

# Coronavirus

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## 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 affecting most, if not all employers, at the moment and will continue to do so in the coming months. This factsheet is intended to provide simple guidance on the current best practice for dealing with coronavirus and your workforce.

**On 10 May, the Government changed its guidance on workplaces. Ensure you keep up-to-date with [latest government and public health advice](#) and refer to the [gov.co.uk](http://gov.co.uk) website for more guidance.**

### What does this mean for employers?

This means:

- your employees should continue to work from home, wherever possible;
- if your employees are unable to work from home, they are now encouraged to return to their workplace provided it is 'Covid-19 Secure' (see below). The only exceptions to this are those workplaces, such as hospitality and non-essential retail, which the Government is requiring to remain closed at the moment (see <https://www.gov.uk/government/publications/further-businesses-and-premises-to-close/further-businesses-and-premises-to-close-guidance>);
- your employees are encouraged to avoid use of public transport, wherever possible.

**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 continue to work from home.**

You should:

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 Government guidance;
3. provide technological support (both in terms of hardware and software) where employees are working from home;
4. invest in virtual meeting platforms to support customers, clients and employees;
5. adjust terms and conditions of employment to accommodate remote working (if required);
6. implement workable routines/mechanisms for maintaining effective communication with those employees working from home;
7. conduct risk assessments to ensure health and safety responsibilities are complied with wherever employees are working;
8. stop any unnecessary/non-essential travel and contact connected with employment;
9. ask everyone to check that their emergency contact details are up-to-date;
10. make sure senior members of staff are trained on how to spot symptoms of coronavirus and any relevant workplace processes (such as sickness reporting);
11. if your work place is open, ensure it is 'Covid-19 Secure';
12. maintain records of staff absences;
13. not require staff to provide evidence of sickness absence for the first seven days. After seven days, workers can provide an isolation note rather than a GP fit note (see Changes to SSP and Isolation Notes below);
14. never single anyone out (for example, on grounds of being a national of an affected country).



## COVID-19 Secure

If your workplace is open, you must ensure that it is 'COVID-19 Secure'. The minimum measures that you should put in place are those set out in the Government guidance, 'Working safely during coronavirus (COVID-19)' (<https://www.gov.uk/guidance/working-safely-during-coronavirus-covid-19>). The guidance provides practical steps that you can take to ensure your workplace is, so far as possible, a safe working environment for your employees and to ensure your employees. The measures advised centre around the need to ensure social distancing measures are adhered to.

In addition to following the above guidance, you can implement additional safety measures if you feel that this would enhance protection for your employees. Examples include: temperature checks and enhanced personal protective equipment. However, you are not required to do so.

## Furloughed workers and Job Retention Scheme for payment of wages to prevent laying off and short-time working

The government confirmed a package of measures which sees employers 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), for the period commencing 1 March 2020. The scheme was originally due to end on 30 June 2020 however a further announcement was made confirming that the scheme would continue until 31 October 2020 but that the level of grant would change over the coming months, as follows:

<b>From 1 July:</b>	Employees can be brought back to work on a part-time basis and the grant will still cover those days where the employee does not work and is on furlough. The grant will not cover those days/hours worked, however.
<b>From 1 August:</b>	The grant will still cover 80% of salaries (up to a limit of £2,500 a month) for those hours not worked; however, it will no longer cover the employer's NI and pension contributions.
<b>From 1 September:</b>	The grant will cover 70% of salaries (up to a limit of £2,187.50 a month) for those hours not worked. You are still required to pay the employees 80% of their salaries (up to a limit of £2,500 a month), however (meaning you will need to top up the grant amount).
<b>From 1 October:</b>	The grant will cover 60% of salaries (up to a limit of £1875 a month) for those hours not worked. Again, you are still required to pay the employees 80% of their salaries (up to a limit of £2,500 a month), however (meaning you will need to top up the grant amount).

For more information, check our 'Furlough Timeline – Key Dates' guide which is available at [www.tinsdills.co.uk](http://www.tinsdills.co.uk)

*The Coronavirus Job Retention Scheme (**Scheme**) is only payable in respect of workers who are on the PAYE system on or before 19 March 2020 (provided that you have submitted real time information payroll data through the PAYE system for the affected employees by that date), and who are to be furloughed by reason of circumstances resulting from coronavirus or coronavirus disease. 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. **You will not be able to claim under the Scheme for any employees that you furlough after 30 June 2020 and who have not been placed on a period of furlough (lasting at least three weeks) before that date.***

If you are required to send employees home due to lack of work or you are considering laying off employees, you may instead be able to send the affected employees home on 'furlough' by agreeing with the 'furloughed employees' that they will be sent home on furlough and that they will cease all work for the business. **You should ensure that any furlough agreement is in writing and that it includes details of the date on which furlough starts, when it will be reviewed and how to keep in contact during furlough.** Following the issue of a Direction from the government to HMRC, it is clear that there *must* be a written agreement or written confirmation of a verbal agreement (which can be in email format) between the employer and employee to furlough if you are to claim under the Scheme. If you verbally agree with an employee that they will be placed on furlough then you should



follow up the conversation with a letter or email to confirm the agreement between you. It is still not clear whether lay off provisions within the contract of employment and a written notification confirming the furlough status will be sufficient, or whether express agreement must be made to the specific period of furlough. However, following the Direction it is probably still the safer option to simply have a specific furlough agreement signed (or with agreement confirmed by email) by the affected employees to evidence compliance to HMRC, if it is requested at any stage. Furloughed employees should receive 80% of their gross basic wage or salary or £2500 (whichever is the lower), disregarding any performance-related bonuses or discretionary payments (such as tips), any conditional payments (e.g. where a threshold or target must be met) and any non-financial benefits; and payment will be reimbursed through HMRC to the employers. Up until 31 July HMRC will reimburse the full 80% or £2,500, but the position will change from 1 August (as stated above) with HMRC reimbursing a lower percentage and employers being required to top up the employees pay to the lower of 80% of basic salary or £2,500. The government has produced a calculator that can be used to calculate the amount that you are able to claim for each employee under the scheme, available at: <https://www.tax.service.gov.uk/job-retention-scheme-calculator/>.

If, since 28 February 2020, you have already laid off employees, you must have first reinstated their contracts of employment before furloughing them and claiming under the Scheme. This will only apply, however, to employees who were laid off on or after 28 February 2020 but *before* 19 March 2020 and who were furloughed for a three week period ending on or before 30 June 2020.

In addition to wage costs, the grant will also cover the cost of *employer* contributions to National Insurance and pensions until 31 July 2020. From 1 August 2020, those contributions will cease to be covered by the Scheme.

Prior to 1 July 2020 workers who you sent home on a temporary 'furlough' (a term coined from American employment law) **could not carry out any work for the business during the furlough period**. If the furloughed worker continued 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. As of 1 July 2020, however, employees can be asked to work part-time on their usual rate of pay but the Scheme will only cover payments for the days/hours they do not work.

The online portal that employers need to use to access the Scheme went live on 20 April 2020 and employers can now claim for grants backdated as far as 1 March 2020. **31 July 2020 is the last date on which you can make a claim for the period ending on 30 June 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. Alternatively, you may 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**.

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.

<https://www.nhs.uk/conditions/coronavirus-covid-19/people-at-higher-risk-from-coronavirus/whos-at-higher-risk-from-coronavirus/> sets out further details on those individuals who are particularly vulnerable to the disease.

## **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 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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