



Employment Law Newsletter – Coronavirus briefing March 2020

In the newsletter we sent on Friday we said we would send a longer briefing on managing the risk from coronavirus. Here it is.

Much has been made of the potential economic impact of a pandemic such as we are currently seeing with coronavirus (COVID-19). Coronavirus presents with flu-like symptoms including a fever, a cough, or difficulty breathing. The current evidence is that most cases appear to be mild - many of those most seriously affected have pre-existing health conditions.

UK-based employees are far more likely to have influenza than coronavirus, but the same precautions are reasonable. While the threat remains small, what should you do?

Alongside the effect the virus might have on your employees, there is the threat of significant disruption to global supply, particularly given the position that China now holds as the source of so many materials: components and finished products.

For businesses already in the grip of a crisis the possible options become more limited and decisions need to be made very quickly. Although the longer-term consequences have yet to play out fully, the coronavirus outbreak already provides some lessons about how businesses can prepare for any future large-scale crises.

The department of Health and Social Care has advice that is updated daily at <https://www.gov.uk/guidance/coronavirus-covid-19-information-for-the-public>. In this briefing we consider both the broader issues for business and for employee relations.

Business issues

Collaborative working

The disruption to normal business activities, particularly routine office-based working and international travel, might just provide the stimulus for a permanent shift in the use of collaborative working tools and virtual working arrangements. The constraint here is no longer a technical one, but a matter of culture and behaviour. Just as businesses need to think about setting up programmes of determining best practice, configuring the tools, training and follow-up when implementing applications such as Customer Relationship Management (CRM), so the same applies for collaborative working and a more distributed workforce.

In the longer term, businesses that can operate more flexibly and blend sustainable remote and collaborative ways of working alongside more traditional structures and practices are likely to be not only more resilient, but also more cost effective and sustainable.

Inventory management and the supply chain

Many sectors rely on production networks in China and outsourcing that is geared towards just-in-time shipments. This not only requires businesses just to think about sales and operational planning (S&OP), stock policy and inventory management to mitigate the short-term effect of external disruptions, but also to consider the opportunities to diversify their whole supply 'ecosystem' in line with the organisation's overall risk management approach (explored further - see below). In such a scenario the decision to buy components in or not, and if so from where and from whom these are sourced, must balance:

- The change in overall in unit cost.
- The inventory impact and other working capital required.
- The impact on service.
- Risks for capability and quality.

We use a diagnostic tool to specify and quantify the trade-offs between these considerations and to pose a number of tactical questions that may be relevant. For example:

- Does buying from X or from Y rather than making offer significant cost advantages (or disadvantages) given the risks and the investment required?
- Which elements of manufacturing could and should be relinquished or re-established? What is the appropriate combination of component parts and unit operations?
- How feasible is it to disaggregate or reconfigure the manufacturing operations? What impact would this have on system requirements and controls?
- What effect do such decisions have on internal resources (in-house capabilities, core competences, et cetera)? is there a need to reduce operating costs or make limited capital available for other uses?

Business continuity planning

Once the immediate crisis is mitigated or has finally played out, organisations should review or at least reflect on their overall approach to Business Continuity Planning (BCP). Not all businesses have effective risk management processes or apply such thinking in a meaningful way. At the very least any framework should aim to routinely measure risk indicators and prepare scenarios for controllable and foreseeable uncertainties in labour, materials, capacity, agility, conformance, and financial matters. Scenario planning exercises should drive action plans.

This is the time to explore, and where necessary develop, alternative sources of strategic or overly concentrated supply and to 'stress test' value chains.

Employee relations

We recommend that you:

- regularly update your staff on what you are doing to reduce the risk of them being exposed to the virus at work
- ensure everyone's contact numbers and emergency contact details are up to date
- ensure your managers can spot the symptoms of coronavirus and are clear on any relevant processes, for example sickness reporting, sick pay, and procedures in case someone in the workplace develops the virus
- ensure that you have clean places to wash hands with hot water and soap, and encourage everyone to wash their hands regularly
- give out hand sanitisers and tissues to staff, and encourage them to use them
- consider whether any travel planned to affected areas is essential.

What if one of your employees becomes ill?

If they feel ill with fever, cough or have difficulty breathing, they should:

- stay at home, except for seeking medical care, and avoid contact with others
- shield sneezes and coughs with a tissue or shirt sleeve (not hands)
- wash hands often with soap and water for at least 20 seconds. Use an alcohol-based hand sanitiser if soap and water are not available
- use the 111 online coronavirus service at <https://111.nhs.uk/service/covid-19> to find out what to do next

Of course, your normal rules for reporting absence apply and they should let you know as soon as possible if they're not able to go to work. Absence still needs to be authorised. You may need to relax your rules for certifying absence as self-isolation may prevent an employee from obtaining a sick note for 14 days.

What if one of your employees becomes ill at work?

If someone becomes unwell in the workplace and has recently come back from an area affected by coronavirus, they should:

- move at least 2 metres (7 feet) away from other people
- go to a room or area behind a closed door, such as a sick bay or staff office
- avoid touching anything
- cough or sneeze into a tissue and put it in a bin
- use a separate bathroom from others, if possible

The unwell person should use their own mobile phone to call either:

111 for NHS advice, or use the online service at <https://111.nhs.uk/service/covid-19>

999 for an ambulance, if they're seriously ill or injured or their life is at risk

They should tell the operator their symptoms and from which country they've returned in the last 14 days.

Can you suspend an employee who you suspect has coronavirus?

You have common law and statutory duties to protect the health and safety of your employees. If, after assessing the risk, you identify that one of your people may have been exposed to coronavirus then it would be appropriate to suspend them from attending work until the risk has passed, although they may be able to continue working remotely.

You may not have an express right to suspend in these circumstances as your contracts may not have envisaged this scenario. With employee relations, it's sometimes not what you do but how you do it that's crucial. People should understand if you have legitimate grounds for concern, even if they hold a different view. Consult on such matters proportionately and sensitively to avoid conflict.

Should you pay them?

This is likely to be the most significant factor in dictating how your employee reacts to your decision to suspend them. Your employee is ostensibly ready, willing and able to work. You have chosen to suspend them. In those circumstances, it would be appropriate to pay in full, particularly as the period is unlikely to last beyond two weeks. This also reduces the risk of someone feeling compelled to come into work, potentially spreading the coronavirus.

If they have been diagnosed with coronavirus, or otherwise became too unwell to work, then your normal sick pay rules apply.

What about a healthy employee who is too scared to come to work

An employee may fear attending work because they are concerned about the risk of contracting the coronavirus. Although you can require them to attend work and discipline them for unauthorised absence if they refuse, that should be the last resort. Speak to them about the source of their fear and seek to allay those fears by explaining the steps that the business is taking to keep people safe.

A flexible approach to annual or unpaid leave, or working from home would be appropriate, particularly for those at high risk of developing more severe symptoms from the coronavirus, because they have a poor immune systems or are pregnant. Alternatively, you may agree before they take time off, how they will make up the lost time.

What if schools close, disrupting childcare arrangements?

The Employment Rights Act 1996, in s.57A, provides employees with a statutory right to a reasonable period of unpaid time off to care for dependants. The right applies where an employee needs to take time off work to take necessary action because of the unexpected disruption in arrangements for the care of a dependant such as a child. The right is limited to sufficient time off to deal with the immediate issues and sort out longer-term arrangements if necessary, but how long is reasonable is a question of fact and degree in each case. Your employee must tell you the reason for the absence as soon as reasonably possible and how long they expect the absence will last.

What about holidays to affected areas?

You can't veto an employee's choice of holiday, but you can encourage them to follow advice from the Foreign and Commonwealth Office (FCO) website and to book with established and trustworthy companies that offer a degree of protection.

The FCO updates travel advice for individual countries daily. So, when a situation deteriorates significantly, it will often change its travel advice to warn against some travel to that country, as it did for China. Travel firms are required to consider any changes to FCO guidance.

Employees should get travel insurance and follow advice from Public Health England while they are abroad.

What if someone with coronavirus comes to your place of work

You don't necessarily have to close. The local Public Health England (PHE) health protection team will get in contact with you to discuss the case and identify people who have been in contact with the affected person. They will assess the risk and advise on any actions or precautions to take. Currently it is very unlikely that you would need to close their workplace.

Could you lay people off?

A lay-off is where employees are not provided with work by their employer and the situation is expected to be temporary. You can lay someone off where you have an express contractual right. Alternatively, there may be an agreement covering layoffs between you and the union, or a national agreement for the industry which you follow. However, it may be unwise to exercise that provision in these circumstances given the aim of isolation or quarantine to protect us all.

What else should you do?

Consider asking staff who have work laptops or mobile phones to take them home so they can carry on working and arrange paperwork tasks that can be done at home for staff who do not work on computers.

If you would like to discuss these or any other issues facing your organisation please speak to your usual contact at Watershed or Keith Morgan on +44 161 703 5611

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