is at your discretion as an employer. It might be straight-forward for you to allow this with minimal business disruption. But you have no obligation to allow the cancellation. However, where possible we are sure most businesses will try to support employees in this situation.

***Q. If an employer gives staff enough notice to cancel a holiday, does the employer have to help compensate the employee for the financial loss?***

No. It is deemed good practice to compensate an employee for the financial loss but it is not a requirement.

***Q. There won't be enough time for employees to take their holidays because when we get back to work, we will be incredibly busy. What can I do about that?***

The Government has released new rules on carrying over holiday. The regulations will allow up to 4 weeks of unused leave to be carried into the next 2 leave years, easing the requirements on businesses to ensure that workers take statutory amount of annual leave in any one year.



### Ill health and vulnerable people

**Q. How do we treat an employee in a 'vulnerable' or 'high-risk group' (over the age of 70, those with an underlying health condition or pregnant) in the following circumstances:**

a. They want to work?

They can work but should work from home if possible.

b. They insist that they can work from home?

You don't have to allow this if it is not practicable.

See Government guidance which states the same social distancing rules for everyone, but with stronger guidance for those deemed 'high-risk'.

**Q. How do we know what health conditions make the employee 'high risk'?**

Anyone instructed to get a flu jab as an adult each year on medical grounds is high risk

- Pregnant women are high risk
- Being aged over 70 makes the employee high risk
- Those who have a serious condition will have received a letter from NHS advising them to self-shield.

**Q. What do we do if someone becomes ill at work and colleagues think it is COVID-19?**

You should instruct the employee to take the following action:

- Go to a room or area behind a closed door
- Get at least two metres away from other people
- Avoid touching anything
- Cough/ sneeze into a tissue and put it in a bin (or use crook of elbow if no tissues are available)
- Use a separate bathroom from others where possible
- Seek advice from 111
- If the advice indicates infection once the individual has left the premises make sure everywhere is cleaned thoroughly.

**Q. Pregnant staff are deemed to be in the high-risk category, can we ask these employees to start their maternity leave earlier?**

No. If the employee becomes unwell and this triggers early maternity leave in line with maternity legislation then this is fine, but you cannot ask a pregnant woman to start her maternity leave earlier just because she is in the high-risk category and she cannot work from home.



***Q. Is the 12-week social distancing rule mandatory for pregnant women?***

Yes, you must follow Government guidance but the social distancing rule at work specifically states that the employee should be allowed to work from home where possible which is exactly the same as any other employee at the moment. The government has declared that this will be in place for “some weeks” not specifically 12 weeks.

***Q. My employee has received a letter advising them to ‘shield’ for 12 weeks. Do we have to allow it and what pay are they entitled to?***

Yes, you have to allow it. Some employees may be able to continue to work from home. If they can’t, then you can furlough them. Please refer to our page on Job Retention Scheme.

## **Health and safety**

***Q. We want to close our premises to deep clean. As this is to protect the health and safety of employees, do we have to pay them to stay away from the premises and not come to work?***

Yes, you must pay them because you are taking the decision to close the premises.

You could request employees work from home where possible.

If you give the appropriate notice (double the length of the holiday e.g. 1 day’s holiday requires 2 days’ notice, 2 weeks’ holiday requires 4 weeks’ notice) then you could insist employees use their holidays whilst the building is being deep cleaned. Providing that this does not contravene their contractual terms.

If you relocate to other premises for a period of time, and should it cost more for them to travel to the new premises, then you could pay travel expenses for the difference so that they can still work.

***Q. If our employees have to work from home and you are saying we need to risk assess their working area at home do you have a template we can send them as to how their workstation should be set up?***

Yes, contact your local HR Dept office.

***Q. If a member of staff starts getting symptoms over a weekend and then self-isolates, do we need to close the company to deep clean offices etc.?***

This is not a government recommendation.



***Q. If a member of staff starts getting symptoms over a weekend and then self-isolates, would other staff members need to self-isolate as well?***

This is not a government recommendation. The current advice is that family members should self-isolate if the employee has symptoms but work colleagues are not mentioned in this guidance.

***Q. If a member of staff gets diagnosed with COVID-19 do we have to deep clean or speak to relevant authorities and take action from there?***

The current advice would be to close the workplace if a member of staff has been diagnosed, seek advice from your local authority regarding any deep cleaning requirements.

***Q. Is it mandatory to do a risk assessment? How detailed does it need to be? What is the risk assessment based on?***

Existing Health and Safety law requires some specific groups to be risk assessed, this includes; young and pregnant workers specifically. However, individual employees may have specific health conditions that could effect their vulnerability in relation to the current situation. Visitors should also be taken into consideration. Therefore, the only way to control the risk to employees and visitors is to carry out a careful examination of what is being done and what further measures can be done to reduce risk, this is about looking after people rather than fear of prosecution.

## **Financial Considerations**

***Q. We are losing business. This will mean an immediate reduction in revenue which has a detrimental and severe impact on our cashflow. What options do we have?***

- Consider furloughing staff through the Job Retention Scheme. Where cash flow is critical, there are other options:
- You could dismiss short-serving staff (employees with less than 2 years' service) without going through redundancy consultations, but it's important you contact your local HR Dept office to discuss this first.
- You could offer employees the opportunity to take unpaid leave.
- You could insist employees take their holiday entitlement (please contact your local HR Dept office for advice on how to do this), so that when you get busier again your staff are there to support income generation rather than taking their holidays.
- You could start consulting with your employees to reduce their hours for a period of time until this crisis passes.
- If the effect turns out to be longer term you could consider redundancies but do contact your local HR Dept office first.



***Q. How much notice do we have to give an employee for lay-offs, unpaid leave, forced holiday, reduced hours etc?***

These vary depending upon the circumstance, the content of your employment contract and any other policy within your handbook. Please contact your local HR Dept office for specific advice.

**Lay-off queries**

We refer you to the Job Retention Scheme as this scheme means that you can claim back 80% of the costs of having an employee off work which might be more preferable than laying-off staff. If the scheme is not appropriate for your business for whatever reason, then please contact your local HR Dept office to discuss lay-offs or other options.

**Volunteering**

***Q. An employee said that they would like to volunteer in the NHS if needed, do we have to give them the time off and do we have to pay them?***

They would be entitled to Emergency Volunteer Leave for a maximum of 4 weeks so you should authorise unpaid absence for that period.

