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In these unprecedented times – our Advisers have been extremely busy taking calls on this subject. They wish to share some essential information with you and as a result have put together a set of frequently asked questions.

### Which of my staff should be self-Isolating? (“MUST” MEASURES)

The government states;

- if anyone lives alone and has symptoms of coronavirus illness (COVID-19), (high temperature over 37.8 degrees or persistent cough) however mild, they must stay at home for **7 days** from when the symptoms started.
- if anyone lives with others and is the first in the household to have symptoms of coronavirus, then they **MUST** stay at home for 7 days, but all other household members also **MUST** stay at home and not leave the house for **14 days**. The 14-day period starts from the day when the first person in the house became ill.
- for anyone else in the household who starts displaying symptoms, they need to stay at home for 7 days from when the symptoms appeared, regardless of what day they are on in the original 14 day isolation period.
- it is likely that people living within a household will infect each other or be infected already. Staying at home for 14 days will greatly reduce the overall amount of infection the household could pass on to others in the community

### For Further guidance

### Which of my staff may need to consider Social distancing? – Vulnerable Groups (“ADVICE & GUIDANCE” MEASURES for self isolating)

This group includes those who are:

- aged 70 or older (regardless of medical conditions)
- under 70 with an underlying health condition listed below (i.e. anyone instructed to get a flu jab as an adult each year on medical grounds):

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- 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 your spleen – for example, **sickle cell** disease or if you have had your 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 body mass index (BMI) of 40 or above)
- Pregnant women

## For Further Guidance

### What does this mean?

- businesses and workplaces should encourage their employees to work at home, wherever possible
- if someone becomes unwell in the workplace with a new, continuous cough or a high temperature, they should be sent home and advised to follow the advice to stay at home
- employees should be reminded to wash their hands for 20 seconds more frequently and catch coughs and sneezes in tissues
- frequently clean and disinfect objects and surfaces that are touched regularly, using your standard cleaning products
- employees will need your support to adhere to the recommendation to stay at home to reduce the spread of the virus to others
- those who follow advice to stay at home will be eligible for statutory sick pay (SSP) from the first day of their absence from work
- employers should use their discretion concerning the need for medical evidence for certification after 7 days for employees who are unwell. This will allow GPs to focus on their patients
- if evidence is required by an employer, those with symptoms of coronavirus can get an isolation note from **NHS 111 online**, and those who live with someone that has symptoms can get a note from the **NHS website**
- employees from defined **vulnerable groups** should be strongly advised and supported to stay at home and work from there if possible. These measures are suggested to apply for 3 months.

## **“Extremely Vulnerable Groups”-Shielded Employees**

There are some clinical conditions which put people at even higher risk of severe illness from COVID-19.

Anyone in this category, the NHS will directly contact with advice about the more stringent measures they should take in order to keep themselves and others safe.

They are strongly advised to stay at home at all times and avoid any face-to-face contact for a period of at least 12 weeks from the day they receive the letter. This period could change.

People falling into this group are those who may be at particular risk due to complex health problems such as:

1. Solid organ transplant recipients
2. People with specific cancers:
  - people with cancer who are undergoing active chemotherapy or radical radiotherapy for lung cancer
  - people with cancers of the blood or bone marrow such as leukaemia, lymphoma or myeloma who are at any stage of treatment
  - people having immunotherapy or other continuing antibody treatments for cancer
  - people having other targeted cancer treatments which can affect the immune system, such as protein kinase inhibitors or PARP inhibitors
  - people who have had bone marrow or stem cell transplants in the last 6 months, or who are still taking immunosuppression drugs
3. People with severe respiratory conditions including all cystic fibrosis, severe asthma and severe COPD.
4. People with rare diseases and inborn errors of metabolism that significantly increase the risk of infections (such as SCID, homozygous sickle cell).
5. People on immunosuppression therapies enough to significantly increase risk of infection.
6. Women who are pregnant with significant heart disease, congenital or acquired.

## **Which employees are entitled to receive Statutory Sick Pay – SSP**

The Health Protection (Coronavirus) Regulations 2020 contain a declaration that the incidence or transmission of novel Coronavirus constitutes “a serious and imminent

threat to public health", and the measures outlined in these regulations are considered as an effective means of delaying or preventing further transmission of the virus.

Typically employees will fall in to one of three categories:

1. Those who are self-isolating due to displaying symptoms of the virus or who is living with someone who is, they will receive SSP from day one and you will be able to reclaim those sums from government.

Employees who are staying at home in accordance with government advice are entitled to statutory sick pay (SSP), even if they are not ill. The Government has introduced temporary legislation (the Statutory Sick Pay (General) (Coronavirus Amendment) Regulations 2020 (SI 2020/287)) with the effect that individuals who are unable to work because they are self-isolating are deemed to be incapable of work for the purposes of SSP. The employee must be self-isolating in accordance with coronavirus guidance published by Public Health England, NHS National Services Scotland or Public Health Wales.

The employee should produce an isolation certificate which is available via NHS 111.

1. Those who are in the vulnerable group and wish to socially distance themselves perhaps more than others. The position for employees with underlying medical conditions who do not fall into the most vulnerable category (see above), those aged 70 and above, and those who are pregnant is less clear. **Government guidance** is that these employees should be particularly stringent in following social distancing measures and work from home where possible. As the guidance falls short of advising this group to self-isolate, arguably they would not be entitled to SSP under the temporary legislation. Employers should ensure that they comply with their **other duties** to protect these workers.

If a pregnant employee is advised to self-isolate by Public Health England, a health professional or NHS 111 they are deemed to be incapable of work and would be eligible for Statutory Sick Pay or any contractual sick pay that you provide. Such an employee is in the vulnerable group and if unable to work from home and cant socially distance at work and as such follows advice to stay at home, then they are eligible for SSP from day 1.

1. Those who are in the very vulnerable 'shielding category' will generally receive a letter from their GP identifying them as high risk and advising them to stay home for at least 12 weeks. For those employees you should treat such a letter as equivalent to a fit note and pay SSP from the start.

If somebody chooses to just generally self-isolate, and/or is not given that written notice, then they are not entitled to statutory sick pay.

We are advising those who are at increased risk of severe illness from coronavirus (COVID-19) to be particularly stringent in following social distancing measures.

Whilst the above specially addresses SSP the same considerations will apply for those employees are entitled to received contractual sick pay.

## **My business is suffering a severe downturn in business – what can I do?**

There are in principle three main options: statutory lay off, redundancy and furloughing. What is Lay off/ Short term working, and what do you need to pay in these circumstances?

### **Statutory Lay Off**

Lay off in this context is not to be confused with 'furloughed' which is a word introduced in relation to special measures to retain employees during this time. If your employees cannot work from home and you don't have enough work for them, they may need to be placed on short-time working or laid-off. There is a statutory scheme for this provided that the suitable clause is contained within the employees contract.

Statutory lay off/short time working allows to enforce reduced hours, or no hours, for a maximum period of 4 continuous weeks or 6 weeks in a 13 week period. If there is no work at the end of that period your employee may claim redundancy. For those businesses faced with short term closures this may be an option.

If you **have** a clause, staff are entitled to the statutory guarantee pay – which is currently £29 per day (rising to £30 per day from 6 April), capped at 5 days in any 13-week period. This is a total of £145/£150.

If your employee earns less than £29 a day, they will get their normal daily rate.

*For Further Guidance; [Guarantee-pay](#) ; [Lay-offs and short time working](#)*

### **Redundancy**

For employers facing a severe loss of business they may want to consider making staff redundant. This is a form of dismissal and for those employed over 2 years will require a fair procedure to effect the dismissal and the payment of statutory redundancy pay and notice. You may wish to discuss this type of dismissal with us before take any action.

For employees who have less than two years service the formalities of the fair process are not required and no statutory redundancy pay will be due.

This is however a more permanent solution and may not allow your business to be 'match fit' when this crisis is over.

### **Job Retention Scheme – Furloughing**

This scheme has been introduced by government at this time to encourage and support businesses to retain as many staff as possible at this current time.

The scheme is designed to allow businesses to send staff home, where this is little or no work and be able to recover up to 80% of their total salary costs paid to employees. This is to ensure that when businesses can return to normal employees will still be available to return to the workplace.

The important points to note are:

- The scheme will be administered by HMRC.
- It is likely that you will not be able to register your interest until some time in April.
- You will be able to recover up to £2500 per employee per month for employees employed on 28<sup>th</sup> February 2020. Those not on the payroll on that date will not be included
- The sums payable will represent the total cost of employing that employee and will include, tax NI, basic pension contributions but not bonus or commission. Further guidance will be issued on this.
- It is possible to top up the 80% to 100%.
- It is not possible for your employee to work for you during this time but they can undertake training although you will need to pay additionally for time spent doing this.
- An employee cannot insist on being furloughed the choice is a matter for you.

Full up to date guidance can be [found here](#) and expect further guidance from time to time.

In order to introduce this to your employees you will need to ;

- Select fairly, and objectively those employees you propose to furlough – to avoid discrimination arguments. This will apply if not all staff are being furloughed because, for example, you may have sufficient work for some staff.
- Changes such as this to terms and conditions do require consent and agreement. We suggest that after a meeting or discussion a letter is provided asking staff to sign and return. It is likely your staff will likely agree such a change as the

alternative may be a permanent loss of employment. It is necessary to try and obtain this to prevent complications and possible claims in the future.

For many employers the changes in their business have happened very quickly requiring action to be taken quickly. In most cases therefore the way forward is to discuss with staff the options available with a view to reaching an agreement that preserves their employment so that they have a job to return to and ensuring that the employer is able to afford that option.

Generally discussions may include;

- Part time reduced hours;
- Where hours are annualised offer to allow them to work the hours later in the year;
- Converting some time to holiday utilising part of an employees annual allowance;
- Employees being engaged on other work instead of their usual role;
- A period of absence with no pay

### **Can I give employees on zero hours contracts no hours?**

Generally, zero hours contracts mean that if you have no work for an employee, you have the right to do that and therefore vary their hours to suit the needs of the business. However, as with all considerations for these type of contracts, much depends on how the arrangement has actually worked and if your employee has consistently worked a similar number of hours each week with little variation.

If that is the case there is an argument to say that it is not a true zero hours arrangement and to reduce the hours to zero without agreement could be a breach of contract/unfair dismissal. If you have any workers on true zero hours contracts, you do not have to offer them work.

### **Other Frequently Asked Questions:**

#### **What if your employee returns from a holiday?**

If your employee comes back from holidays and is showing any symptoms of the Coronavirus, they should follow NHS and Government guidance which states to self-isolate, until the symptoms have passed.

## **What if your employees do not want to come to work because they fall in the vulnerable category?**

You should listen carefully to the concerns of your employees and if possible, offer flexible working arrangements such as homeworking. If the worry is the risk of infection on public transport, it might be possible to adjust your staff's hours to enable them to travel outside rush hour.

Generally those with underlying health conditions or are pregnant may obtain a fit note from their doctor allowing them to remain off work. If that is the case they will receive SSP.

If there is no objective reason for your employees not to attend and fulfil their job description and duties, this could potentially lead to Disciplinary action being considered for alleged refusal to obey a reasonable management instruction. However, the government is urging that all situations be treated with support and flexibility wherever possible.

## **What if an employee needs time off to look after their children if schools are closed?**

If your employee's children are sent home because of school closure, some employees would be able to work from home. Employees may choose to take this time off as holiday so normal processes and pay apply.

If your employee is unable to work from home, they could be granted unpaid emergency time off for dependents leave, or unpaid parental leave. These are short term solutions and the matter should then be discussed with the employee concerned.

## **Does an employee get full pay or SSP if they are diagnosed with coronavirus?**

Coronavirus related illness should be dealt with in the same way as any other sick leave employees may take. If you normally only pay statutory sick pay (SSP) during sickness absence, then this is what the employee should receive. (subject to usual eligibility requirements being met). However, whereas ordinarily SSP is payable from day 4 of sickness for up to 28 weeks in total, the first 3 days being non payable waiting days, where the reason behind the absence is coronavirus, SSP should be payable from day one.

Your employee can self-certificate for 7 days and would require an isolation certificate available from NHS 111, although you may wish to show some flexibility if they have

not been able to obtain this.

### **Can you reclaim sick pay from the government?**

Yes, it was announced that businesses with fewer than 250 employees will be able to claim back any Statutory Sick Pay for employees off sick for up to 14 days. The Statutory Sick Pay will be for “all those who are advised to self-isolate” even if they have not displayed symptoms. This will therefore include those who may have returned home from a country where the outbreak is considered to be significant e.g Italy.

### **Should you warn other staff that a certain employee has Covid 19?**

Yes. You should keep staff informed about cases in your organisation. Remember, you probably don't need to name individuals and you shouldn't provide more information than necessary. You have an obligation to ensure the health and safety of your employees, as well as a duty of care. Data protection doesn't prevent you doing this

### **If someone is required to self-isolate (because someone in their household is showing symptoms) but insists on coming to work what do you do?**

You should reiterate and remind them of the government published information and insist they follow it. Send them home if necessary and arrange to pay SSP.

This could potentially lead to disciplinary action for refusal to obey a reasonable management instruction, as a duty of care is owed by you to both your employee, and their colleague's, health and safety.

For those in the vulnerable category – such as older employees or those who are pregnant you should make sure that they can be socially distant from other employees or members of the public to ensure they are not put at unnecessary risk. Suitable risk assessments should be undertaken.

### **What if large events such as weddings or exhibitions have to be cancelled?**

You should always check the specific terms and conditions of contract, i.e.; cancellation / termination clauses / force majeure clauses, ( i.e.; no liability for failure to supply a service where it is beyond your control), and or impossible to perform, (frustrated in law).

## **What about Pregnant Employees – What are your Obligations?**

**Pregnant employees**– are in the vulnerable group, and are advised to socially distance themselves and receive SSP on the production of a fit note, due to the perceived increased risks of severe illness. Reg.16 of the Management of Health and Safety at Work Regulations 1999 imposes a duty on employers to conduct a risk assessment if working conditions could involve risk to a new or expectant mother or their baby. If the assessment reveals any risk to an employee, or their baby, the employer must follow a series of steps to ensure that they are not exposed to the risk or damaged by it. Given that government advice is for pregnant workers to work from home where possible, the employer should take all steps to make this possible.

Many pregnant employees may be concerned about their eligibility for Statutory Maternity Pay (SMP) as this depends on average earnings in approximately weeks 18 to 26 of pregnancy. Employees and workers can claim SMP if they meet the normal qualifying conditions.

If your employee wants to protect earnings during the qualifying period for SMP (approx. weeks 18 to 26 of pregnancy) or during a period of self-isolation, they can ask to take annual leave instead of relying on SSP.

## **What happens with staff holidays**

We are frequently being asked how to deal with employee holidays for those who have perhaps booked time off and now wish to cancel or postpone that time and how to deal with holidays for the remaining holiday year.

Generally employee holidays need to be taken at times to suit the business and with lengthy absences already, understandably, employers may be concerned about the amount of unused holiday still to be taken. This is particularly relevant as holiday will continue to accrue during any period of furlough.

The Working Time (Coronavirus) (Amendment) regulations 2020 will amend Working Time Regulations to create an exemption to enable workers to carry over 20 days of their statutory holiday for up to two years where it is not reasonably practicable for

worker to take some or all of the holiday to which they are entitled due to the coronavirus. This means that four weeks of this years annual entitlement can be carried forward when otherwise it would fall victim to a possible 'use or lose' policy.

So for employers faced with the question of current holiday wanting to be rearranged it is now possible to be more flexible in how such matters are dealt with but any request will still be subject such a request suiting the needs of the business.

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March 27th, 2020

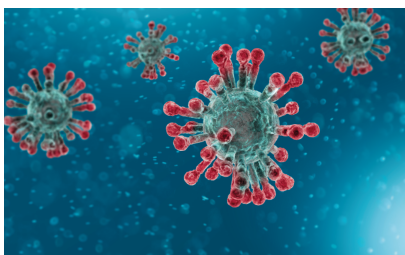
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