

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) continues to have a significant impact on businesses. This factsheet is intended to provide simple guidance on the current best practice for dealing with coronavirus and your workforce.

On 5 November, England was placed into national lockdown and 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 website for more guidance.

The current guidance states that you must not leave or be outside of your home except for specific purposes (such as work and volunteering and to fulfil legal obligations). A full list of the exceptions can be found [here](#).

This means that you should encourage your staff to work from home and only open your place of business (unless it is a non-essential business) if your staff cannot carry out their work from home practically.

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, employees 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 employees and Job Retention Scheme for payment of wages to prevent laying off and short-time working

The government confirmed a package of measures which saw employers receive grants to pay those employees 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 extension was announced by the Chancellor on 5 November 2020 and so the Scheme will run until 31 March 2021.

From 1 November:: The grant will 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 contribution.

Employees can work on a part-time basis (i.e. part working and part furloughed) 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.

From 1 February: The level of cover under the Scheme may be reviewed at this time.

*Unlike in previous months, where the Coronavirus Job Retention Scheme (**Scheme**) was only payable in respect of employees who were on the PAYE system on or before 19 March 2020, the scheme will now be open to employees who were on the PAYE system on or before 23 September 2020 (provided that you had 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 employees who are off sick as they have or are suspected to have symptoms of coronavirus, or who are in isolation. **You will now be able to claim under the Scheme for employees who have not previously been furloughed (provided they were on the PAYE system on or before 23 September 2020 – see above).***

You will also be able to claim under the Scheme for any employees who were on the PAYE system on or before 23 September 2020 and have been made redundant, provided you re-employ them.

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. **As before, 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.** 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. If you are unsure whether your existing contracts of employment satisfy this requirement, speak to one of our specialist employment solicitors who will be able to advise you.

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. 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/>.

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:

- If a member of staff develops symptoms, you should tell them to request a free test as soon as their symptoms start;
- once they have ordered the test, they will be asked by NHS Test and Trace to provide details of anyone who they have been in close recent contact with. This will not automatically be all their co-workers, but anyone who meets the definition of a close contact;
- you should ask the person to leave the workplace and, if they are a member of staff, tell them to self-isolate and treat them as being on sickness absence;
- Employers may need to keep staff informed about COVID-19 cases among their colleagues. However, employers should not name the individual. If a co-worker is at risk because of close contact, then they should be notified to self-isolate by NHS Test and Trace.

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

- If the person with symptoms tests positive for COVID-19, NHS Test and Trace will notify their close contacts and instruct them to self-isolate;
- This will occur by either a phone call, text message, email or letter. The period of self-isolation will be for up to 14 days, from the point of most recent contact with the person who has tested positive for coronavirus;
- You must not allow the member of staff to return to work until after the end of the period of self-isolation and only then if they no longer have symptoms.

You have a **legal responsibility** to ensure your employees self-isolate if they:

- have tested positive for coronavirus
- have been in close recent contact with someone who has tested positive and received a notification to self-isolate from NHS Test and Trace

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 effectively, 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 effectively, 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 employees 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.



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

In light of the coronavirus pandemic, changes were made to law 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. To check whether you can claim any SSP costs back from the government, check out the latest guidance [here](#).

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.

If your employee is unable to work because they are clinically extremely vulnerable, or at the highest risk of severe illness from coronavirus and following public health guidance, or is unable to work because they have caring responsibilities resulting from coronavirus (COVID-19), including employees that need to look after children, they should be eligible under the Scheme and can be furloughed.

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 or who is required to self-isolate because they travelled overseas (other than if required to do so for work), 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).

Redundancies whilst on furlough

In the unfortunate event that you are required to make the decision to terminate the employment of any furloughed employees by reason of redundancy then, following recent changes in law (under the Employment Rights Act 1996 (Coronavirus, Calculation of a Week's Pay) Regulations 2020), any statutory redundancy and notice pay for those employees should be calculated based on that employee's *average weekly pay* from before they were furloughed. It should not be calculated based on their furloughed pay. Employers should note that, whilst notice pay will be recoverable for employees who remain on furlough during their redundancy notice period, redundancy payments and any payment in lieu of notice will not be recoverable under the CJRS.

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/>

DISCLAIMER: Tinsdills Limited shall not be liable in contract, tort, negligence, breach of statutory duty or otherwise for any loss, damage, costs or expenses of any nature whatsoever incurred or suffered as a result of any reliance on the information provided in this document which is based on government or public health service guidance which is inaccurate, incomplete, or not current. All information is for general information only and should not be relied upon or used as the sole basis for making decisions without consulting primary, more accurate, more complete, or more timely sources of information. Any reliance on this material is made at your own risk.

