

Covid-19 Information Sheet – *Employment: Employee Absence and Pay – FAQs*

This information sheet has been produced by BPP's Pro Bono Centre by legally qualified staff members. The information contained in this document is accurate as of 12th May 2020.

In this factsheet, we have put together a summary of our advice on your rights to take time off work and/or receive pay if you are an employee and you cannot go to work. It also covers questions relating to annual leave and the new Coronavirus Job Retention Scheme. We have tried to cover off the most common scenarios below.

Sickness Absence due to COVID-19

Government advice remains 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.

I am off sick because I have a suspected/diagnosed case of COVID-19. What are my rights to take time off and what will I be paid?

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.

I have been furloughed by my employer but I am now sick. Can I get SSP?

You are not entitled to SSP if you are on furlough.

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. Can I just work remotely and be paid?

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.

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. Will I still be paid?

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.

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/>. Do not go to your GP to get an 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. If you don't have an email address, you can have the note sent to a trusted family member or friend or direct to your employer.

Workplace Closures and Employees who cannot work from home

My employer has asked me to stop coming to work, even though I have no COVID-19 symptoms and still want to work. I cannot do my job from home. What are my rights?

Employers are asking employees not to attend the work place for a variety of reasons. This might be because your employer has closed temporarily or has a reduced workload, and they have asked you not to come to work. This is the case for many employees working in retail or hospitality, as shops, restaurants and cafes now close.

If your employer has made this request, and 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 (CJRS)** 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.

What is the Coronavirus Job Retention Scheme and how does it affect employees?

The CJRS is intended to avoid redundancies and protect jobs. However, it is not limited to those employees who would otherwise be made redundant. It applies to any who are furloughed "by reason of circumstances as a result of coronavirus or coronavirus disease".

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)**. No part of the reclaimed grant can be siphoned off to fund benefits; the entire grant must be paid to the employee (with no deductions for fees, administration charges etc.). The amount of salary for the employee must disregard anything which is not "regular salary or wages". That includes disregarding any performance related bonus or discretionary payments (including tips).

The scheme will be backdated to 1 March 2020 and will remain open until 31st October 2020 (although there will be some changes to the detail of the scheme after 31st July).

Your employer will need to designate you and any other affected workers as **"furloughed workers"**. Until end of July 2020, 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. After July 2020, furloughed workers will be able to carry out work for their employers on a part-time basis, although the detail of such arrangements is not yet confirmed.

If you are furloughed then 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. You must be told about, and agree to, this change of employment status.

The CJRS applies to employees who have been on the payroll since 19 March 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 19 March can also be furloughed, if they are now rehired.

To qualify for the payment, you must be furloughed for a minimum of 3 weeks. You can then come off furlough. This means that your employer cannot rotate staff weekly between furlough and non-furlough. You may be furloughed multiple times subject to the minimum time period of 3 weeks.

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.**

Your employer must notify you of your furlough status in writing and your employer and you must have agreed in writing (this can include by email) that you will cease all work in relation to your employment.

If you are on furlough leave, you can **undertake volunteering or training**, provided it does not generate any money for your employer.

You can start a new job when on furlough. This means you might end up earning 80% of your old salary and 100% of your new salary. You cannot work for organisations that are linked to your employer during this time.

HMRC has also confirmed that those with certain **work visas** will not be regarded as breaching their visa conditions if they receive funds under the furlough scheme: *"Grants under the scheme are not counted as 'access to public funds', and you can furlough employees on all categories of visa."*

Annual Leave and COVID-19

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.

I have been furloughed. Can I take annual leave whilst on furlough and will I get full pay?

HMRC Customer Support has confirmed that it is possible to take annual leave when on furlough and it must be paid at full pay.

Vulnerable Employees and COVID-19

I think that 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 should have been 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*. This is because you are *deemed* to be incapable of work by virtue of your classification as extremely vulnerable. 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.

Childcare and Absence from Work

My child's school or nursery is closed 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. 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.

*** 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.**

Returning to Work – 13th May 2020 Onwards

On 10th May, the Government announced that people who cannot work at home should now return to work. Who does this apply to?

On 10th May, the Government announced, as part of its early steps to get people back into the workplace, that where working from home is not possible and an employer is not currently required to be closed, then employees should be 'encouraged' to return to the workplace from 13th May onwards. This is subject to the employer being able to provide a COVID-19 secure working environment. This will mean slightly different things for different work environments (for example whether the workplace is an office, a factory, a warehouse etc.) but in short employers will need to take certain specific steps to ensure safety in their workplace and crucially, wherever possible, allow for appropriate social distancing at work. This might mean staggering working hours or shifts, redesigning work places and providing enhanced cleaning and hand sanitation.

Not all employees should be returning to work on 13th May and indeed many employers will still remain closed on this date. Even if your employer is open for business, if you can and have been working from home, then the Government guidance remains that you should continue to do so. If you cannot work from home and you have been furloughed, then you should not return to the workplace unless and until your employer advises that your furlough arrangements are coming to an end and you are required back in work.

In all cases your employer must be able to provide a COVID-19 secure working environment, as outlined above, and should be taking account of individual circumstances in considering return to work arrangements. A return to the workplace may not be appropriate for every employee at this time. If you are a vulnerable person (see above) or have other underlying health conditions or another relevant factor (such as being pregnant) then you should discuss your personal circumstances with your employer to consider what protective health and safety arrangements may be available and appropriate for you.

Apprentices

I am currently undertaking an apprenticeship. How is COVID-19 going to affect me?

The government remains committed to supporting apprentices and their employers during this challenging time. The Education and Skills Funding Agency (ESFA) is taking to steps to ensure that wherever possible, apprentices can continue and complete their apprenticeship, despite any breaks they may need to take as a result of COVID-19.

What support is available to me?

The support provided by the ESFA includes:

- confirming apprentices on furlough can continue their training as long as it does not provide services or generate revenue for their employer
- encouraging both training, and assessment, to take place remotely
- granting extensions, where appropriate, to the timetable for assessments
- allowing breaks in learning, and explaining how they should be recorded
- stating HM Treasury will not be pausing apprenticeship levy payments for employers

Further information can be found here: <https://www.gov.uk/government/publications/coronavirus-covid-19-apprenticeship-programme-response>

Further Information

Help and Advice

There are a number of organisations and charities that can help provide further information and advice:

BPP Employment Law Telephone Advice Line (ELTAL) – email probono@bpp.com to access this service

ACAS: <https://www.acas.org.uk/coronavirus>

CAB: <https://www.citizensadvice.org.uk/work/coronavirus-if-your-employer-has-told-you-not-to-work/>

Gov.uk: <https://www.gov.uk/government/publications/guidance-to-employers-and-businesses-about-covid-19/covid-19-guidance-for-employees>

Information and Updates

The UK Government publishes a number of documents and updates as part of the ongoing response to Covid-19. These can be found on the UK Government website here: <https://www.gov.uk/coronavirus>

Wellbeing

This is an extremely difficult time for everyone. There is much uncertainty and a lot of anxiety. Along with your physical health, it is important to look after your emotional wellbeing during this period. There are a number of organisations that can help you during this difficult time.

Mind - 0300 123 3393 (Monday to Friday, 9am to 6pm) www.mind.org.uk