



Do you employ staff?

Corona Virus Information for Employers

Following on from our other HR Updates provided on 4th and 10th March 2020, we thought it would be a good idea to provide a further update on the information that is currently being provided by the Government and how this relates to employers.

This situation is very changeable so please note that this advice is correct as of today, 17th March 2020, and it may be subject to change. We will update you with additional information as and when this becomes available.

Changes to Self-Isolation

The rules on self-isolation have been amended. In our previous newsletters, we stated that employees are only required to self-isolate for 14 days if they exhibit Corona Virus symptoms or have been exposed to the virus, if they have travelled to a country with high infection rates, or if they have been advised to self-isolate by the NHS advice line 111.

The new rules for self-isolation are as follows:

- Anyone who experiences a new continuous cough or fever should self-isolate for a minimum of 7 days. After those 7 days, if symptoms get worse or show no improvement, advice should be sought by NHS online, and it is likely a further 7 days of self-isolation will be advised.
- Anyone who comes into contact with a suspected or confirmed case of Corona Virus should seek advice from NHS online, and will likely be advised to self-isolate for 14 days, even if they do not exhibit symptoms.
- Anyone who lives in the same household as someone who is symptomatic should self-isolate for 14 days, even if the ill person only self-isolates for 7 days. There is no need to seek NHS advice to confirm that self-isolation is appropriate in these circumstances.

On 13th March the Government confirmed that anyone who self-isolates due to the above requirements will be entitled to receive SSP, even if they have no symptoms. Currently SSP is still payable from the fourth day of absence onwards, the Government has confirmed that this will be changed so that SSP will be payable from the first day of absence, but no implementation date for this has been confirmed yet. We will advise you of an implementation date for this as soon as we possibly can.

Employees have been advised that they can get a Fit Note from the NHS online service, NHS 111, or a backdated Fit Note from their GP once their self-isolation ends. We advise all employers to be flexible with absence documentation requirements when an employee is absent due to the Corona Virus, because the NHS is understandably experiencing significant strain at the moment and therefore employees may find it difficult obtaining Fit Notes.

As previously stated, any absence relating to the Corona Virus should not be included in any absence management procedures, no employee should suffer a detriment for complying with Government and NHS guidance on this matter. However, anyone who has been advised to self-isolate to prevent the spread of the Corona Virus but chooses to disregard this information and remain at work, can be investigated and managed in line with the Company's disciplinary procedure.

Isolation for "At Risk" Employees

Any employee who is aged over 70, who is pregnant, or who has an underlying medical condition that can affect their susceptibility to Corona Virus, is classed as "At Risk". Following the Government Press Release on the evening of the 16th March 2020, it has been confirmed that those who are "At Risk" should self-isolate for approximately 12 weeks (this time is subject to change). Therefore, if you have any employees who fit this description, you should be prepared for them to self-isolate from the end of this week onwards. If possible, these employees should be permitted to work from home. Where working from home is not at all possible, "At Risk" employees will be entitled to receive SSP (or Contractual Sick Pay, if this is contained within the Contract of Employment). The suggested 12-week timeline is expected to cover the "peak" of the UK's Corona Virus outbreak, but it may either be reduced or extended, depending upon the situation and the information available. Any employee who is required to self-isolate for an extended period of time is acting in accordance with the Governments advice and guidance and should receive formal management for this.

It may be that you have employees who are classed as "At Risk" but who feel able bodied and perfectly healthy, and therefore do not want to comply with Governmental guidance. If this is the case, you cannot force an employee to remain at home and they are free to remain working, as long as they understand they may be exposing themselves to risks. Self-isolation should only be enforced if an employee is exhibiting symptoms, or if they have been in contact with someone exhibiting symptoms.

You may experience employees who are not "At Risk" themselves asking to remain away from the workplace for a prolonged period of time because someone within their household is "At Risk". Employees in this position are not covered in the guidance from the Government and are therefore unable to receive any SSP if they attempt to self-isolate. Where this is the case, the employee has the following options:

- Working from home, if their role permits it
- Taking a period of unpaid leave from work
- Remaining in work and adhering to all precautionary measures that have been put in place as advised by you and the Government

It is understandable that these employees may be experiencing higher levels of anxiety than any employees who do not have “At Risk” relatives living with them, but clear and reassuring communication, where you inform them of the preventative measures you’re putting in place, should hopefully help to alleviate their concerns.

Working from Home

Employers have been encouraged to consider allowing employees to work from home since tests first confirmed cases of Corona Virus within the UK. However, following the Government Press Release that took place on the evening of the 16th March 2020, the Prime Minister has made it clear that this is no longer a “suggestion”, but actually clear guidance on what all employees should be doing – if their role permits it. Now is the time to look at your Company and consider whether temporarily working from home is possible for some or all of your employees. Think outside the box, don’t say “no” to Home Working because you don’t want to agree to it, because you don’t know how it will work, or because it will work for some employees but not others – now is the time to be flexible and to consider all ways that this could possibly work.

Many employees can easily work from home because they already have the facilities available, but you may have other employees who are able to fulfil their role at home, but don’t have the facilities to do so. In these circumstances, is it possible for you provide the employee with computer equipment etc.? Or perhaps an employee can complete some but not all of their role at home. In this case, could you agree to them completing “light / reduced duties” at home? In some circumstances, reduced duties would be better than an employee completing no work at all during self-isolation, or an employee exposing themselves to Corona Virus on their commute to work.

Whilst an employee works from home, technically, you as their employer, are still responsible for their health and safety. Normally the Home Working environment needs to be suitable and assessed to ensure there are no hazards that can pose a risk to your employee. Ideally, a full health and safety risk assessment would be conducted, but in the current circumstances, where decisions are being made quickly due to the Corona Virus, it may be more suitable to have a conversation with your employees to ensure they are aware of safe homeworking practices. Further information about this area please refer the Health and Safety Executive’s website; <https://www.hse.gov.uk/toolbox/workers/home.htm>

We also recommend that you confirm any agreement you make with your employees in writing. This agreement should confirm the details of the arrangement, such as:

- The level of communication the employee must comply with whilst working from home
- How long the agreement is expected to last, or whether it is open-ended
- What “working day” (hours) the employee is expected to adhere to, and whether they need to inform you of when their breaks are taking place, etc.

It may be that you agree to Home Working but ultimately decide that it isn't suitable for the Company. If this is the case, you can cancel the agreement and ask your employees to return to work as normal. If the employee refuses, and they do not have a legitimate reason to remain at home, then depending upon the circumstances you can either allow the employee to take a period of unpaid leave, or you can choose to formally manage this situation in line with your disciplinary procedure.

Lay-Offs / Short-Time Working

Due to the Corona Virus outbreak, you may need to consider laying off staff or implementing a period of short-time working, to manage either a temporary business closure or a down-turn in work. If there is an explicit lay-off/short-time (LOST) working clause in your contracts of employment this is easy to do, but where there is no explicit clause in the contract, you will need to consult with your employees in order to gain their agreement to a lay-off/short-time working period. Lay-offs and short-time working are regularly used as an alternative measure, to redundancy. If you proceed without your employees' agreement, then you would be risking a breach of contract claim. Due to the often-sudden requirement to implement lay-offs or short-time working, you are not required to give employees any notice of these proceedings.

During a temporary lay-off or period of short-time working, your employees will be entitled to statutory guarantee pay (SGP), which is paid to employees who are not provided with work, on a day they would normally work under their contract of employment. The rate of SGP is set by the government and is £29 per day, increasing to £30 from 6 April 2020. It is payable for a maximum five days in any three-month period for a full-time worker, pro-rated for part-time employees.

Payment of guaranteed pay is limited to a maximum of five days of SGP paid within any rolling three-month period. Therefore, for each workless day, you will be required to assess whether your employee has been paid the maximum of five days of SGP within the previous three months.

Whilst placing your employees on a temporary lay-off or period of short-time working is a practical step to manage either a temporary business closure or a down-turn in work due to Corona Virus, you do need to consider that using these measures could result in your employees becoming entitled to a statutory redundancy payment (SRP). To be entitled to SRP, they must have;

- a minimum of 2 years' continuous service
- been placed on a temporary lay-off or period of short-time working for either;
- 4 or more consecutive weeks or
- 6 or more weeks within a period of 13 weeks, where no more than 3 weeks are consecutive
- provided notice of their intention to claim SRP
- resigned with appropriate notice

To receive their SRP, they will have to provide you with statutory notice of their intention to claim this payment. This notice must be in writing and state that they are making a claim for a redundancy payment in respect of being placed on temporary lay-off or a period of short-time working. It should then be posted or hand-delivered to the Company / you.

This must take place either on the last day of the week spent on lay-off or short-time, on which the employee is basing their claim on, or within a 4-week period of the above date. This time limit is strictly applied and cannot be extended, even by an employment tribunal. A notice which is served too early will not be valid. However, there is nothing to prevent employees from serving a second notice at a later date to comply with the time limit, if their first notice wasn't valid.

You may wish to contest your employees' claims for statutory redundancy pay, however, you can only contest this in limited circumstances and you are required to follow a statutory procedure. A claim can be contested, where it is reasonably expected that;

- the employee will be provided with a period of employment lasting at least 13 weeks
- they will not be placed on lay-off or short-time working for any of these weeks and
- this period of employment will start within 4 weeks of the date the employee's notice to claim was served

If you have an employee who is reasonably expected to be provided with work, you should serve a counter-notice explicitly stating that you contest the liability to pay a statutory redundancy pay. The counter-notice has to be served to your employee within 7 days of service of their notice of intention to claim and must either be given to the employee by hand or posted to their normal address. The time limit for you serving the counter-notice must also be strictly applied and cannot be extended. Contesting the claim, even after serving the required notice, will automatically fail if the employee is not provided with the minimum period of employment within 4 weeks of their notice to claim, i.e. they remain on lay-off or short-time working for this 4-week period.

You can decide to withdraw your counter-notice, if you become aware that there is no possibility of the employee being provided with the required period of employment, or that this will not become available within 4 weeks of the employee's notice of their intention to claim. To withdraw the counter-notice, you have to provide your employee with written notice of their withdrawal, and this can take place at any time. Where you do not withdraw the counter-notice, an employment tribunal will determine whether the employee is entitled to receive redundancy pay.

Please let us know if you intend to implement a temporary lay-off or period of short-time working, if you have further queries and require support with the drafting of necessary letters.

Mental Health Advice

Those who already suffer from mental health conditions, such as anxiety or OCD, seem to be particularly affected by the Corona Virus outbreak. Being placed in a situation where there is a lack of control, or where they are faced with uncertainties, can have a negative effect on people suffering from mental health issues. It may be that you have employees who are finding it harder to manage their mental health due to the Corona Virus. The World Health Organisation has released advice specifically for those who feel that their mental health is being affected by the Corona Virus outbreak. Their advice is as follows:

- Limit your time spent on social media or news websites. Understandably people want to be informed but spending a large amount of time reading endless information is likely to cause panic and stress. It is advised

to only look for “updates” once or twice a day, at a specified time, and to spend the rest of the time focusing on other things.

- Be careful what you read. A lot of misinformation is being spread on social media, which is causing people to feel confused and panicked. To prevent these feelings, people should only obtain information from reliable sources, such as the BBC, the Government, the NHS, or Public Health England.
- Stay connected with people. Self-isolation requires people to stay away from public spaces and avoid the company of others, but there does not mean that you cannot talk to people. Isolation can lead to loneliness, which is detrimental to mental health. Regular phone calls or skype conversations can help to prevent these feelings.
- Try to have fun. In stressful times, it can be easy to focus on the negative or what we “can’t” or “shouldn’t” do, but people are encouraged to try to make the best of the situation. If you’re isolated, utilise workout videos on YouTube, take a walk in a local park (avoiding crowds), or read the books you never get the time to read. The time spent in isolation does not need to be negative, it could be an opportunity to relax and exercise self-care.

If you offer an Employee Assistance programme as part of your employee benefits package, then remind them of this benefit and encourage them to use it.

How Can We Help

We will endeavour to provide further employment related updates as and when further information becomes available. We have attempted to keep the information within this newsletter as concise as possible, whilst also ensuring essential details are kept in. If you have any queries relating to the content of this newsletter, or any other HR related topic, please don’t hesitate to contact us via hradvice@hasslefreehr.co.uk