



**DOYLE CLAYTON**

Workplace Lawyers

**CORONAVIRUS GUIDANCE FOR EMPLOYERS**

**21 March 2020**

## **CORONAVIRUS GUIDANCE FOR EMPLOYERS**

This guidance answers some of the common questions employers have in relation to the coronavirus outbreak. Inevitably as government advice changes, employers will have to change their approach. Please do get in touch if you require advice on your particular circumstances.

### **Can we lay staff off for a short time to save money if needed?**

Employers can only lay staff off (no work and no pay) or put them on short-time working (less work and less pay) if they have a right to do this in the employment contract. In industries where there is a custom and practice of laying off employees or putting them on short time working, there may be an implied term allowing employers to do this, but this will be rare.

If you lay employees off or put them on short-time working without a contractual right to do so, they will be able to resign and claim constructive unfair dismissal and a redundancy payment. They could also choose to remain employed and bring a claim for breach of contract or an unlawful deduction from wages.

Where an employer has a contractual right, employees who are laid off or put on short-time working may be entitled to a statutory redundancy payment in certain circumstances. They may also be entitled to be paid a statutory guarantee payment for some days when no work is provided. This is a complex area and employers should seek specific advice.

### **Can we make staff go part-time to save money if needed?**

Normally you will not be able to change an employee's hours without their agreement. You should check the terms of the employment contract to see what it says about their working hours and whether you have any right to change them. Where you do have a right to change them, you will need to act reasonably and give as much notice as possible.

If you do not have a right to change their hours you will need to see if you can agree this with them. If the alternative to agreeing reduced hours is redundancy, employees may be prepared to agree this.

### **What should employees be paid if they are ill?**

Employees who are ill or otherwise incapacitated (whether due to the coronavirus or something else) are entitled to statutory sick pay, subject to meeting the qualifying requirements. They will also be entitled to any contractual sick pay in accordance with contractual terms.

### **What should employees be paid if they are not ill but they are self-isolating?**

#### *Self-isolating but able to work*

Employees who are self-isolating but who can work as normal should be paid in the normal way.

### *Self-isolating but unable to work*

Employees who are unable to work while self-isolating and who otherwise qualify for statutory sick pay will be entitled to statutory sick pay if they are self-isolating to prevent infection or contamination with coronavirus in accordance with guidance published by Public Health England, NHS National Services Scotland or Public Health Wales. The guidance is being constantly updated. Below are the links to the latest guidance but employers should always check for the latest information.

England – <https://www.gov.uk/government/publications/covid-19-stay-at-home-guidance>

Scotland - <https://www.nhsinform.scot/illnesses-and-conditions/infections-and-poisoning/coronavirus-covid-19#stay-at-home-advice>

Wales - <https://phw.nhs.wales/topics/latest-information-on-novel-coronavirus-covid-19/self-isolation-advice/>

Depending on the terms of the contract, employers may not have to pay contractual sick pay. However, they should consider whether to extend sick pay in order to deter employees from ignoring government advice, coming to work and potentially infecting others.

### *What evidence can we ask for?*

The government announced in the budget on 11 March that employees advised to self-isolate will be able to obtain a notification via NHS 111 which they can use as evidence of their reason for being absent from work. The government launched online isolation notes on 20 March. Employees can obtain an isolation note by answering questions online at [111 online coronavirus service](#) or [NHS.UK/coronavirus](#) as well as on the NHS app. The isolation note is then sent to them by email.

### **Are employees now entitled to statutory sick pay from the first day of absence?**

The government also announced in the budget that as an emergency measure it will bring in legislation to make statutory sick pay available from the first day of sickness absence for people who have COVID-19 or have to self-isolate in accordance with government guidelines. That legislation is not yet in force and so employees are not currently entitled to sick pay from the first day of sickness absence. Guidance from the DWP indicates that it intends to legislate so this will apply retrospectively from 13 March 2020.

### **Can we stop employees' personal travel to affected areas?**

Employers will not normally have a contractual right to restrict an employee's personal travel. Employers should also be aware of the potential for race discrimination claims – for example a travel ban may disproportionately affect nationals of that country and would have to be justified. An outright ban may not be proportionate.

Where holiday has not already been agreed, an employer may be able to refuse a holiday request if they consider that travel to that destination is irresponsible.

If an employee travels to an area and has to self-isolate on their return, they may still be able to work remotely, in which case they will be entitled to full pay in the usual way. If the employee is well but required to self-isolate in accordance with government guidance, they will be entitled to statutory sick pay. However, the employer could decide not to pay any company sick pay. If the employer is paying company sick pay to others who self-isolate in accordance with government guidance, they will need to consider whether a refusal in such circumstances could be indirectly discriminatory and whether they can justify it.

If the employee is unwell on their return, they will be entitled to sick pay in the usual way. If company sick pay is discretionary, this may be a reason to exercise discretion against paying sick pay but again employers should consider whether there is any risk of a discrimination claim.

### **Can we require employees to work from home?**

This will depend on the terms of the contract. There may be express provision in the employment contract for home working or there may be a mobility clause that is wide enough to cover home working. There may also be an established practice of home working which the employer can rely on as an implied term of the contract.

Otherwise, in the absence of the employees' agreement, insisting on home working could technically be a breach of the employment contract. However, in the current climate, it seems unlikely employees would not agree to work from home. In addition, in light of recent government guidance to work from home where possible, an instruction to work from home is likely to be a reasonable management instruction and failure to comply could justify disciplinary action.

### **Are there any health and safety issues associated with home-working?**

Yes, an employer needs to ensure they have considered the health and safety implications of employees working at home. Employers are responsible for their employees' health, safety and welfare at work, "*so far as is reasonably practicable*". They should conduct a risk assessment of all the work activities carried out by their employees to identify any hazards and assess the degree of risk. Where an employer already operates homeworking, these points would usually be covered by their existing homeworking policy.

If there is no such policy, points to consider include:

- Increased risk of stress due to isolation/lack of support at home Employers should consider monitoring stress levels and directing employees to sources of support where required
- Any equipment which is supplied must be suitable for its purpose, maintained in good working order and inspected regularly. There is no legal obligation to provide the equipment necessary for homeworking, although an employer may need to consider this in the context of making reasonable adjustments for a disabled employee
- An employer should ensure must appropriate first aid provision. Most homeworking will be low risk and a simple first aid kit should suffice

- A reminder of the procedure for reporting accidents or near misses and adapting as necessary for home-working.

Due to the COVID-19 outbreak, there are increased health risks associated with working in the office (such as use of public transport and interaction with colleagues and others). Therefore, the potential risks associated with working from home need to be considered in the context of the employer's general duty of care to its employees.

#### **Are there any insurance issues associated with home working?**

Employers should check to make sure any equipment they provide is insured when it is in the employee's home. If using their own equipment, employees will need to check their home insurance policies to see if there is anything they are not covered for if they are using it for work purposes.

#### **Are there any data protection issues associated with home working?**

Guidance issued by the Information Commissioner's Office on [data protection and the coronavirus](#) says that during the pandemic people may work from home more frequently than usual and can use their own devices. However, employers will need to consider the same kinds of security measures for homeworking that they would use in normal circumstances. The sort of things that employers need to consider include:

- Is the employee able to work in an environment where they can maintain the confidentiality of the information they are handling? If they share a house with people that they do not know well, they need to take particular care that any personal data they are handling cannot be seen by others or accidentally lost or destroyed. This may mean them having to work in their bedrooms rather than in common areas. Even those who live with their families should take precautions to ensure that their family members cannot see any personal data or confidential information. If they use laptops, consider issuing privacy screens that mean that nobody can see what is on the screen unless they are looking directly at the screen. These are also useful if people regularly work on public transport and you allow them to do so
- If the employee takes home paperwork, do they have somewhere secure to store it overnight? Ideally in a lockable cabinet, but if this is not possible in the short term, a lockable case?
- For those employees who have home offices away from the house, they should lock them every time they come back into the house to make a coffee etc. In all other cases, employees should be reminded to close windows and take extra care to ensure that all doors are locked when they leave the house to reduce the risk of a break-in
- When travelling from the office to home, employees need to be warned to take particular care of any laptops, phones and other devices and of any manual files. They should not let

anything containing personal data or confidential information out of their sight when on public transport, nor should they leave anything in a car, whether locked or not

- Access rights need to be strictly controlled and data should be encrypted if possible so that if any device is lost or stolen, the impact will be minimised
- If employees need to print remotely, it may be that the security settings on the employer's systems will not permit this to be done from a personal device. If this is the case, the temptation is sometimes to forward documents to a personal email address for printing. This should still be prohibited as this can create a significant security issue. Instead, employers should consider alternatives in case whole offices are shut and people cannot come into the office at all. Speak to your IT provider – they may be able to source company equipment on loan that the worker can attach to their own printer (or they may be able to print wirelessly from their company mobile phones) without creating security issues
- Consider data minimisation and processing only as much information as is needed for their purposes. In particular, employers should consider whether they need to process special category data (such as health data). They should pseudonymise data wherever possible, redacting names if possible so that in the event of a loss of data, the impact will be lessened
- Remind staff about the importance of reporting any personal data breach as soon as possible to the data protection officer (or similar), and remind them of what constitutes a personal data breach (e.g. loss of a file on the train; a burglary at home that results in theft of a laptop; sending an email to the wrong person) and what they need to do to report the incident

### **Can we tell staff that a colleague may have potentially contracted Covid-19?**

Yes you can tell staff as you need to ensure their health and safety but you should not name the individual unless this is unavoidable.

### **Can we collect health data in relation to Covid-19 from employees or visitors, or ahead of a conference or event?**

You can ask for information about whether somebody has visited a particular country or is exhibiting symptoms of Covid-19 and you can ask visitors to consider government advice before they decide to come. We can provide you with some suitable GDPR wording for visitors.

### **Can we share employees' health information to authorities for public health purposes?**

Yes you can do this, although you probably would not be asked to share information about particular individuals. If you are, and it is necessary for these purposes, then you can do so.

## **Will the ICO still take regulatory action against us?**

The ICO has confirmed that they will make allowances for any slippage in normal standards to take account of other priorities taking up an employer's resources at this time.

## **Is the government offering businesses any grants/reliefs?**

Details of the government's measures can be found [here](#). In summary:

- Small employers (with fewer than 250 employees at 28 February 2020) will be reimbursed for any statutory sick pay paid to employees in respect of the first 14 days of sickness related to COVID-19. The eligible period for this scheme commenced on 13 March 2020.
- On 20 March the government announced the introduction of the Coronavirus Job Retention Scheme. All UK employers will be able to access support to continue paying 80% of the wages of employees who would otherwise have been made redundant, subject to a maximum of £2,500 per month.
- VAT payments will be deferred. No businesses will need to pay VAT from now until 30 June. Businesses will have until the end of the financial year to repay the VAT bills.
- Business rates are being abolished (for 2020/2021) for all retail, hospitality and leisure businesses, irrespective of their rateable value. A £25,000 grant will be provided to retail, hospitality and leisure businesses operating from smaller premises, with a rateable value between £15,000 and £51,000.
- Pubs in England with a rateable value below £100,000 will receive a £5,000 business rates discount (for 2020/2021).
- The government is providing additional funding for local authorities to support small businesses that already pay little or no business rates because of Small Business Rate Relief (SBRR). This will provide a one-off grant of £10,000 to businesses currently eligible for SBRR or Rural Rate Relief, to help meet their ongoing business costs.
- A new, temporary Coronavirus Business Interruption Loan Scheme to support small and medium-sized businesses to access bank lending and overdrafts. This will provide loans of up to £5 million, with no interest in the first 12 months. The government will guarantee 80% of each loan.
- Businesses in financial distress and with outstanding tax liabilities may also be able to agree a bespoke Time to Pay arrangement with HMRC.

- Under the new Covid-19 Corporate Financing Facility, the Bank of England will buy short term debt from larger companies. This will support companies affected by a short-term funding squeeze and allow them to finance their short-term liabilities.

**Doyle Clayton 21 March 2020**

*This is not legal advice and should not be relied on as such. Specific advice should be sought to address your own circumstances.*

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