

Coronavirus: Impact on Employers

March 2020

COVID-19 is the disease which is caused by the coronavirus. It was first identified in Wuhan City, China, in December 2019. By 11 March 2020 the World Health Organization ([WHO](#)) declared the outbreak a global pandemic owing to the alarming levels of spread of the virus coupled with the increased mortality rate in vulnerable groups in society; such as the elderly, those with a weakened immune system or long-term conditions like cancer and chronic lung disease. Many countries, including the UK, have introduced widespread public health measures to combat the spread of the virus and alleviate the pressure on their respective health systems.

There has been a dramatic shift in advice from the [UK government](#) and as of 16 March 2020 the medical advice in the UK is that the entire household of anyone who develops a new cough **OR** a high temperature should self-isolate at home for 14 days. Boris Johnson has projected that up to a fifth of workers could be off sick at any one time, with many more absent from the workplace in self-isolation or caring for dependants due to the illness or school closures. It may be that this will be the norm for many months to come given a vaccine is not expected to be available for at least a year. Businesses will therefore suffer staff shortages and face unprecedented challenges in terms of the daily running of their business and their profitability in the short and long term.

What action should an employer take?

Employers have a legal duty to ensure the health, safety and welfare in the workplace of their employees, customers, suppliers and members of the public. Employers should minimise the risks posed by the coronavirus to these groups as far as reasonably possible by carrying risk assessments for all workers and specifically for those who are at higher risk. Workers should be instructed to follow the government's self-

isolation guidance in order to reduce the risk of an employee attending the workplace and spreading the virus. If an employee does attend the workplace when they are presenting symptoms, they should be sent home to self-isolate.

Employers should:

- regularly update all staff on the actions being taken in the workplace;
- circulate the [Government's latest guidance](#) to all staff. Presently, this advice updates daily and as such these should be sent on a daily basis;
- ensure that there are clean places to wash hands with hot water and soap and encourage everyone to wash their hands regularly;
- contact details of staff in an emergency details should be checked and updated where required;
- provide hand sanitiser and tissues for staff, and encourage them to use them;
- engage additional cleaning services;
- train managers to spot symptoms of coronavirus and on the procedure that they should follow, e.g. sending someone home from the workplace presenting the symptoms of coronavirus;
- consider allowing vulnerable workers and pregnant workers to work from home where reasonably practicable;
- consider allowing all other staff to work from home where reasonably practicable; and

- consider closing the workplace temporarily if reasonably practical.

Normal pay

If an employer asks an employee to remain at home, then the employee will be entitled to normal pay. This is subject to any lay off provisions contained within the employee's contract of employment which might allow the employer to lay off the individual or reduce working hours in certain circumstances such as a pandemic.

Self-isolation and sick pay

Employees who self-isolate following either medical or government advice must receive Statutory Sick Pay ([SSP](#)). Employers should check all contracts of employment as employees might be entitled to enhanced contractual sick pay over and above SSP. Usually, SSP is not available until the fourth day of sickness but as of 5 March 2020, the government has said that individuals eligible for SSP will be entitled from the first day of absence. This additional entitlement is only relevant to absences connected with Coronavirus. The Government has asked employers to use their discretion when requesting a fit note where an employee is self-isolating.

Where an employee is well enough to work but has self-isolated following medical advice, SSP will be payable. It is unlikely, however, that they will be entitled to any enhanced contractual sick pay, depending on the terms of their employment contract. Nevertheless, [ACAS](#) recommends paying employees their enhanced contractual pay in this situation to avoid the risks of employees returning to work (as opposed to self-isolating) over financial concerns and spreading the virus in the workplace.

Where an employee is simply choosing to self-isolate out of fear of catching the virus, they are not entitled to SSP or contractual sick pay. Employers should discuss a suitable way forward and consider options such as a period of unpaid leave or allowing the employee to work from home if practical. If no suitable agreement can be reached and in circumstances where an employee is not sick, employers could consider disciplinary action. Caution must be exercised here; the employee may belong to a vulnerable group or be requesting time off to look after dependants.

Dependant care leave and parental leave

Employees have a statutory right to take unpaid [dependant care leave](#). This right will extend to an employee in circumstances where their child's school closes, or they fall sick and so require care. Further, for those employees with one year's continuous service they can apply for a period of unpaid parental leave to care for a child under the age of 18, up to a maximum of four weeks a year. Some employment contracts allow for paid dependant care leave and so employers are advised to review the relevant clauses within the contract.

Working from home

The Government has requested that employees who are well enough work from home, where practical, to halt the spread of the virus. Employees are entitled to their normal pay if they are working from home. It is advisable to produce a working from home policy and share it with all relevant staff members which should include information regarding equipment, access to systems, relevant training, health and safety considerations and expectations of both the employer and employee when working from home.

Use of holiday entitlement

If well employees can't work from home, employers can consider asking those employees to use their holiday entitlement. An employer has the right to close their workplace and instruct employees to take holiday during the closure so long as the employee is given twice as many days' notice as that to which the closure will be. This is not an attractive option and could lead to loss of morale especially as staff will lose their entitlement for the rest of the year and so should only be considered where other flexible options are not appropriate.

Comment

An employer should balance the best interest of its business with its legal duty to ensure the health, safety and welfare at work of their employees, customers, suppliers and members of the public. Employers must ensure that they are aware of the official guidance from government and take timely, appropriate action to mitigate any risks. Providing staff with regular updates is vital and employers should communicate any actions taken.

Employers should pay particular attention to those in vulnerable groups. When implementing measures, as these higher risk staff members must not be unfairly disadvantaged as this could lead a to a discrimination claim. Legal advice should be sought if an employer is unclear whether action could amount to discrimination.

As the situation develops those employers who have already conducted a thorough review of their workplace and are aware of the potential risks and possible solutions will be best placed to limit the harm the business may suffer.

Contact Karen Cole today for further information.

Karen Cole
07903 619 001
karen.cole@riaabg.com
www.riabarkergillette.com



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Note: This is not legal advice; it is intended to provide information of general interest about current legal issues.

