

# 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](http://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.

### **The Government has announced that everyone should stay at home except for in specific situations.**

This means:

- only going outside for food, health reasons, or for essential work but only where this absolutely cannot be done from home;
- when you do go out (including for essential work), staying 2 metres or 6 feet away from other people (social distancing);
- avoiding busy commuting times on public transport where travel is essential;
- not gathering in groups of more than two;
- washing your hands as soon as you get to work and when you get home.

**You should support your workforce in complying with these measures. This might include agreeing more flexible ways of working and/or requiring your staff to work from home.**

It is **good practice** to:

1. allow staff to work from home where possible (even if it requires investment in infrastructure);
2. keep your workforce updated on actions you are taking to reduce exposure in the workplace and to comply with the requirement to stay at home;
3. stop any unnecessary/non-essential travel (particularly overseas);
4. provide sufficient cleaning stations (with hot water and soap) where working on site is essential;
5. encourage everyone to undertake regular handwashing;
6. provide hand sanitiser and tissues for staff (if possible) and encourage their use;
7. ask everyone to check that their emergency contact details are up-to-date;
8. make sure senior members of staff are trained on how to spot symptoms of coronavirus and any relevant workplace processes (such as sickness reporting);
9. you should maintain records of staff absences;
10. you should not require employees to provide evidence of sickness absence for the first seven days. After seven days, employees can provide an isolation note rather than a GP fit note (see [Changes to SSP and Isolation Notes below](#));
11. 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.**

In addition to the measures set out above (including social distancing), 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 stop unnecessary contact with other people (this is known as 'social distancing') and for everyone to remain at home except for in limited, specific circumstances. This includes:

- working from home, where possible (even if that means investing in new infrastructure);
- avoiding busy commuting times on public transport;
- avoiding gatherings of people of more than 2, 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:

- providing technological support (both in terms of hardware and software);
- adjusting terms and conditions of employment to accommodate remote working (if required);
- implementing workable routines/mechanisms for maintaining effective communication;
- conducting risk assessments to ensure health and safety responsibilities are complied with.

### **Furloughed workers and 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 those workers who would have been laid off or made redundant as a result of the impact of coronavirus 80% of their salaries (up to a limit of £2,500 a month), initially for the period 1 March 2020 to 31 May 2020, to avoid lay offs and redundancies. The Chancellor has urged employers not to cut jobs and to rely on the grants where possible as a way to avoid mass unemployment.

*The grants will only be payable in respect of workers who are on the PAYE system, were employed on or before 28 February 2020, and who are affected by business closure due to lack of work or who would otherwise have been laid off. It does not apply to workers who are off sick as they have or are suspected to have symptoms of coronavirus, or who are in insolation.*

If you are required to send employees home due to lack of work, or where you are considering laying off employees, you may instead be able to send the affected employees home on 'furlough' by giving the 'furloughed employees' notice of the decision to send them home. **You should ensure that any furlough notice or agreement includes details of the date on which furlough starts, when it will be reviewed and how to keep in contact during furlough.** You will need to review everyone's contracts of employment to check whether you are entitled to send them home (i.e. whether they include laying off provisions) as, without them, you are not entitled to do so and the employees could refuse. However, faced with the prospect of redundancy as an alternative, many employees will be likely to agree to being 'furloughed' despite the lack of laying off provisions in their contracts. Furloughed employees should receive 80% of their gross wages, which will be reimbursed through HMRC to the employers. Normal employee contributions for income tax, National Insurance and pensions will be made from the payment. You will only be able to obtain grants for furloughed workers if you do not lay them off during the furlough period or, if you have already laid them off, where you have first reinstated their contracts of employment. In addition to wage costs, the grant will also cover the cost of *employer* contributions to National Insurance and pensions.

Whilst guidance on the new scheme continues to be updated, it appears that any workers who you are sending home on a temporary 'furlough' (a term coined from American employment law) **must not carry out any work for the business during the furlough period.** If the furloughed worker continues to do any work for you whilst on a temporary furlough you will not be eligible to receive



payment for them under the grant and you could be subject to criminal and/or civil proceedings if you made a claim for that worker under the grant.

The government has stated that employers will be able to access the grants by the end of April via an online system currently being set up by HMRC and the grant will be backdated to 1 March 2020.

We have produced a series of FAQs on the Job Retention Scheme, which are available on our website. More information on the scheme is also available at: <https://www.businesssupport.gov.uk/>

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

- you should ask the person to leave the workplace and, if they are a member of staff, treat them as being on sickness absence;
- there are no restrictions or special control measures 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:**

- 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**

The Statutory Sick Pay (Coronavirus) (Suspension of Waiting Days and General Amendment) Regulations 2020, came into force on 28 March 2020. These regulations mean that, where eligible, workers will be entitled to SSP from day one (rather than day four) 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**

Following the government's announcement in its Budget on 11 March 2020, changes were made to law under the Coronavirus Act 2020 to allow certain eligible SSP costs to 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 has confirmed it will work with employers over the coming months to set up a repayment mechanism for employers as soon as possible.

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 system/portal is live.

### **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).

### **Carrying over holidays**

The Working Time (Coronavirus) (Amendment) Regulations 2020 came into force on 26 March 2020. These regulations amend the Working Time Regulations 1998 (WTR) to allow holiday relating to the four weeks' basic holiday entitlement provided for by regulation 13 WTR to be carried over into the next two leave years where it has not been taken because of the effects of the coronavirus pandemic (including any effects on the on the worker, employer or wider economy or society).

### **Emergency Volunteering Leave**

The [Coronavirus Act 2020](#) received royal assent on 25 March 2020 and includes (amongst other things) provisions for emergency volunteering leave (**EVL**), which is a temporary new form of statutory unpaid leave for employees and workers who wish to volunteer in the health and social care sectors during the outbreak of coronavirus.

To qualify for EVL, a worker needs to be issued with an 'emergency volunteering certificate' (**EVL Certificate**) by an appropriate authority, confirming that they have been approved as an emergency volunteer and that they will volunteer for a specified period. The worker must then provide you with written notice, including the EVL Certificate, at least three working days before the first day of the period specified in the EVL Certificate.

They will be entitled to take a set block of two, three or four consecutive weeks of EVL during a period of 16 weeks (**volunteering period**) and there is no requirement for a worker to have any qualifying period of service with their employer to take EVL. Subsequent volunteering periods can be specified by relevant national authorities in regulations.

A number of categories of worker are exempted from the entitlement to take EVL, particularly those who work in other critical roles.

Terms and conditions of employment (except those relating to remuneration) continue to apply during EVL and protections apply to an individual's pension rights. Workers who take, or seek to take, EVL are protected from detriment and employees receive additional unfair dismissal protections.

### **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 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 ask for more information than is necessary and if individuals are concerned they should speak to you.**

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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