CORONAVIRUS SPECIAL – MEMBER GUIDANCE NOTE

INTRODUCTION

As cases of Coronavirus (COVID-19) continue to rise in the United Kingdom causing widespread disruption to travel, places of work, and instruction from Government for individuals to 'stay at home' (self-isolate), it is anticipated that employers will increasingly be affected by employee absence. This Guidance Note explains how employers should treat employees who are absent from work (either as a result of contracting the coronavirus, are staying at home or because the employer is unable to provide work due to a dislocation of production on site or site closure) for payment purposes. It also covers the ancillary workplace issues that might arise in the context of dealing with the coronavirus.

On Thursday 12 March 2020 the UK and devolved Governments moved from the ‘contain’ to the ‘delay’ phase of their coronavirus action plan and published 'stay at home' guidance for people with confirmed or possible coronavirus. This updated guidance supersedes previous guidance on self-isolation and now requires individuals with a high temperature or a ‘new’ continuous cough to stay at home for 7 days to protect others in the community while they are infectious. During these 7 days the advice is:

- DO NOT visit a GP surgery, pharmacy or hospital;
- DO NOT contact NHS 111 (to tell them they are staying at home);
- There will be NO testing for individuals who are self-isolating with mild symptoms – if symptoms worsen during home isolation or are no better after 7 days, follow NHS 111 coronavirus advice.

OTHER INFORMATION SOURCES

There is a plethora of information currently available about coronavirus so, as things continue to evolve at a rapid pace, members are advised to keep up to date with Government and public health advice by checking regularly the following information sources on how to deal with, prevent and manage your people during the coronavirus outbreak:

- National Health Service (NHS) https://www.nhs.uk/conditions/coronavirus-covid-19/
- The Advisory, Conciliation and Arbitration Service (ACAS) https://www.acas.org.uk/coronavirus
WILL EMPLOYEES BE ENTITLED TO SICK PAY?

On 11 March 2020, the Chancellor announced that Statutory Sick Pay (SSP) will be temporarily extended to cover:

- Individuals who are unable to work because they have been advised to stay at home (self-isolate); and
- People caring for those within the same household [children or elderly relatives] who display coronavirus symptoms and have been told to self-isolate/stay at home.

Employees who stay at home in accordance with guidance from Public Health England, NHS Health Services Scotland or Public Health Wales will be eligible to receive SSP, which is currently paid at a rate of £94.25 per week. SSP will be paid from the first day of absence (without the need for the usual three waiting days) paid retrospectively with effect from 13 March 2020. The change is intended to be temporary and will apply only during the coronavirus epidemic, after which time SSP will revert to the previous position.

The Government will refund those employers with fewer than 250 employees the full cost of SSP for anyone absent from work due to coronavirus for up to 14 days.

NOTE 1: Employees may also be entitled to any company sick pay (CSP) in accordance with the company sick pay rules. For example, hourly paid Operatives employed under the HVAC/BESA National Agreement and covered by the Welplan Sickness and Injury Benefit Scheme, will receive additional sick pay from the fourth day of absence.

NOTE 2: As mentioned above, Government guidance is that those staying at home with minor symptoms should not call their GP or NHS 111, so employees will not be able to provide any documentary evidence for the first seven days of absence. It is unlawful for employers to require medical certification for the first week of absence and employees would normally self-certify for the first week of absence.

NOTE 3: Many company sick pay (CSP) policies will include a requirement for the employee to obtain a 'fit note' from a doctor before CSP is payable from the 8th day of absence. An employee who is following official guidance to stay at home (self-isolate) and who has flu-like symptoms may have difficulty obtaining a fit note, particularly given the anticipated pressure on health services. Employers should therefore consider making exceptions to their usual sick pay policies as to the evidence required. This is in line with updated government guidance that employers should be more flexible in relation to the evidence they require.

FREQEUNTLY ASKED QUESTIONS

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<tr>
<th>What should you do if a member of your workforce tests positive for coronavirus?</th>
<th>If you are notified that a member of your workforce has contracted coronavirus, you should assess the risk of others having contracted the disease at work and advise them of any action they may need to take; including seeking medical advice. NHS 111 coronavirus service will let you know whether medical intervention is required. Clients, suppliers, contractors, etc. whose workforce and/or customers may have been in contact with the individual and therefore may be at risk of infection by the individual should be notified immediately.</th>
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Those who are unable to work because they are unwell because they may have contracted coronavirus would be entitled to Statutory Sick Pay (SSP) and/or company sick pay (CSP) under the circumstances outlined above.

It is advisable to consider and discuss with your employees the possibility of working from home for those whose jobs allow this and who are well enough to do so – perhaps toward the end of their period of absence.

If you choose to pay more than SSP or company sick pay entitlement, it is advisable to ensure that you state, in writing, to the whole workforce, that the payment is discretionary, will be kept under review and may be withdrawn with or without notice at any time as the situation develops.

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<tr>
<th>What can an employer communicate about an employee with coronavirus?</th>
<th>Personal data concerning health is ‘special category data’. While it would be fine to let your employees/contractors/customers know there has been a confirmed coronavirus case within your workforce, it would not be appropriate to provide any details from which the individual might be identified. Employers 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.</th>
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<tr>
<td>What should you do if a worker self-isolates on medical advice?</td>
<td>Employees who self-isolate/stay at home in accordance with guidance from Public Health England, NHS National Services Scotland or Public Health Wales will be eligible to receive SSP, which is currently paid at a rate of £94.25 per week. In addition, they may also be entitled to CSP (see NOTE 1 above) You may also discuss the possibility of working from home for those whose jobs allow this and who are well enough to do so.</td>
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<td>Payment where an employee chooses to self-isolate without being required to do so</td>
<td>Someone who chose to self-isolate, purely as a precautionary measure without being required to do so, would not be entitled to SSP and/or CSP during their period of isolation as they would not be considered incapable of working. In the absence of a contractual right to pay in those circumstances, it would generally be for the employer to agree what payment will be made, or indeed, to decide not to pay the employee at all if they were not ‘available for work’. In exercising its discretion in this regard, the Acas guidance recommends that an employer should listen to any concerns staff may have. An employer should carefully consider the personal circumstances of the employee in question and take into account their concerns. The guidance also suggests taking a flexible approach if an employee has genuine concerns about coming in to work, such as allowing the employee to work from home, or to take periods of annual or unpaid leave, which might be appropriate in the case of a vulnerable employee who was at risk of developing more severe symptoms from the coronavirus. Where possible, provide information to allay</td>
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these concerns such as the government and NHS guidance, any measures being taken at site and/or by you to reduce the risk of infection of your workforce and agree to take some additional measures if appropriate.

If an employee still refuses to attend work, you could inform them that it could result in disciplinary action – however, this should be only applied as a last resort. See BESA Guide to Employment on Managing Discipline at Work.

| What should you be aware of if an employee needs time off work to look after someone else? | Employees are entitled to time off work to help someone who depends on them (dependants’ leave) in an unexpected event or emergency. An example of when this may apply with coronavirus if an employee has a child they need to look after or arrange childcare for because their school has closed unexpectedly or if an employee needs to help their child or another dependant who is sick or needs to go into isolation or hospital. Click here for more information on dependants' leave.

There’s no statutory right to pay for dependants’ leave however, see information above for entitlement to SSP for those caring for others within the same household who display coronavirus symptoms and have been told to self-isolate/stay at home.

If you choose to pay for dependants’ leave (instead of legal entitlement to SSP – see above), be mindful of the need to be consistent and non-discriminatory for all employees who may require such leave. As with discretionary sick pay, if you choose to pay employees for dependants’ leave, it is advisable to ensure that you state, in writing, to all employees, that the payment is discretionary, will be kept under review and may be withdrawn with or without notice at any time as the situation develops.

The amount of time off an employee takes to look after someone must be reasonable for the situation. For example, they might take a couple of days to arrange alternative childcare and if they require more time, they may choose to take it as annual leave. |

| What should you do if you cannot provide work due to Coronavirus? | If an employer instructs employees, who would otherwise be capable of, available for, and willing to perform their normal work, to stay at home for a specified period either:

to prevent the spread of coronavirus, e.g. after a colleague has tested positive or dislocation of production on site (restrictions on materials) or because of site closure.

The employer would be obliged to pay those employees full pay. |
HVAC/BESA Operative National Agreement: the guaranteed week provisions (pay for 37.5 hours per week) are applicable so long as the Operative is capable of, available for, and willing to perform his normal work. In these circumstances, the employer should pay the normal rate for such hours as the employer is unable to provide work.

Lay-off or Short-time Working

Where an employer’s business is adversely affected by coronavirus, it may wish to consider laying-off employees or putting them on short-time working, if the contract of employment allows. Even if the contract does not explicitly allow for a period of lay-off/short-time working, you may, subject to consultation and agreement with the affected employees, reach an agreement to introduce and implement a period of temporary lay-off/short-time working. You may be able to secure agreement this agreement if you were able to provide an undertaking, in writing, to make up the contractual pay once work is recommenced and finances allow. See BESA Guide to Employment for advice on lay-off/short-time working

Where employees can work from home, they should be requested to do so.

What should you do if a worker seeks your advice on whether to attend work?

Employers are advised to be cautious when responding to an employee’s request seeking their instructions on whether to attend work.

If the employee is capable of, available for, and willing to perform his normal work and is instructed by the employer not to attend work, they may be entitled to full pay.

Where there is risk of spreading the infection if the employee were to return to work, you may wish to refer them to their obligations as a worker under the health and safety legislation rather than explicitly instruct them not to attend work in the first instance.