**Employment Update – Covid-19**

**Employees and Absence from Work**

***AS AT 30th MARCH 2020***

The Government now requires **everyone in the UK** to practice 'social distancing'. This means we must try and stop unnecessary contact with other people. This is significant for our jobs, as ‘social distancing’ means working at home where possible, avoiding busy commutes on public transport and avoiding gatherings of people.

Employers are under an obligation now to help their workforce take these steps. Although not practical for all job roles, where possible, this might mean allowing employees to work from home, agreeing flexible working to help employees avoid peak time commutes and cancelling face to face meetings.

The concern for so many people at the moment is about their legal rights to pay should they need to be absent from the workplace due to COVID-19, whether due to symptoms, the requirement of social distancing or childcare issues.

We have put together a summary of our advice on your right to take time off work and/or pay if you are an employee and you cannot go to work. We have tried to cover off the most common scenarios below.

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| ***I am off sick because I have a suspected/diagnosed case of COVID-19.*** | Government advice is that you MUST self-isolate for 7 days (if you live alone) or for 14 days (if you live with others). | You are entitled to your usual sick leave and pay entitlements (including SSP\*). Check your employment contract or HR policies to see if your employer offers enhanced company / contractual sick pay over and above SSP. |
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| ***What are online isolation notes and where can I find them?*** | Isolation notes will provide you with evidence for your employer that you have been advised to self-isolate due to coronavirus, either because you have symptoms or you live with someone who has symptoms, and so cannot work.  Isolation notes can be found online here: <https://111.nhs.uk/isolation-note/> | For the first 7 days of not being able to work, you can self-certify in the usual way by completing a form and sending it to your employer. After that, and if your sickness is related to coronavirus symptoms or you are living with someone who has such symptoms, the isolation note can be used as evidence of the advice to self-isolate.  You need to use the 111 Coronavirus Service <https://111.nhs.uk/covid-19/> to get an isolation note.  If you don’t have an email address, you can have the note sent to a trusted family member of friend or direct to your employer.  **\*\*Please do not go to your GP to get an isolation note\*\*** |
| ***I am absent from the workplace because I am self-isolating or I have a suspected/diagnosed case of COVID-19, but I am able to work at home and feel well enough to do so.*** | Government advice is that you MUST self-isolate for 7 days (if you live alone) or for 14 days (if you live with others), even if you are only experiencing mild symptoms. | If you are able to work remotely, well enough to do so and your employer allows for this, then you are entitled to your full contractual pay during this time.  Remember many employers will not have routinely allowed work homing in the past, but will be adjusting their policy on this for the current situation. If you are unsure, speak to your manager or HR team. |
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| ***I am absent from the workplace because I am self-isolating or I have a suspected/diagnosed case of COVID-19. I feel well but I do not have a job which I can do from home.*** | Government advice is that you MUST self-isolate for 7 days (if you live alone) or for 14 days (if you live with others), even if you are only experiencing mild symptoms. | If you are unable to work remotely but following PHE/NHS guidance on self-isolation, you are entitled to SSP\*, even you if you only have mild symptoms and would otherwise have gone to work.  Best practice suggests employers should also pay any enhanced company / contractual sick pay they offer in this scenario, but they are not legally obliged to do so. |
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| ***I fall within a vulnerable group and have a higher risk of complications if I catch COVID-19. I don’t have any symptoms at this time but I don’t want to go into the workplace anymore. What are my options?*** | Government advice is that people who are at a higher risk of catching coronavirus (‘vulnerable people’) should now take strict social distancing measures.  You are a ‘vulnerable person’ if you:  - are aged 70 or over;  - have a long term health condition, such as heart disease, asthma or any condition which weakens your immune system (this list is not exhaustive)  - you are pregnant  - you are a carer for someone in one of the above categories.  Some clinical conditions put people at an even higher risk of severe illness and those individuals will be contacted direct by the NHS by Sunday 29 March 2020. The conditions include:  - people with cancer undergoing active chemotherapy or radiotherapy  - people with blood cancer at any state of treatment  - people with severe kidney disease (dialysis)  - people with severe chest conditions (severe asthma, cystic fibrosis) | Employers have a duty to ensure the health and safety of staff and therefore must be especially careful and take extra steps for anyone in their workforce who is a vulnerable person in order to support the Government’s advice.  If you can work from home, then your employer should now support your choice to do and help facilitate this. In this case, you are entitled to your full contractual pay during this time.  If you are advised to stay at home (i.e. you are in a high risk group and the Government advice is to stay at home) but you cannot work from home and you are not sick or self-isolating due to symptoms, then you will still be eligible for SSP. Some employers may choose to pay company / contractual sick pay, but there is no legal obligation to do so.  Our advice is to be open with your employer about your condition and your concerns. It may be possible to agree a period of annual leave (paid) or special leave (usually unpaid) for a period of time, allowing you to return to work in due course. |
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| ***My employer has asked me to stay away from work, even though I have no COVID-19 symptoms and still want to work. What are my rights?*** | Employers are asking employees not to attend the work place for a variety of reasons. This might be due to a temporary move to home working. Or if you employer has closed temporarily or has a reduced workload, they might ask you not to come to work. This will be the case for many employees working in retail or hospitality, as shops, restaurants and cafes now close. | If you are simply being asked to work at home, you are entitled to your full contractual pay during this time.  If your employer has made this request in other circumstances, you remain employed, but you cannot work at home, you are still entitled to your usual pay **unless** your employer has a contractual right not to pay you or you are on a zero hours contract. You should check the terms of your employment contract.  Some employment contracts provide for ‘lay off’ – a situation where an employer can stop paying employees or pay them less. This must be clearly stated in your employment contract. Otherwise, if an employer wants to reduce pay or temporarily stop pay, this would have to be by agreement with employees.  The **Coronavirus Job Retention Scheme** introduced by the Government aims to help employers keep paying employees who are unable to come to work at this time – see below for further information on this. |
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| ***My child’s school or nursery is now closing and I need to be off work to look after them. What are my options and will I be paid at all?*** | Schools and other childcare settings closed from 20th March 2020, other than for children of key workers or vulnerable children. Further information is available here:  <https://www.gov.uk/government/news/schools-colleges-and-early-years-settings-to-close>  Many working parents will now be facing practical difficulties with childcare. | There are several options for taking time away from work due to childcare responsibilities following school closures:  **Time off for dependents** – this emergency leave gives a right to a reasonable amount of time off work if a child is ill or there is a breakdown in childcare arrangements (as is the case for school closures). In theory there is no limit on this time off. This leave is almost always unpaid (unless an employer’s policy states otherwise).  **Parental leave** – parents are entitled to up to 18 weeks parental leave for each child up to that child’s 18th birthday. Parental leave is usually limited to 4 weeks per year, but can be longer if agreed by an employer. It must be taken by agreement and in whole weeks. Again this leave is almost always unpaid.  **Annual leave** – taking holiday time, although not ideal, would allow you some time off to look after children and importantly this time off would be paid. Annual leave must still be taken with your employer’s agreement. You may not have sufficient annual leave entitlement to cover the whole school closure period, so you will need to consider the other options covered here.  **Working from home** – many employers would have previously had a hard and fast policy that if you are looking after children, you cannot be working from home. However, the situation with COVID-19 is unprecedented. If you can work from home in theory, can you agree a way to continue working even with children at home? This might mean reduced hours, more flexible hours, splitting work and childcare time with a partner in the same position. Many employers will want to look at flexible options so that people are still getting their jobs done. The big advantage of this arrangement, if practical for you, is that you can continue to receive full contractual pay.  In all of the above options, your continuity of employment is preserved and you would have your job to return to. |
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| ***What is the Coronavirus Job Retention Scheme (CJRS) and how does it affect employees?*** | The CJRS is intended to avoid redundancies and protect jobs.  UK employers will be able to access support to continue paying part of their employees’ salaries for those that might otherwise have been laid off during this time. HMRC will reimburse 80% of the wage costs up to a cap of £2,500 per month (£37,500 per year).  The scheme will be backdated to 1 March 2020 and will initially be open for at least 3 months. | Your employer will need to designate you and any other affected workers as “furloughed workers”. This means that you will not be carrying out any work for your employer but your employer will still pay you 80% of your salary under the scheme. You are not being dismissed or made redundant, so most of your employment terms and conditions apply, and your continuity of employment will be preserved.  The CJRS applies to employees who have been on the payroll since 28 February 2020 on any type of contract, including full-time and part-time employees, employees on agency contracts and employees on flexible or zero-hour contracts. Employees who have been made redundant since 28 February can also be furloughed, if they are now rehired.  You must be told about, and agree to, this change of employment status.  Your employer may use their discretion to pay you on top of the 80% paid through the scheme. That is up to your employer.  You will not be required to repay the money provided under the scheme. |
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| ***My employer has commenced a redundancy process at my work. Does the Coronavirus Job Retention Scheme apply to me?*** | It appears that the scheme will cover those employees who have already been dismissed or made redundant. | Your employer should be contacting you to discuss its plans, should the furloughed workers situation apply to you. |
| ***Can I be forced to take annual leave by my employer?*** | The general position is that you should not be required to take annual leave if you are self-isolating as per Government guidance or because you feel unwell. | If you do not wish to attend work but you are fit and cannot work from home, your employer is entitled to ask you to take holiday. Your employer must give you twice the amount of notice as the period of holiday requested. For example, your employer must give you 4 days’ notice if they require you to take 2 days’ holiday. |
| ***My work has got busier since the pandemic and my employer has cancelled my annual leave. What are my rights?*** | Your employer is entitled to cancel your annual leave. | Your employer must give you at least as much notice as the number of days’ holiday they are refusing. For example, if you had two days booked off then your employer must give you at least two days’ notice before the leave was due to start. |
| ***I want to cancel my annual leave as I am unable to travel given the current situation. What can I do?*** | Unless your employment contract allows you to cancel your holiday, your employer may insist that you take it. There is no requirement on the employer to accept your cancellation due to COVID-19. | It is worth speaking to your employer to see if there is any flexibility given the current uncertain times. |
| ***If I can’t take my annual leave or my leave has been cancelled or I am unable to travel, can I carry over my unused leave into the next holiday year?*** | The Government has announced that it will allow workers to carry over 4 weeks of unused annual into the next two leave years. | This new legislation will apply to you where it is not reasonably practicable for you to take some, or all, of the holiday you are entitled to due to Coronavirus. It means that your rights to paid holiday are protected. |

\* A note on SSP (Statutory Sick Pay) - SSP is available to anyone isolating themselves from other people in such a manner as to prevent infection or contamination with COVID-19. This is from day 1 of any absence.

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