



Employment Law Newsletter – Coronavirus update 11th March

On Monday 2nd March we sent a note about some of the business effects of Coronavirus to our employment law newsletter subscribers. That note, with the rest of Watershed's employment law newsletters, is at <https://watershedhr.com/resources-main/resource-library/newsletters/>. Much has changed in the last week so we are updating our thoughts on employee relations and circulating this information more widely among Collinson Grant clients and contacts.

Budget update

The Chancellor delivered his budget as we were putting this update together. There is some news that should reduce the effect of self-isolation:

- Statutory sick pay (SSP) will now be paid to employees from day one, rather than day four, of sickness absence. This is available even if the employee does not show any symptoms.
- The government will reimburse small employers (<250 employees) for any statutory sick pay paid to employees, for the first 14 days of sickness. This is presumably a temporary measure. Statutory sick pay is currently paid at £94.25 per week.

Employee relations

Many of the employment-related problems created by the virus flow from the requirement to self-isolate. As employers, you are expected to do all you can to reduce the risk of the infection spreading further.

Self-isolation is about protecting others and stopping the spread of COVID-19. It is very important that anyone who has or might have been exposed to the virus should limit the number of people they come into contact with for 14 days. This is the most effective way of preventing the coronavirus from spreading.

Who needs to self-isolate?

Currently in the UK, self-isolation is relevant to several groups of people:

- Those who are waiting for a COVID-19 test result.
- Those who have travelled from one of the government's list of areas with high infection
- Those who have travelled back from an area where the coronavirus is known to be present and have symptoms.

- Those who are identified as being a close contact of someone with coronavirus.

What about everyone else?

It is not currently recommended that people outside these groups should self-isolate.

How do you self-isolate?

- Stay at home
- Don't go to work, school or public areas
- Don't use public transport like buses, trains, tubes or taxis
- Discourage people from visiting your home

What if someone with coronavirus comes to work?

The person should move at least two metres away from other people. If possible, they should go to a room or area where they can be isolated behind a closed door, such as a staff office. If it is possible to open a window, do so for ventilation.

The individual who is unwell should call NHS 111 from their mobile, or 999 if an emergency (if they are seriously ill or injured or their life is at risk) and explain which country they have returned from in the last 14 days and outline their current symptoms.

Whilst they wait for advice from NHS 111 or an ambulance to arrive, they should avoid touching people, surfaces and objects and be advised to cover their mouth and nose with a disposable tissue when they cough or sneeze and put the tissue in a bag then throw the bag away. If they need to go to the bathroom whilst waiting for medical assistance, they should use a separate bathroom if available.

Contact the Public Health England (PHE) health protection team to discuss the case and identify people who have been in contact with the affected person. PHE will carry out a risk assessment and advise you of any precautions you should take. This will include cleaning all communal areas. Businesses are not currently being advised to close.

What if you need to close?

Unless your contract gives you the express right to lay people off in these circumstances you will need to pay employees in full if they are ready, willing and able to work but your closure prevents them from doing so.

What is the current guidance on preventing the spread of infection?

You should:

- cover your mouth and nose with a tissue or your sleeve (not your hands) when you cough or sneeze
- put used tissues in the bin straight away
- wash your hands with soap and water often – use hand sanitiser gel if soap and water are not available
- avoid close contact with people who are unwell
- clean and disinfect frequently touched objects and surfaces
- not touch your eyes, nose or mouth if your hands are not clean.

Should you distribute face masks?

Many of our clients are ensuring that all their employees have tissues and hand sanitiser close by, but should you also provide face masks? Current advice from PHE is that people should not wear face masks unless a healthcare worker has advised them to do so. There is no evidence of benefit from their use outside healthcare environments.

PHE recommends that the best way to reduce any risk of infection is good hygiene and avoiding direct or close contact (closer than two metres) with any potentially infected person.

Can you insist on employees making up for their colleagues' absences?

Many of your contracts will record your employees' core hours but also say that they will be

required to work a reasonable number of hours' overtime or stipulate that they are required to work such additional hours as the business requires. The key will be to reasonable. Consult about what you will ask them to do, why and for how long. If you can offer incentives, do so. If you exercise the contractual right clumsily or you impose a requirement where you have no right, people may simply refuse or, worse, resign and claim that they have been constructively and unfairly dismissed. Try to reach an agreement and be willing to compromise.

Don't forget that under the Working Time Regulations, workers are entitled to:

- An 11-hour daily rest period.
- A 24-hour weekly rest period.
- A rest break of 20 minutes where they work more than six hours.
- Adequate rest breaks where the pattern of work is such as to put the worker's health and safety at risk.

Unless workers have signed voluntary opt-out agreements, you should ensure that they do not work more than 48 hours a week calculated over a reference period of 17 consecutive weeks.

Temporary changes

As coronavirus continues to spread, and the advice from PHE develops, you will need to adapt the way you work to reduce its spread and protect your staff while also operating your business. Here are some suggested temporary changes that you should consider.

Self-isolation

For those who are ill and in self-isolation, recognise that they may be unable to obtain a fit note from their doctor so relax your requirement for authorising sickness absence after more than seven days.

For those who are not ill but plan to self-isolate, tell them to speak to their line manager about why they consider themselves to be at risk, what work they can do and what you will pay them.

Travel

Suspend work-related travel to restricted areas and maintain an active link on your intranet to UK Government and World Health Organisation guidance on the areas to avoid. For unrestricted areas, consider whether you can conduct meetings by Skype or other video conferencing facility.

Ensure that your employees tell you of any visits to a restricted area in the last 14 days.

Working remotely

Ensure that staff take their laptops home each day and understand your rules on working remotely with access to your internal system. Warn them that you may require them to work remotely at short notice. Decide which expenses the employee can claim for example additional heating and lighting costs. These are not obligatory, particularly as this will be a temporary measure. However, you should adopt a position now.

Identify any equipment you will provide and check your employer's insurance policy will cover it. If not, require the employee to take out and maintain satisfactory insurance cover. If this involves additional cost (over and above that of a standard home insurance policy), agree to reimburse them

Sick pay

It remains good practice to give full pay to employees who self-isolate following medical advice from NHS 111, their doctor or the local health protection team.

If you instruct someone not to attend work because of your assessment of risk, rather than specific medical advice, they are entitled to be paid as usual (unless their contract provides otherwise).

The Government has announced that emergency legislation will be brought forward to allow the payment of statutory sick pay from the first day of sickness rather than four days but it's not yet clear when these rules will come into effect.

Annual leave

Recognise that employees may wish or need to cancel or change holiday plans so be flexible in allowing people to change or cancel booked holidays and advise them who they should consult. You may be approaching the end of your leave year so decide whether to change your rules on allowing holiday to be carried over.

Warn employees that you may require them to take holiday at a specific time depending on the circumstances. Check your holiday rules.

We have also had a query about what employers can disclose about employee's health, which has obvious data protection implications. We think the advice is:

Data Protection

You may need to disclose data about an employee's health. Remember:

- You need a lawful basis for processing - this could be that the processing is necessary to comply with a legal obligation to which the controller is subject – the health and safety of employees.
- As it is special category data, one of the special conditions for processing this type of data must be met – this could include: .
 - Where processing is necessary for reasons of substantial public interest.
 - Where processing is necessary for reasons of public interest in the area of public health, such as protecting against serious cross-border threats to health or ensuring high standards of quality and safety of health care and of medicinal products or medical devices
 - Where it is necessary to protect the vital interests of the data subject or another person, where the data subject is physically or legally incapable of giving consent.

Normal data protection principles apply so you should not process more data than necessary or disclose names and roles unless necessary. For example, it will usually be sufficient to inform people that they have been in contact with someone who has or may have Coronavirus, rather than disclosing their identity. If you ask for personal data, limit the questions to those that are necessary – whether they have any symptoms, whether they have travelled to an affected area, whether they have been in contact with someone with symptoms or who has travelled to an affected area. These data should be kept securely.

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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