

Managing Coronavirus Issues at Work (An HR Perspective)

Guidance Notes and Q&A

INTRODUCTION

There are a number of risks posed by Coronavirus that employers will need to be aware of; it is important to remember that employers have a duty of care towards their employees and must take reasonable steps to protect the health and safety of their workforce.

WHAT IS THE CORONAVIRUS?

The World Health Organisation explains that coronaviruses (CoV) are a large family of viruses that cause illness ranging from the common cold to more severe diseases such as SARS (Severe Acute Respiratory Syndrome).

This particular episode has been named 'COVID-19'. It first appeared in December 2019 in Wuhan, which is within the Hubei province, China. A seafood market has been identified as the possible source of the virus.

Very many countries around the world have cases of Coronavirus; some are more severely affected than others.

WHAT ARE THE SYMPTOMS?

Symptoms include fever, cough and shortness of breath. Some people will suffer from mild illness and recover easily whilst, in other cases, infection can progress to pneumonia. Reports suggest that the elderly, those with weakened immune systems, diabetes, cancer and chronic lung disease are the most susceptible to serious illness and death.

Symptoms can appear in as few as two days after infection but it is thought that it can take up to 24 days.

Employees who experience symptoms should follow Government advice on reporting this, which may include either internet or telephone services depending on the individual's location in the UK. Note that this may not include calling 111, which has been the general advice until now.

HOW IS THE VIRUS PASSED ON?

The virus is most likely to spread from person to person through:

- direct contact with a person while they are infectious;
- contact with droplets when an infected person coughs or sneezes; or
- touching objects or surfaces (such as drinking mugs or desks) that were contaminated by droplets from secretions coughed or sneezed from an infected person with a confirmed infection, and then touching the mouth or face.

EMPLOYER CONSIDERATIONS

Duty of care

Employers have a duty of care towards their employees which includes not exposing them to unnecessary risk. In this case, that may include not putting them in a position in which they could become infected by the virus without taking all reasonable precautions.

Wellbeing

It's important to acknowledge that your employees will be worried about the virus and that, in the most cases, their concerns will be valid. In addition to having a duty of care to protect health and safety, you also need to consider their wellbeing. Remind employees of any wellbeing initiatives you have, for example, an Employee Assistance Programme.

Employees located overseas

Employees who are located overseas may be under Foreign and Commonwealth Office advice to return to the UK. Where there is no guidance to return, employees may remain overseas, however, employers should be aware that flights are being cancelled at short notice and so may choose to take swift action to return the employee to the UK.

Business travel

On 17 March 2020, the Government advised against all non-essential foreign travel to tackle the spread of the virus. This will initially apply for a period of 30 days but could be extended.

In addition, on 16 March 2020, the Government advised against any "unnecessary travel", and employers should again consider whether any work related travel is necessary taking into consideration the health condition of the employee.

Employers should assess whether work related travel is essential. Where an employee does travel on business, always know where they are and where they are going. Ensure they are given clear instructions on hygiene to reduce the risk of picking up the virus. If employees do report symptoms of the virus while they are travelling, you will have to support them. Have a plan in place in advance of travel, setting out what the employee should do if they feel ill.

Working from home

On 16 March 2020, the Government stated that workers were "advised" to work from home where possible. You should consider whether your employees can work from home and if so, ensure they have the equipment needed to do so.

In addition, the Government stated that certain people were "strongly advised" to work from home, where possible. These are people who are 70 years old or over; women who are pregnant and those who are under 70 years old but have an underlying health condition. These are listed as:

- chronic (long-term) respiratory diseases, such as asthma, chronic obstructive pulmonary disease (COPD), emphysema or bronchitis.
- chronic heart disease, such as heart failure.
- chronic kidney disease.
- chronic liver disease, such as hepatitis.
- chronic neurological conditions, such as Parkinson's disease, motor neurone disease, multiple sclerosis (MS), a learning disability or cerebral palsy.
- diabetes.
- problems with the spleen, for example, sickle cell disease or where an individual has had their spleen removed.
- a weakened immune system as the result of conditions such as HIV and AIDS, or medicines such as steroid tablets or chemotherapy.
- being seriously overweight (a BMI of 40 or above).

There is currently no instruction for employees in the above categories to self-isolate. This means that where it is not feasible for an employee to work from home, they can still be in work but you should ensure precautions are in place to protect their wellbeing.

An employee in one of the above categories who wishes to remain at home but cannot work from home is technically withdrawing their services and will not be entitled to pay. However, employers may want to show leniency in this situation, given the circumstances, and pay an amount equivalent to SSP or full pay. It should be noted that the SSP equivalent payment is not likely to qualify for recovery from the Government when this scheme is introduced, because the individual is not under Government guidance to self-isolate.

On the other hand, if the employee is happy to present themselves for work but the employer does not wish to take any risks and, as a precautionary measure, sends the employee home, the employee will be entitled to full pay.

Alternatively, the employer may choose to try to agree/enforce a period of annual leave if the employee cannot work from home.

Government guidance on self-isolation is continually changing and employees who fall into the above categories may well soon be required to self-isolate in which case they should stay at home and will be entitled to SSP (subject to their ability to work from home).

Self-isolation and pay

The Government is advising that certain people, including those with only minor symptoms, should self-isolate.

Emergency legislation put in place requires statutory sick pay (SSP) to be paid to anyone self-isolating in order to prevent the infection or spread of the virus in accordance with public health guidance, who is then unable to work as a result, providing they meet the other eligibility criteria. Originally, the Government brought this into effect from Friday 13 March 2020, however, subsequently amended the implementation date to 16 March 2020.

This will be in place for a period of eight months.

In addition, measures have been put in place for employees to obtain medical evidence from NHS 111 rather than their own GP.

Further legislation will require SSP to be paid from day one of sickness absence, though this is not yet in place.

Employers may be able to agree a period of homeworking during self-isolation provided the employee remains fit for work, or annual leave, in which case full pay will be maintained.

If an employee has a confirmed case of Coronavirus

Your normal sickness absence and pay policy will apply to employees who have Coronavirus. However, the Government's emergency legislation plan includes a change to SSP laws for employees who are off sick because they have the virus. Normally, SSP is only payable from the 4th day of sickness absence, subject to the employee meeting other criteria. However, the change in law means that SSP will be payable from **the 1st day of absence** where the employee is off sick due to Coronavirus. SSP rules for absence caused by any other sickness apart from Coronavirus are not affected by this change; the three unpaid 'waiting days' must still be served before SSP is triggered. The date when this change will be implemented has not yet been confirmed, but employers should prepare for potential back-dating of SSP payments for Coronavirus.

There is no indication that the other eligibility criteria for SSP will change i.e. the requirement to earn at least the lower earnings limit.

Recovery of SSP

Emergency legislation will also enable employers to recover SSP payments for Coronavirus from the Government. This will only apply to employers with fewer than 250 employees and only to a maximum of 14 days' SSP payment. Implementation of this measure, and the process to be followed, is yet to be confirmed.

Employers who have concerns about an employee's exposure to the virus

Where you have concerns about a non-symptomatic employee (for example, an employee who has recently returned from China but is displaying no symptoms, or if it is known or suspected that the employee has had contact with someone known to have the virus) then the best advice might be to play it safe with a brief period of suspension on precautionary grounds.

Where you choose to suspend employees just as a precaution, it will have to be on full pay unless the contract gives you a right to suspend without pay for this reason (which is unlikely). You may alternatively wish to consider agreeing a period of annual leave with the employee to cover the absence or a period of homeworking where feasible.

Employees who refuse to come to work due to concerns

If an employee is worried about catching the virus and so refuses to attend work, Acas suggest listening to the employee's concerns and offering reassurance. Take all reasonable steps to protect the health and safety of your employees and talk your employee through what you have done/will do. If the employee still refuses to come to work, this may be dealt with through the disciplinary procedure. Alternatively, you may decide to offer a period of paid annual leave or unpaid leave, or allow the employee to work from home where this is feasible.

In Northern Ireland, the equivalent of Acas is the Labour Relations Agency (LRA).

Discrimination, bullying and harassment

Coronavirus is not a reason to treat employees differently because of their national origin. Placing extra obligations on individuals (more robust hygiene methods, for example) just because they are from China, places you at risk of a claim of race discrimination. Extra hygiene measures, if you decide to implement them, should be required of all employees.

You should be alert to 'banter', or more serious instances of harassment, between employees about the virus which relates to someone's nationality or ethnicity and ensure that your zero tolerance stance to harassment is maintained.

Employees about to go on holiday

Employees may have pre-booked annual leave to countries which have a high number of cases and employers may be concerned that they pose a risk of picking up the virus and exposing the rest of the workforce to it. Employers cannot force employees not to travel and employees may not be inclined to cancel their plans if it means they may miss an important family event or lose a lot of money. Employees should be encouraged to maintain good hygiene whilst travelling and pay attention to any signs of ill health. Whilst you can cancel annual leave that has already been requested and authorised as long as the requisite period of notice is given, this may not be good for employee relations. For more on this, see the Q&A later. Employers should tread carefully here; any treatment which the employee feels is detrimental because of their choice to travel may lead to claims of indirect discrimination and treatment would need to be objectively justified.

Closure of business

Some employers may decide to put in place a plan to cover a situation where their business temporarily closes down due to exposure/potential exposure to the virus. Employees who are ready and willing to work but are not provided with work (as would be the case with a temporary closure) can be placed on lay off. Lay off must be with full pay unless there is a provision within the contract for lay off without pay (subject to the payment of statutory guarantee pay for employees with a least one month's service at the time of lay off). If there is no contractual provision, you can attempt to agree with employees a period of unpaid lay off.

This may also occur when the business itself has not taken the decision to close, but where, for example, the landlord of the building from which the business operates has decided to close its doors, meaning that no-one can enter. In this situation, employers should consider whether it can temporarily move to an alternative location or permit its employees to work from home. If no other alternative can be found, a period of lay off may be required.

Closure of schools etc.

If schools/nurseries etc. close due to suspected or actual cases of the virus, employees may notify their employer that

they are unable to attend work due to a breakdown in their usual childcare arrangements. In this case, as in others where a child is unable to attend school due to closure etc. so the employee must remain at home to look after them, normal rules on unpaid time off for dependants will apply unless the employer has any other rules to cover this situation.

Hygiene measures

The World Health Organisation's standard infection control measures are:

- frequently cleaning hands by using alcohol-based hand rub or soap and water.
- when coughing and sneezing cover mouth and nose with flexed elbow or tissue – throw tissue away immediately and wash your hands.
- avoid close contact with anyone who has fever and cough.
- if you have fever, cough and difficulty breathing seek medical care early and share previous travel history with your healthcare provider.

For more on managing the Coronavirus from a health & safety perspective, clients can contact the Health & Safety advice line.

Managing Coronavirus Issues at Work

Q&A

Can I cancel an employee's annual leave if I know they are going to a severely affected area?

The law allows you to cancel annual leave that has already been authorised as long as you give the minimum required notice, which is the same length of time as the period of leave to be cancelled. However, you should proceed with caution here. Cancelling leave which has already been authorised, in any situation, is not likely to go down well with the employee and will often lead to a loss of money for them. If you proceed with cancellation, consider offering compensation for the employee's financial loss. In any case, the Government now advises against all non-essential travel overseas meaning that many holidays may well be cancelled.

Do I have to allow employees to cancel their booked period of annual leave if they cannot travel abroad as planned?

No, there is no requirement for you to do this. If you have specific rules on allowing employees to cancel their leave, you should stick to these but, in the circumstances, you may decide to be more flexible and allow cancellation.

As a deterrent to travel, can I deduct pay from employees who insist on going to a severely affected area on annual leave?

It is highly likely that applying this type of penalty deduction will be deemed an unlawful deduction from wages and so it is not advisable to proceed in this way.

I have an employee who was overseas on holiday and now can't get home because their flight has been cancelled. What should I do?

You can expect that the employee will try to identify other methods of getting back

home. If, for whatever reason, they cannot travel back, there are several ways in which you can deal with this:

- use their annual leave to cover the absence. The length of their absence and their remaining entitlement to annual leave will dictate the extent to which you can do this. Using annual leave like this will have to be agreed with the employee unless you take the step of enforcing annual leave on the employee. To do this, you need to give them notice that you require them to take annual leave that is twice as long as the time you require them to take. For example, a week's enforced leave will require two weeks' notice. The uncertainty around the length of their absence may make this tricky;
- agree for the employee to work from their location if the nature of their job allows for this and they have the equipment they need to fulfil their duties. The employee cannot insist that they work from their location if it is clearly not tenable;
- agree that the employee uses banked time off in lieu. It is not likely that the employee would have enough lieu time to cover an extended absence;
- agree a period of paid leave that is not annual leave;
- agree a period of unpaid leave;
- agree any other type of leave permitted by the contract that may be appropriate.

A mixture of the above can be used to cover an extended absence.

We are due to have visitors to our London office from our China office next month. Should we postpone the visit?

Provided there are no travel restrictions preventing the visitors entering the UK which will take the matters out of your control, it's up to you whether to postpone the visit. Your employees may raise concerns about potential exposure to the virus and you may wish to take this into consideration, though any unreasonable resistance should be dealt with accordingly. If you decide the visit should go ahead, ensure there are robust hygiene measures in place, restrict contact between your employees and the visitors as much as reasonably possible and take more care with any of your employees who are older, pregnant, have existing respiratory conditions or those who have diabetes, chronic lung disease or cancer.

One of my employees has recently come back from Japan and told me that they were informed during the flight that there was a suspected case of Coronavirus on the aeroplane. What should I do?

It is best to take precautionary measures seeing as your employee has potentially been in contact with someone who has the virus. A period of suspension on health and safety grounds (paid unless the contract says otherwise) is advisable.

My employee has told me they have family due to visit from China next month. I am worried that their risk of infection will increase. What can I do?

Provided there are no travel restrictions in place preventing the visit, there is little you can do to stop this happening. Ensure the employee knows what to do if they begin to feel ill during or after the visit. Suspension of the employee would probably not be appropriate in this scenario unless you know or suspect that one of the family

members has the virus but this will be your decision.

We regularly receive packages that have been sent from China. The staff in my post room are concerned about exposure to the virus and are refusing to touch them. What can I do?

There is currently no evidence that Coronavirus can be carried in packages that have originated in China and so no grounds for your employees to refuse to deal with any that are received. To allay their fears, you could consider providing gloves which will be thrown away after each use, and encouraging good hand hygiene.

The business next to mine has sent all of its employees home because of Coronavirus. Should I do the same?

This really is a question only you can answer. If you can get more information from the business next door as to why they took this measure, this may help you understand the level of risk of exposure to your employees if they continue working. If feasible, consider whether your employees can work from home so that operations are maintained.

One of my employees has contracted the virus. Do I just pay sick pay as normal?

The Government intends to relax the rules on statutory sick pay for employees who have Coronavirus, though the start date for this change has not been announced. This means you will have to pay SSP from the 1st day of sickness absence, rather than the 4th day as you would normally have done. Remember that there are other qualifying criteria for SSP too, including the need to earn at least a minimum amount per week, which is currently £118 but will increase to £120 from April 2020. If your contracts include a provision for enhanced sick pay, you should apply the scheme as you normally would.