

Coronavirus

Factsheet for employers

This document is intended to provide general employment law advice for employers in light of the current coronavirus pandemic and is based on latest government and public health service guidance available at the time and date stated at the top of this page.

We will update this document regularly as a live document. Please check the latest version on our website (www.tinsdills.co.uk) to be sure the information you receive is entirely up-to-date (see [disclaimer below](#)).

Coronavirus (COVID-19) is likely to affect most, if not all employers, in the coming months. This factsheet is intended to provide simple guidance on the current best practice for dealing with coronavirus and your workforce.

It is **good practice** to:

1. keep your workforce updated on actions you are taking to reduce exposure in the workplace;
2. reconsider any unnecessary travel (particularly, overseas or to any networking/social events);
3. provide sufficient cleaning stations (with hot water and soap)
4. encourage everyone to undertake regular handwashing;
5. provide hand sanitiser and tissues for staff (if possible) and encourage their use;
6. ask everyone to check that their emergency contact details are up-to-date;
7. make sure senior members of staff are trained on how to spot symptoms of coronavirus and any relevant workplace processes (such as sickness reporting);
8. you should maintain records of staff absences;
9. you should not require employees to provide a GP fit note for the first seven days (see below);
10. never single anyone out (for example, on grounds of being a national of an affected country).

**Ensure you keep up-to-date with [latest government and public health advice](#).
Refer to the [NHS 111 online coronavirus service](#) for more guidance.**

Public Health England (PHE) recommends that everyone should follow general cold and flu precautions to help prevent people from catching and spreading coronavirus.

Face masks for the general public are not being recommended as protection from infection as there is currently no evidence of benefit from their use outside healthcare environments. Instead, they are only recommended to be worn by symptomatic individuals where advised by a healthcare worker.

PHE recommends that the best way to reduce any risk of infection is good hygiene and avoiding direct or close contact (closer than 2 metres) with any potentially infected person. Any member of staff who deals with members of the public from behind a *full* screen will be protected from airborne particles.

Social distancing, flexible working and working from home

Current government advice is for everyone to try and stop unnecessary contact with other people (known as 'social distancing'). This includes:

- working from home, where possible;
- avoiding busy commuting times on public transport;
- avoiding gatherings of people, whether in public, at work or at home (including networking).

You should support your workforce to take these steps; ways in which you can do this may include:



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- agreeing to more flexible ways of working – for example, by allowing and facilitating staff being able to work from home, or changing start and finish times to avoid busier commuting times;
- cancelling face-to-face events and meetings and using video or conference calling technology as an alternative.

Government grants for payment of wages to prevent laying off and short-time working

The government has confirmed a package of measures which should see companies receive grants to pay workers 80% of their salaries (up to a limit of £2,500 a month). The Chancellor also urged employers not to cut jobs.

If you are required to send workers home due to lack of work, or you are considering laying off employees or putting them onto short-time working, the government's plan is for your workers to receive 80% of their gross wages. However, there is a requirement that you do not lay off your workers.

The government say that there will be grants available by the end of April from the UK's tax authority that you will be able to access to allow you to keep paying your workforce. The grants are intended to be backdated to March and the scheme will last for at least three months with a view to preventing mass unemployment. You will only be able to obtain grants for workers' wages if you do not lay those workers off or, if you have already laid them off, you must first reinstate their jobs.

The grants will only relate to workers who are on the PAYE system and who are affected by business closure due to lack of work or who would otherwise have been laid off or put on short-time working hours. It does not apply to workers who have or are suspected to have symptoms of coronavirus, or who are in isolation.

If a member of staff (or public) with a *suspected* case of coronavirus has recently been into work:

- There is no need to close the workplace or send other staff home at this point.
- Current guidance states that no restrictions or special control measures are required while the results of the laboratory test on that member of staff/public for coronavirus are awaited.

If a member of staff (or public) with a *confirmed* case of coronavirus has recently been into work:

- Current guidance states that closure of the workplace is not recommended (however there will inevitably be a presumption that the person will no longer be in work).
- Your management team is likely to be contacted by a local Health Protection Team from PHE to discuss the case, identify people who have been in contact with them and advise on any necessary actions or precautions to be taken.
- A risk assessment of the workplace is likely to be undertaken by the Health Protection Team.
- The Health Protection Team should also contact the person who is confirmed to have coronavirus directly to advise them on isolation.
- Advice on cleaning of communal areas such as offices or toilets should also be given to you by the Health Protection Team.

Self-isolation and sick pay

Able to work from home?

If an employee is required to self-isolate and their work is such that it can be done from home, you should permit them to work from home during their isolation period at their normal rate of pay (even if they are entitled to SSP). A failure to do so could give rise to a claim for a breach of the implied duty of trust and confidence or unlawful deduction from wages.

Unable to work from home



Where an employee is required to self-isolate and the nature of their work genuinely does *not* allow them to work from home, your contractual sick pay scheme may provide for payment in those circumstances; you may also choose to pay the employee at their normal rate of pay regardless of whether or not they are entitled to SSP. (It could be argued that this would be appropriate in order to incentivise employees who potentially pose a risk to others to stay in isolation rather than return to work because they cannot afford to, or do not want to, lose pay.)

Many workers do not qualify for SSP, including those on zero hours contracts and those who earn less than the current threshold of £118 per week. This is likely to be an area of future development as the impact of coronavirus continues increases.

Changes to SSP and Isolation Notes

Where eligible, workers will be entitled to SSP from day one (rather than day 4) of any sickness absence as a result of coronavirus. SSP will also be temporarily extended to those who self-isolate due to someone in the same household displaying coronavirus symptoms.

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

The government has stated that notes can be accessed through the **NHS website** and **NHS111 online**. This is not currently live but is likely to be live shortly.

According to Health & Social Care Secretary, Matt Hancock, 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 you. **The service can also be used to generate an isolation note on behalf of someone else.**

Government refund of SSP

On 11 March 2020, the government announced in its Budget, that certain eligible SSP costs will be refunded to small and medium-sized employers where employees are absent from work due to sickness resulting from coronavirus:

1. Refunds for SSP will be limited to two weeks per employee;
2. Employers with fewer than 250 employees (as at 28 February 2020) will be eligible;
3. The eligible period for the scheme will commence from 13 March 2020, being the day on which the regulations extending SSP to self-isolators came into force;
4. While existing systems are not designed to facilitate such refunds for SSP, the government have confirmed they will work with employers over the coming months to set up a repayment mechanism for employers as soon as possible.

For now, employers should keep a full record of absences as a result of coronavirus so that any refund due to them can be calculated once the repayment mechanism is confirmed.

Sending employees home

As an employer, you have a duty (under the Health and Safety at Work Act 1974 and associated legislation, as well as at common law) to protect the health safety and welfare of your workforce.

If an employee insists on coming in to work and it is reasonably suspected either that they themselves are infected or that they pose a health risk to other employees in some other way (e.g. because they had recently travelled to an affected area) and you ask that employee to go home and maintain a period of isolation for a specified time, that employee would be entitled to receive their normal pay, unless there was a clear contractual right to withhold pay in those circumstances.

Similarly, if you instruct employees who would otherwise be capable of work to stay at home for a specified period as a *precautionary measure*, you would be obliged to keep those employees on full



pay as if they had been suspended, or risk claims for breach of contract and constructive unfair dismissal. Obviously where such employees can work from home, they should be requested to do so.

The position would not necessarily be the same for an employee who self-isolates voluntarily, without being required by their employer to do so (see immediately below).

Vulnerable people

Employers need to take extra steps for anyone in their workforce who is at increased risk from coronavirus. This will include, but is not limited to, those who:

- have a long-term health condition (e.g. 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; and/or
- care for someone with a health condition that might put them at a greater risk.

Where an employee chooses to self-isolate without being required to do so

Someone who chose to self-isolate, purely as a precautionary measure without being required to do so in accordance with guidance published by PHE would not be entitled to SSP during their period of isolation. In the absence of a contractual right to pay in those circumstances, it would generally be for the employer (you) to agree what payment will be made (if any).

Data protection considerations

You may be required to ask employees to provide details about sensitive health conditions and recent travel that they think are excessive.

Employers do have an obligation to protect their staff so, in some cases, it can be reasonable for you to ask if an individual has visited a particular country or if they have experienced coronavirus symptoms. **However, you should not be asking for more information than is necessary and if individuals are concerned they should speak to you about this.**

If a person becomes ill with coronavirus, it is likely that you will need to tell other members of staff (and potentially third parties, such as insurers). **This does not mean that you should give out the individual's name. Anonymised information should be given where possible.**

Information regarding an employee's health, such as whether the employee is suffering symptoms of coronavirus, or has been diagnosed as having the virus, is special category data under the General Data Protection Regulation (GDPR) and the Data Protection Act 2018.

Additional requirements and obligations apply to the processing of such data by you as their employer and any third parties.

If you would like further advice on dealing with coronavirus in the workplace, please contact a member of **our Employment team** on:

01782 652300

or through our online contact form at:

<https://tinsdills.co.uk/about-us/contact-us/>

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