

Employment Law Alert

Coronavirus

Important employment law issues

Further information

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Background

The number of people infected with COVID-19 continues to rise rapidly. As COVID-19 continues to spread, the question of how to deal with the virus in everyday work life is becoming increasingly important.

Many companies have already taken extensive measures to protect employee health and safety, such as restricting business trips or meetings. At this stage, it is unclear which medium and long-term economic consequences COVID-19 will have.

This alert looks to highlight some important employment law issues.

When will employees be entitled to sick pay?

Employees who have been diagnosed with, or are off sick with symptoms of, the virus or who have been told to self-isolate by Public Health officials or their GP will be eligible to receive Statutory Sick Pay (SSP). The UK Government has announced that SSP will be available from day one of absence (rather than day four) in accordance with new rules, which are yet to be formally implemented. SSP will also be extended temporarily to include people caring for those within the same household who display COVID-19 symptoms and have been told to self-isolate.

If the employee has no notice from a health authority he/she may not be entitled to SSP. However, employers should give careful thought to whether it is nonetheless sensible to pay employees to self-isolate in these circumstances, taking account of the risks of such employees turning up to work and potentially putting other employees, customers and clients at risk. Whether or not contractual sick pay is payable in this situation will depend on the terms of the contract and the employer's policies.

Can we require employees to remain away from work?

Employers have a duty to protect the health, safety and welfare of their workforce and so can ask employees not to come to work if this is reasonably required to protect others. If an employee is not sick but the employer tells them not to come into work (including where the employer decides to close the workplace for a temporary period) the employee should be paid his/her usual pay unless there is a contractual right to place the employee on a period of unpaid leave, although this is unlikely.

My employee does not want to come to work due to concerns about the virus - do I need to pay them?

Probably not (subject to what the employee's contract and the employer's policies say). Unless the employee is self-isolating on Government, Public Health England or NHS advice, or is sick, he/she is likely not entitled to SSP and, as the employee is not sick, it is unlikely the employer's contracts and policies will provide for contractual sick pay in the circumstances. The specific reason should always be discussed with the employee (additional obligations may be owed to vulnerable employees) and options such as home working or taking annual leave should be considered.

Should we restrict work travel and can we stop employees' personal travel?

Employers should undertake risk assessments for any work travel. Many employers have cancelled all non-essential work travel for a limited time, to be kept under review. Risks will depend on the mode of transport, destination and purpose of the travel and all employers will have to undertake their own risk assessments in conjunction with reviewing the most up to date Government advice. Employers should communicate any changes in policy to employees and keep them updated.

It is hard for an employer to limit the activities of an employee, such as holidays, outside of work. Best practice is to discuss the employee's plans with them and make them aware that, subject to what the Government advice is at the time of their return, they may be asked to self-isolate. Employer's should ask the employee to keep them updated on their plans and on any issues that develop while they are away, so that they can be discussed and appropriate steps taken on their return, to protect the health and safety of others in the workplace.

Should I send people home to work?

In all the above situations, home or flexible working may allow the employee to continue to work as usual, thereby avoiding issues around sick pay and also enabling the employer's business to continue as normal, so far as possible. Employers should consider whether they have a contractual right to require employees to work flexibly and/or vary location, duties and hours of work. Proactive steps may need to be taken to change terms and conditions through consultation.

It is sensible for all employers who are consider home working, to test home working facilities now, before they may be necessary, and to communicate openly with employees about any plans and arrangements for home working.

As with any home working arrangements, employers should carry out a health and safety risk assessment, which will include checking whether the employee's home working set up has appropriate and safe equipment and furniture. More generally, confidentiality, IT and data privacy policies and security systems should be reviewed to ensure that working outside of the office does not expose any business data, including the personal data of employees, customers and clients, to threat.

Employers may consider splitting their workforce into groups and having certain groups in on certain days, to mitigate against the risk of the whole workforce contracting the virus, in the event some employees do become ill. When considering who to put in which group, consider splitting business critical roles across groups so that the business can continue to function so far as possible in the event employees become unwell.

Can we be liable for discrimination and harassment?

Yes. When taking any action to manage the impact on the workforce, employers should be cautious not to discriminate by treating any employees differently because of race or ethnicity (for example only seeking information from certain sections of the workforce). Employers should also ensure its employees from high risk areas are protected from potential discrimination and harassment. This will include having well publicised diversity and anti-discrimination policies as well as putting in place additional training and tackling any inappropriate behaviour.

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