



## **Covid-19 Coronavirus Update**

### **Q&A around Covid-19 Coronavirus issues at work**

This week has seen a number of developments regarding the spread of the Covid-19 Coronavirus with many governments taking stricter measures to control the spread of the virus. We therefore take this opportunity to answer a few of the common questions regarding the virus.

It is important to note that the situation is very fluid and government guidance is changing daily. We can therefore only provide a general guide that should be used with care. Furthermore, as we are not medical professionals. We cannot provide any medical advice on the virus, its treatment or transmission. This guidance is current for 18 March 2020.

#### What is the current status of the virus?

The government provides daily updates regarding Covid-19 Coronavirus, which can be found at <https://www.gov.uk/guidance/coronavirus-covid-19-information-for-the-public>, the current risk level to the UK has been increased to High.

As of 9am 17 March 2020 the UK has tested a total of 50,442 people with 1950 confirmed cases. We are currently awaiting government confirmation of the number of deaths, but they are thought to be approximately 71.

#### Q&A around Covid-19 Coronavirus issues at work

- *What is coronavirus?*

A coronavirus is a type of virus. As a group, coronaviruses are common across the world. COVID-19 is a new strain of coronavirus first identified in Wuhan City, China in January 2020. The incubation period of COVID-19 is between 2 to 14 days. This means that if a person remains well 14 days after contact with someone with confirmed coronavirus, they have not been infected.

- *How is it spread?*

Because it's a new illness, we do not know exactly how coronavirus spreads from person to person. Similar viruses are spread in cough droplets and this appears to be the most likely source of transmission.

The current theory is that droplets are either ingested directly or settle out of the air onto surfaces and are then picked up by people who touch those surfaces. The virus then makes its way to the eyes nose and mouth and enters the body that way.

This is why current advice is where possible to keep a distance of 2 metres from other individual and to wash your hands thoroughly and regular to remove the virus from your hands before it is able to make its way to the eyes nose and mouth

- *If an employee is advised to self-isolate to avoid the risk of spreading coronavirus, are they entitled to sick pay?*

Current government guidance is that an individual should self-isolate at home for 14 days after visiting certain areas or after having close contact with someone who has tested positive for coronavirus. The government also advises that individuals with a high temperature and/or a new continuous cough should self-isolate for at least 7 days from the onset of symptoms. If they live with others, the rest of the household should self-isolate for 14 days (even if the rest of the household has no symptoms).

Employees who are self-isolating in accordance with government advice are entitled to SSP even if they do not have any symptoms. The government has introduced temporary legislation with the effect that individuals who are unable to work because they are self-isolating in accordance with coronavirus guidance published by Public Health England, NHS National Services Scotland or Public Health Wales.

In any event, it is good practice for employers to treat absence due to self-isolation as sick leave and pay the employee in accordance with their usual policy, or to pay them in full. Employers should aim to avoid the situation where an employee attend work against medical guidance, risking the spread of the coronavirus, because they are concerned about not being paid or having to use up their annual leave allowance to cover any absence.

- *Can I instruct an employee who may be at risk of having contracted coronavirus not to come to work?*

Employers are under a duty to ensure the health and safety of all of their employees and to provide a safe place and system of work. In light of this, and the serious implications of coronavirus is contracted and spread in the workplace, an employer would be justified in instructing an employee with the symptoms associated with the coronavirus not to attend work, to seek advice from NHS 111 and not to return to work until the symptoms have cleared. In this situation the employee would only be entitled to SSP as they deemed to be incapable for work on the basis that they are being required to self-isolate in accordance with government advice.

- *What should I do if an employee is concerned about the risk of contracting coronavirus and does not want to attend work?*

As a general rule, an employer can require employees concerned about contracting coronavirus (COVID-19) to attend work. However, the employer should check current government guidance about self-isolation and take the employee's own circumstances into account when deciding whether there are grounds for the employee to stay at home.

Where there are no grounds for self-isolation, the fear of contracting the illness would not generally be sufficient reason for failing to attend work, and an employer faced with an employee refusing to come to work will be entitled to take disciplinary action for unauthorised absence. An employer could also stop paying an employee who refuses to attend work on the basis that the employee is failing to perform their part of the contract.

However, where business needs allow, an employer may wish to make a more flexible approach and allow employees to work from home, or to take a period of annual or unpaid leave. This is particularly advisable where an employer is dealing with vulnerable employees i.e. those at high risk of developing more severe symptoms from the coronavirus, such as employees with asthma, diabetes or heart disease.

We can provide on request a template letter providing guidance for staff on coronavirus which you can adapt for your needs. This letter follows the government's latest advice on COVID-19 as of 16 March 2020.

- *Should a policy triggering disciplinary action after a certain amount of absence be suspended in relation to employees with coronavirus symptoms during the outbreak?*

Given the nature of the coronavirus outbreak, it may be sensible for employers to reconsider their disciplinary policy in relation to sickness absence where employees are sick with symptoms suggesting a risk of coronavirus. If employees are concerned about disciplinary action, they may attend work when unwell or return to work before they are fully recovered. Not only are sick employees likely to perform poorly, but they also risk infecting other employees, which will result in increased staff absence.

In order to avoid these issues, employers may wish to advise employees that absence due to coronavirus symptoms will not be taken into account when determining whether or not to take disciplinary action. They should make clear that this is a temporary measure and update employees when they revert to the normal policy.

- *What medical evidence can I request from employees who are absent with flu-like symptoms during the coronavirus outbreak, when government advice is not to visit their GP?*

Most sickness absence policies allow for employees to self-certify absences for up to 7 days. Where an employee who is absent for more than 7 days advises that they have flu-like symptoms, the employer will need to make an exception to its normal requirement for medical evidence. Nevertheless, the employer should take all reasonable steps to verify the sickness absence. This could include requiring the employee to make regular telephone contact and requiring the employee to explain what medical advice they have sought and followed. The employee could be asked to provide evidence where possible, but employers should act reasonably in what they require from employees in the circumstances due to limited resources around GPs and NHS 111.

- *Do we send all employees who have been in contact back home for a week?*

As above, current advice is that individuals with a high temperature and/or a new continuous cough should self-isolate for at least 7 days from the onset of symptoms. If they live with others, the rest of the household should self-isolate for 14 days (even if the rest of the household has no symptoms). There is no requirement for employers to send all employees home at this time.

- *If my workplace is closed to prevent the spread of coronavirus, must I continue to pay employees?*

If an employer decides to close its business, for example due to the numbers of staff of sick or self-isolating or due to lack of customers, it must pay employees as normal unless the contract states otherwise. Some employers may have a contractual right to lay-off employees or put them on short-time working, in which case employees may be entitled to statutory guarantee payments. If an employer does not have the contractual right to lay-off / short-time working then it could seek the voluntary consent of employees to agree to be laid-off or put on short-time working and we can provide a template agreement and letter concerning this if needed.

In the event that an employer is instructed by the government to close the workplace, employees may be entitled to statutory sick pay (SSP), as they may be deemed to be incapable of work in accordance with temporary legislation to prevent the spread of coronavirus.

If employees can work from home while the workplace is closed, the employer should pay them as normal.

In businesses where working from home is not an option, some employers may find themselves unable to keep up with their contractual obligations to pay employees. They may need to consider options such as asking for volunteers for redundancy or asking employees to agree to a period of unpaid leave. Employees may be prepared to accept unpaid leave on a temporary basis, where the alternative would be redundancy.

- *Do we close the site for a deep clean?*

As stated above the current theory is that viruses are spread in cough droplets that are either ingested directly or settle out of the air onto surfaces and are then picked up by people who touch those surfaces, as such a more stringent and regular cleaning schedule of commonly handled surfaces will reduce the spread of the infection generally.

One aspect that has been unclear is exactly how long coronavirus, can survive outside the human body. Initial studies on coronavirus have found that the virus survives can persist in the air for a couple of hours and can survive on cardboard for up to 24 hours and up to 2-3 days on plastic and stainless-steel surfaces.

There is currently no requirement to undertake a deep clean where there is a suspected case of coronavirus. Where you do undertake a deep clean Public Health England have provided guidance that can be found [here](#)<sup>i</sup>.

- *How should I respond if my employees are affected by school closures to prevent the spread of coronavirus?*

The statutory right to time off for dependants provides for a period of unpaid leave to take action necessary because of the unexpected disruption or termination of arrangements for the care of a dependant. This would cover time off to arrange alternative childcare in the event of a school closure but it does not cover extended time off for employees to look after the children themselves.

Employers should keep in mind that advice on self-isolation and social distancing during the coronavirus outbreak is likely to make it more difficult for employees to make alternative arrangements for the care of their children. Employees may have no option but to stay at home themselves.

Employers will therefore need to consider alternative arrangements, such as allowing the employee to work from home where possible or agreeing to a period of paid or unpaid leave.

Where an employee is self-isolating, in accordance with government advice, they will be entitled to SSP even where they are not ill.

### In Conclusion

There remain many unknowns and as such a lot of volatility regarding the Covid-19 Coronavirus. It must be remembered that the NHS provide the UK with a unique tool to deal with this sort of health crisis.

We will of course continue to monitor any developments in order to keep members informed. Don't forget, as an RMI member you have access to the RMI Legal advice line, as well as a number of industry experts for your assistance. Should you find yourself in the situation above, contact us at any stage for advice and assistance as appropriate.

### Motor Industry Legal Services

*Motor Industry Legal Services (MILS Legal Ltd) provides fully comprehensive legal advice and representation to UK motor retailers for one annual fee. It is the only law firm in the UK which specialises in motor law and motor trade law. MILS currently advises over 1,000 individual businesses within the sector as well as the Retail Motor Industry Federation (RMI) and its members.*

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<sup>i</sup> <https://www.gov.uk/government/publications/covid-19-decontamination-in-non-healthcare-settings/covid-19-decontamination-in-non-healthcare-settings>