

# COVID-19 - What do employers need to know?

**Coronavirus poses challenging strategic, financial and social issues for employers. In this article we examine employers' responsibilities, and what steps they should take.**

The COVID-19 outbreak has far reaching impacts in the workplace. Employers must protect the health and safety of the workforce whilst ensuring business continuity, and operating within commercial and financial constraints.

How should employers approach these issues? In our view, a good model is to work through:

- Assessing and minimising infection risks in the workplace;
- Managing sickness absence;
- Alternatives to sickness absence;
- Considering alternatives to business reductions and closures; and
- Managing the risk of claims.

## Infection risks in the workplace

Recent press coverage on how COVID-19 impacts the workforce has focussed on sickness absence and pay. But there are other proactive practical steps employers should take to protect their staff.

As employers are responsible for the health and safety of their employees, they should:

- Keep abreast of government advice and devise policies and strategies to deal with the spread of the virus;
- Ensure there is good hygiene in the workplace, and that working practices do not pose undue risks to employees (e.g. ensure there are well stocked sanitary facilities for employees to wash their hands and encourage their regular use);
- Identify higher risk groups and decide what additional steps might be needed to protect them;
- Make sure staff know how to spot the symptoms of COVID-19 and are clear on relevant policies and processes (for example sickness reporting and sick pay), and that procedures are in place should a worker contract the virus;
- Consider whether any recommendations can be made to improve staff safety during commutes, business travel and site work;
- Promptly communicate to staff any policy decisions and actions being taken to reduce risks of coronavirus exposure.

## Managing sickness absence

### When Statutory Sick Pay (SSP) is payable

Usually, SSP is paid after the first 3 days of sickness absence.

However, the Government announced in the Budget on 11 March that:

- SSP will be payable from the first day of COVID-19 related absence; and
- For businesses with fewer than 250 employees, it will refund SSP paid for up to 14 days' absence per employee.



SSP (currently £94.95 per week) is payable:

- To employees earning over the lower earnings limit of £118; and
- When qualifying employees:
  - Have COVID-19;
  - Have been advised to self-isolate in such a manner as to prevent infection or contamination with COVID-19 (regulations have just come into force to include this in the definition of persons deemed incapable of work for the purposes of SSP); or
  - Care for those in their household who display COVID-19 symptoms and have been told to self-isolate.

Employees can obtain a sick note from NHS 111. However, with this resource being under significant pressure, employers are also being asked to be pragmatic about the need to evidence absence.

### When SSP is not payable

SSP is **not** payable to

- Individuals who are not qualifying employees;
- Qualifying employees who are off work caring for a dependant;
- Qualifying employees who are not themselves ill, but have been asked to work from home by their employer; or
- Qualifying employees who do not wish to attend the workplace due to the general risk of infection during the outbreak. This poses a real dilemma for employers: should they pay more than full pay if not required to do so by regulation or sick pay policies?

If so, for how long? It may be that many employers would wish to – but cannot take – that financial risk.

### Non-qualifying employees

SSP is **not** payable to employees earning less than £118 per week or the self-employed, but measures have been introduced to reduce the risk of financial hardship such as:

- Making it 'quicker and easier' access to benefits;
- Temporarily removing the minimum income floor in Universal Credit so that individuals can claim for time they spend off work due to sickness; and
- Enabling those on contributory employment and support Allowance to claim from day one, instead of day eight.

### Caring for a dependant

Similarly, SSP is **not** payable to employees who need to look after:

- Children who have been told to self-isolate by their school, but are otherwise well; or
- A relative who has COVID-19.

However, employees do have a statutory entitlement to reasonable time off to deal with a family emergency for dependents.

What constitutes 'reasonable' time off will depend on the individual circumstances.

Employers might need to give employees more time off than normal to care for dependants because care arrangements are challenging, or the dependant may be seriously ill.



Employers can support employees with paid leave, but this is not mandatory **unless** covered by the employment contract or company policy.

This can present a real dilemma for employers about the 'right' thing to do versus what is commercially viable. Employers might be able to agree reduced hours or flexible working arrangements to support the individual in paid work as well as support business needs.

### **Self-isolating employees**

SSP is also **not** payable where the employee (or worker) is not sick but has been asked to self-isolate by their employer.

ACAS guidance states that where an employer has asked the employee not to attend work, the employee should receive their normal pay.

For example, if someone has returned from China, Italy or another affected area and their employer asks them not to attend the workplace, they should be paid during the time they do not attend work.

It may be possible to continue working remotely, but even where work is not possible, ACAS guidance is that this time should be paid.

If an employee refuses to stay away from work, employers may need to consider suspending the employee on medical grounds and should have an implied right to do so provided this is done reasonably.

The safest approach for the employer is to pay the employee as usual, although if they fall into the category of individuals who are being advised through public health guidance to self-isolate then the employer may be entitled to treat the employee as on sick leave and entitled to sick pay only.

Employers will need to decide whether they want to take the risk of treating the absence in this way, particularly as it was not considered directly in the recent Budget announcement.

### **Employees who do not wish to attend the workplace**

Finally, SSP is **not** payable to qualifying employees who are otherwise well, but whose concerns of contracting coronavirus during the outbreak mean they are uncomfortable attending the workplace.

These employees are unlikely to benefit from the options above, but an employer may want to consider some possible alternative solutions we set out below.

### **Alternatives to 'sickness' absence**

Many employees may not be 'sick' during periods of self-isolation, or may simply not want to attend work and risk infection.

Employers should therefore consider ways to accommodate staff who are able to continue working, but are not able to attend their workplace.

If employers recognise trade unions, it would be sensible to discuss any proposed arrangements with them.

Below are some options employers can consider:

- Home working - this will reduce exposure to the virus and help to maintain business continuity. Home working is possible for many office workers but needs to be carefully considered, keeping in mind that:
  - Employers remain responsible for their employee's well-being and should ensure that they carry out a suitable risk assessment to identify hazards and assess the risk of home working;
  - Where possible, employers should ensure that their business technology is sufficiently up to date to allow employees to work from home;
  - Employers should have clear policies regarding home working, in particular relating to security and expenses; and
  - Whilst many employees will prefer to work from home, some may be unable to or may not want to. Employers should listen to concerns and may wish to discuss alternative arrangements which may be more suitable such as commuting outside of peak hours or annual leave.
- Holidays – employers could invite employees to take annual leave or, if they have the contractual right to do so, stipulate that annual leave **shall** be taken, but employers should consider whether this is appropriate in the context of the outbreak when many employees will not be able to take a 'normal' holiday.
- Sabbaticals – employers may encourage employees to take an extended period of unpaid leave or sabbatical. This will need to be offered to employees fairly and consistently without discrimination, and express agreement from the employee will be needed. Some employees may be looking for a career break and be happy to agree. This could reduce salary costs during the downturn, reduce employees' exposure to the virus and help retain talent.
- Flexible working – employees with 26 weeks' continuous employment can request flexible working. Employers may offer this to staff who do not have the necessary service to manage staffing and budgets, or consider revising working hours and/or working days to support wellbeing and maintain resourcing.

### Considering alternatives to business reductions and closures

For some employers, COVID-19 will present acute issues relating to reductions in demand which require them to manage their cost base.

Making permanent reductions through redundancies may be knee jerk, too short term in view and/or simply take too long.

Instead, employers could consider:

- If there is a contractual right to temporarily lay-off employees. Note that in practice this is rare, and in most cases employees will be entitled to a statutory guarantee payment; and/or
- Reducing the work offered to casual workers and contractors.

### Managing the risk of claims

Employers should be mindful of the risk of certain groups being particularly disadvantaged by measures taken in respect of coronavirus. For example, employees could allege that they have been subject to discrimination.

When devising policies, employers should be mindful of groups such as carers and parents who may need to look after children or elderly relatives, to ensure they are not disadvantaged.

Employers may want to reinforce anti-discrimination policies to remind staff that discrimination is not tolerated.



Employers should investigate and take necessary disciplinary action if employees are subjected to race discrimination or harassment in the workplace (it has been reported in the media that incidents of harassment against people of particular nationalities or ethnic backgrounds have increased in the wake of COVID-19).

### **How we can support you**

It is encouraging to see proactive and pragmatic Government action being taken to support employers and employees. Nevertheless, employers also need to devise their own strategies and policies to manage the potential disruption and clearly and proactively engage with their workforce.

Please contact the Employment Legal Services team if you require any more guidance on understanding and addressing the challenges of COVID-19 in your workplace.

### **KPMG LLP (UK)**

13 March 2020

The information contained herein is of a general nature and is not intended to address the circumstances of any particular individual or entity. Although we endeavour to provide accurate and timely information, there can be no guarantee that such information is accurate as of the date it is received or that it will continue to be accurate in the future. No one should act on such information without appropriate professional advice after a thorough examination of the particular situation.

© 2020 KPMG LLP, a UK limited liability partnership and a member firm of the KPMG network of independent member firms affiliated with KPMG International Cooperative (“KPMG International”), a Swiss entity. All rights reserved.

KPMG LLP is a multi-disciplinary practice authorised and regulated by the Solicitors Regulation Authority (SRA number: 615423).

The KPMG name and logo are registered trademarks or trademarks of KPMG International.