



Do you employ staff?

Corona Virus Information for Employers

Following on from our other HR Updates provided on 4th, 10th and 17th March 2020, please find below further updates on the information that is currently being provided by the Government, and how this relates to employers / employment.

This situation is very changeable so please note that this advice is correct as of today, 24th March 2020, and it may be subject to change. We will update you with additional information as and when this becomes available.

We are working very hard to provide this information in a timely manner as well as answer the large number of queries we are receiving from retained clients. Unfortunately, the increasingly changing nature of this situation is requiring the Government to provide new information all the time, but there is a significant lack of detail underpinning the information that they are providing, which means that we do not always have the answers to your questions.

These are unprecedented times; they have not happened before and therefore we do not have historical information to work with. Every time the Government releases new information, we have to research and interpret this information in order to be able to advise you. This takes time, and sometimes we are only able to offer our “interpretation”, due to the lack of clear guidance.

The Chartered Institute of Personnel and Development (CIPD) is the resource which we regularly use to seek higher level expert legal advice, but they too are also in the same position as we are, regularly unable to provide clear advice to us.

That being said, this newsletter provides as much information as we are able to, at this point in time and we will continue to work hard every day, to support you all, during this difficult and stressful time.

“Lockdown” Imposed on 23rd March 2020

At 8:30pm on Monday 23rd March 2020 the Prime Minister announced stricter measures to prevent the Corona Virus spreading further. For the next 3 weeks (at least) we are required to stay at home as much as possible, gatherings of over 2 people are banned, family members are not permitted to visit one another, and people are only permitted to travel to work if it is absolutely essential. There has been some confusion over whether this means all workplaces that do not contain “key workers” must close, but we can now confirm that this is not the case. The Government has been very clear from day one that employees should be working from home wherever possible. This is what the Government means when it says people should only travel to work if it is essential. If they can work from home, they should be working from home.

For those employers who cannot agree to home working, careful consideration needs to be given to the precautionary measures within the workplace. Social distancing applies to the workplace too, so any employees who must travel to the workplace, must be kept 2 meters apart. Employees who travel for work purposes or visit customer premises should not be exposed to unnecessary risks. For example, engineers and plumbers are currently being advised to attend emergency visits only. If you have employees in similar roles, we advise the same measures are taken.

The above guidance does not apply to anyone employed in one of the types of business that has been ordered to close by the Government to prevent members of the public from disregarding the lockdown. For clarity, these are:

- Pubs, cinemas, theatres and restaurants.
- All non-essential retail stores.
- Libraries, community centres and youth centres.
- Indoor and outdoor leisure facilities such as bowling alleys, arcades and soft play facilities.
- Communal places within parks such as playgrounds and sports courts.
- Places of worship, with exceptions being made for funerals.
- Hotels, hostels, bed and breakfasts, and campsites, etc, with exclusions being made for permanent residents and key workers.

This list is not exhaustive, more information can be found here: <https://www.gov.uk/government/publications/full-guidance-on-staying-at-home-and-away-from-others/full-guidance-on-staying-at-home-and-away-from-others>

The Management of “At Risk” and “Highly At Risk” Employees

In our newsletter dated 17th March 2020 we advised that some of your employees will be classed as “At Risk” to severe cases of Corona Virus if they are aged over 70, have an underlying medical condition or are pregnant. On the 22nd March 2020 the Government further categorised those who are “At Risk”, creating another group of people who are now classed as “Highly At Risk”. This section of the newsletter will advise how both categories of employees should be managed.

“Highly At Risk” employees:

- have severe respiratory conditions.
- have certain cancers.
- have had solid organ transplants.
- have rare diseases and inborn errors of metabolism.
- are pregnant with a significant heart disease.
- are on immunosuppression therapies that expose them to infection.

This list is not exhaustive and more information can be found at: <https://www.gov.uk/government/news/major-new-measures-to-protect-people-at-highest-risk-from-coronavirus>.

Employees who fit this description should receive communication from the NHS on or before 29th March 2020, which will inform them that they must remain home for 12 weeks. The communication will advise these employees that they cannot be visited by family, they cannot conduct their own food shopping, and they cannot go to the pharmacy to collect medication. These measures are being put in place because people who are “Highly At Risk” are most likely to require care in the ICU if they contract Corona Virus, and unfortunately they are the most likely to not survive this virus. Unfortunately, there is no official guidance on how these employees should be managed, although it is clear that it is not safe for them to remain in the workplace. Where possible, these employees should be allowed to work from home. Where not possible, we advise that they are managed the same as other “At Risk” employees, with a clear difference being that they should not attempt to remain in the workplace.

Employees who are “At Risk”, but not “Highly At Risk”, are **not** entitled to SSP, as previously advised in our newsletter dated 17th March 2020. However, these employees are still classed as more vulnerable to the Corona Virus than the average person, and therefore we do advise precautionary measures for these employees. You may even have employees in this category who approach you and request to be managed differently to their colleagues. Your options for these employees are as follows:

- Home working (if possible for their role).
- Remaining at work with additional precautionary measures such as ensuring the employee will be isolated or will never be more than within 2 meters distance of a colleague or customer. This may not be possible for all roles.
- Allowing the employee to utilise their annual leave. The employee may choose to use a full week’s holiday, or a combination of holiday and unpaid leave e.g. 3 days holiday, 2 days unpaid leave.
- Agreeing to the employee remaining away from the workplace on altered pay. Understandably many employees who fit this description will want to remain at home. If this is the case, you can agree to the employee remaining at home and you could temporarily alter their pay to a specified amount. Many employers are agreeing to pay employees the equivalent of SSP, although the amount you decide is up to you. It is essential that the employee consents to this temporary alteration of pay, and that their agreement is confirmed in writing. If it is not agreed to, or confirmed in writing, you could expose yourself to a potential breach of contract claim because employee pay is contractual. The agreement should confirm the rate of pay will return to normal as soon as the employee is able to return to work.
- Unpaid leave. If an employee does not want to remain at work during this time, and you’re unable to accommodate any of the above suggestions, the employee could withdraw from the workplace and take a

period of unpaid leave. Again, this should be confirmed in writing to clearly show the unpaid leave was a mutual decision and not something forced on the employee.

It is highly likely that any employee who is classed as “Highly At Risk” or “At Risk” will be covered and therefore protected by the Equality Act 2010 due to the protected characteristics “disability” or “pregnancy and maternity”. Therefore, it is essential that reasonable adjustments are made for these employees, where possible, and that they are not treated less favourably than their colleagues during this time.

Employees Affected by School Closures

On Monday 23rd March 2020, nurseries, schools and colleges across the country closed to the majority of children (with exceptions being made for the children of “key workers” or children who are vulnerable or who require specialist support). Unless your employees are classed as “key workers” it is highly likely you will have multiple employees affected by these closures.

To clarify, “key workers” are categorised as follows:

- Frontline health workers such as doctors, nurses, paramedics, social workers, and care workers, etc.
- Workers in education and childcare such as teachers, nursery workers and specialist education professionals, etc.
- Workers in key public services including people who are essential to the justice system, religious staff and the public service journalists, etc.
- Local and national government workers who are crucial to delivering essential public services.
- Those involved in food production.
- Public safety and national security workers, including police, armed forces personnel, fire fighters and prison staff, etc.
- Essential air, water, road and rail transport workers.
- Utilities, communication and financial services staff, including postal workers and waste disposal workers, etc.

This list is not exhaustive. A full list can be found at: <https://www.gov.uk/government/publications/coronavirus-covid-19-maintaining-educational-provision/guidance-for-schools-colleges-and-local-authorities-on-maintaining-educational-provision>

It is yet to be confirmed how long your employees will be affected by these school closures, but they are expected to be in place for a number of months. Therefore, it is likely you will have employees who will need some time away from the workplace, whether this is to deal with the change and make new childcare arrangements, or if childcare is not available, to care for their children. The options available to your employees, are as follows:

- Time off for Dependants. This is normally short-term, unpaid leave, that allows employees to take time away from work to deal with an emergency associated with a dependant in their care, which in this case would be making alternative arrangements for childcare. Whilst your employees should not rely on elderly relatives for their childcare, there may be other options available to them. We would usually advise that this leave would only be for as minimum amount of time as possible, but in these uncertain times, anything up to a week could

be considered reasonable. Check your contracts of employment, they may contain a provision that specifies the first day of this leave is paid.

- Home Working. We wouldn't usually advise you to consider home working for an employee who is also caring for their child, but these are unprecedented times. Please see the "Home Working" section of this newsletter for more advice.
- Flexible Working / Reduced Hours. Your employee may request to lower their hours to manage their new and unexpected childcare needs. We would normally advise that you follow the 'Flexible Working Procedure' when you receive a such a request however there is now no time for that now. If you receive such a request then we would encourage you to be as flexible as possible so if you can agree to this temporarily, you should. However, we'd recommend agreeing on a "subject to review" basis just in case the agreement turns out to work better "on paper" than it does in practice. If it's subject to review, you can alter the agreement, or even cancel the agreement, in the future if you need to. Flexible working agreements should always be confirmed in writing.
- Holiday Entitlement. An employee may request to use their holiday entitlement to ensure they receive payment whilst they are away from the workplace to care for their child. Due to the unexpected nature of the school closures, it may be reasonable for you to be flexible when it comes to holiday request notification periods. It could be that the employee uses holiday entitlement as a full week, or as a number of days per week combined with flexible working, or unpaid leave. Whatever you agree, we recommend it is agreed subject to review, and you confirm the agreement in writing.
- Unpaid Parental Leave. This is an unpaid statutory right to 18 weeks unpaid leave per child, up until the child is aged 18, and capped at a maximum of 4 weeks per year. This leave must be taken in weekly blocks, it cannot be separated into days. Only employees who have 12 months service and a parental responsibility for a child, have the right to take this leave. Your employees would usually need to provide you with 21 days' notice of this leave, but you could choose to be flexible and waive this requirement at this time.
- Unpaid Leave. If you have an employee who has already used all of their Unpaid Parental Leave, or an employee who does not qualify for this leave, then you can agree for the employee to temporarily withdraw from the workplace and take unpaid leave, until the advice from the Government changes and rules on childcare (i.e. the use of Grandparents) are relaxed and people can return to work. This should be agreed in writing to confirm that it was a mutual agreement and not something forced on the employee.

Home Working

The Government has consistently and strongly advised that all employees who can work from home during the Corona Virus outbreak, should work at home, to prevent the Corona Virus from spreading further. Despite this consistent advice, many employers who can agree to home working are reluctant to discuss it with employees or agree to home working arrangements – even though their employees are able to work from home. A reluctance to change combined with a fear of how to trust and manage employees whilst they are at home is leading many employers to disregard the Governmental advice, even though this could increase the cases of Corona Virus within the country.

Home working may not be suitable for all or even some of your employees, but we do recommend that you consider it. You have legal responsibility towards the physical and mental health, safety and well-being of your employees, this commonly refers to making sure the workplace or type of work will not cause injury or be hazardous or stressful,

but it does also include your responsibility to attempt to protect your employees from the Corona Virus. Here are our tips for home working:

- **Protect the Company.** Whilst the Government is strongly encouraging all employers to support home working, you can only agree to it if it works for your Company. If there are legitimate business needs that prevent you from being able to agree to it, then you can deny requests. You need to ensure home working does not negatively affect your Company.
- **Be Flexible.** Some of your employees will easily be able to transition to working from home, with no changes to their role. However, other employees may only be able to complete some of their duties or work reduced hours of the day if they are affected by school closures. In any other circumstance, this could be viewed as a reason to refuse home working, but in response to the Corona Virus, a flexible approach to how the work is undertaken is advised. If your employees work from home they should receive their normal pay, but if they work reduced hours, their pay should be suitably adjusted.
- **Plan Your Communication.** It's easy to become concerned that managing remote employees will be difficult, but with clear and planned communication, many employers are pleasantly surprised and find it easier than expected. There are many different types of video and conference call software available to use, which can be an excellent way to remain connected with employees who are working from home. Face-to-face communication can feel more natural and effective than talking over the phone, so video calls are the next best thing. Regular communication throughout the day can help the team to feel connected and can also help you to "check in" with your employees and their workload. This regular communication can also help to prevent people from feeling isolated, which is important for mental health.
- **Trust Your Employees.** It's easy to assume that home working means less work, but there is a lot of evidence to show that isn't the case. Reports show that many employees find it easier to be more focused and productive when away from the workplace and the distractions their colleagues can sometimes create. Regular communication will help you to monitor your employees' performance and if issues are identified, then these can be discussed with the employee, and/or the home working agreement can be amended or cancelled.
- **Confirm the Agreement.** When you've finalised the agreement with your employee, you should make sure this is confirmed in writing. These then become the terms and conditions of your agreement. Your written confirmation can go into as much detail as you would like. It can stipulate what hours your employees should work, how regularly your employees should communicate with you, how specialist temporary software should be used and whether the agreement is subject to review and can be cancelled if it is deemed to not be suitable. These suggestions on what to include in your agreement, are not exhaustive.

Please refer to our third newsletter, dated 17th March 2020, for additional information on home working.

Coronavirus Job Retention Scheme

On Friday 20 March, the government announced its plans to provide financial assistance to help employers retain employees for an extended period of time, despite not being able to offer work, in order to avoid lay-offs. They have called it the "Coronavirus Job Retention Scheme" and, whilst little information has been published as to how it will work in practice, we have set out what we currently know below.

The scheme enables employers to place their employees on “furlough” which essentially means putting employees on temporary leave of absence where they do not work and receive no pay, but are still retained and recorded as employees, to be brought back into the workplace when required. Employers who do this will be able to obtain a grant from the Government to cover 80% of the furloughed employees’ wages, up to a maximum of £2,500 per employee per month. The scheme is open to all employers, there are no restrictions.

Guidance sets out that employers will need to decide which of their employees will be furloughed employees and then submit that information to HMRC, along with each employee’s earnings. A grant will then be received to cover the 80% wages. There is no requirement for employers who access a grant to top up the employees’ wages by the remaining 20%, although you may choose to do this. More information is expected from the Government / HMRC about the online portal which should be used to submit the information and what other information may be needed.

Chancellor Rishi Sunak has stated he hopes the first grants will be paid by the end of April 2020, and they will be backdated to 1 March 2020. The scheme is initially intended to run for three months but it may be extended, if necessary.

Theoretically any employee can be furloughed. They need to be on PAYE in order for an employer to be able to claim the grant for their wages. Guidance states that the ability to furlough an employee depends on their contract of employment. However, it is unlikely that employee contracts will include a specific right to use furlough. Contracts which contain a right to lay-off employees on no pay already gives employers the right to send employees home and not pay them for a temporary period and so can likely be used to furlough employees.

The difference is that employees on lay-off will get, subject to service criteria, statutory guarantee pay (SGP) whereas furloughed employees will get 80% of their wages. SGP is £29 per day for a maximum of five days in a rolling 3-month period (rising to £30 from 6 April 2020) so furlough offers the employee a much more favourable option in terms of pay.

If contracts do not contain a Lay-off / Short-time working (LOST) clause then the employee will be required to seek agreement from the employee to initiate furlough. Although 80% of wages may not be an initially attractive option next to full pay, it is likely to be more attractive than a lay-off or period of short-time working, or even redundancy.

If you have already laid off employees, you can get in touch with those employees and agree to change their current status from lay-off to furlough. This would simply involve changing their pay arrangements from nothing (if not entitled to SGP) or from SGP to 80% wages, as they are already not working.

You will need to decide which employees will be furloughed. However, if you are not placing everyone on furlough, you need to consider carefully who should be selected. Think about the skills, competence and experience that you need to retain, and which will continue to be in demand during this difficult period, and the skills, competence and experience that you could temporarily manage without. As always, you also need to make sure your decisions could not be considered discriminatory towards employees with protected characteristics in line with the Equality Act 2010.

Where employees need to be selected for furlough, it may be advisable to first ask for volunteers across the business, if any high risk employees, who had previously been risk assessed as fine to still be in work, put themselves forward, it may well be appropriate to choose them first. There does not appear to be a maximum or minimum number of employees who can be furloughed.

Furlough requires that the employee does no work, so short-time working cannot continue during furlough. However, now that the “Coronavirus Job Retention Scheme” and the ability to place employees on furlough has been announced, consider whether it is possible to re-organise reduced work patterns to allow for some of those on short time working to go back to full hours and the others to be furloughed. This should be discussed with employees first.

Holiday Entitlement and Pension Contributions

We have received a number of questions from clients on how lay-offs, unpaid leave, short-time working or periods of furlough would affect an employee’s holiday entitlement or their pension contributions. We have researched this issue and again, the information is limited, but we have not found any information that specifies contractual rights change in relation to these absences from work / reduction in hours. Therefore, contractual agreements should remain in place as normal.

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