

COVID-19 - FAQ's for Employers

Q: An employee receives a note from 111, a GP or NHS professional requiring them to self-isolate – or has been advised to do so because they have developed a continuous cough or high temperature - what do I pay them?

A: In these circumstances, the employee is entitled to SSP because they are advised to remain away from work to avoid the spread of infection. Arguably, this also triggers company sick pay as a result if you provide this benefit; however, you could creatively argue that an employee self-isolating is not '*absent on account of sickness or injury*' as I expect your contractual terms may require.

Q: What if the employee cannot attend the GP to get a sick note due to the potential spread of the virus?

A: You might need to be flexible if you require evidence from the employee or worker. The employee may have to self-isolate for 14 days and therefore not be able to get a fit note from their GP. For example, someone might not be able to provide a sick note ('fit note') if they've been told to self-isolate for 14 days.

Q: Is SSP payable from the first day of absence?

A: The government has temporarily amended the eligibility requirements for statutory sick pay (SSP), allowing the statutory payment to be made from the first day of sickness absence.

Prime Minister Boris Johnson said that the emergency measures were being introduced so that employees would not lose out financially where they are asked to stay at home to protect others in the workplace from the virus.

The Prime Minister appeared to refer to employees who have been requested to self-isolate on medical advice, even if they are not suffering from any symptoms and so remain able to work. It is likely that such individuals would be eligible for SSP by reason of deemed incapacity.

Q: Can I claim back statutory sick pay?

The Chancellor of the Exchequer, Rishi Sunak, has announced that the government will reimburse small employers (<250 employees) any statutory sick pay they pay to employees, for the first 14 days of sickness.

Q: What if an employee wants to voluntarily self-isolate?

A: An employee who chooses to voluntarily self-isolate and has not been medically advised to do so is entitled to no pay; they are not taking leave because of sickness but rather as a voluntary, precautionary measure.

Q: If an employee (who works with colleagues in an office) is suspected of having COVID-19, but insists on coming into work, would it be a breach of contract to insist that the employee remains absent from work on sick leave, on SSP only? This assumes no contractual provision entitling the employer to do that. (On these hypothetical facts, the employee is ready and willing to work.)

A: You can insist the employee remains absent from work provided you continue to pay the employee's normal wages rather than SSP.

It is therefore unlikely to be a breach of implied duties to require an employee to stay at home in these circumstances, assuming there are reasonable and non-discriminatory grounds for concern, and the matter is dealt with appropriately, proportionately and sensitively.

If the employee is not actually incapable of working at the point they are suspended then their absence is unlikely to be regarded as sickness absence, and they are not entitled to SSP. If they were diagnosed with COVID-19, or otherwise became too unwell to work, then the position would, of course, be different.

Q: Can I force an employee to self-isolate if they go to a higher risk country?

A: You would have to ensure that they receive their full pay during the self-isolation period if you are enforcing the isolation. If the employee has a note/ advice from a medical professional to self-isolate, we can pay SSP as they are deemed incapable of working.

If they are ready and willing to work, and the inability to work is the result of your decision, any deduction of pay may be unlawful.

Q: Can I approach anyone and ask them if they may be at risk of contracting the virus?

A: You are advised to take a balanced and consistent approach to discussing risks with employees, to ensure you are not discriminating against certain groups of individuals.

Q: Can I require an employee to tell me where they've been and where they're going?

A: You can encourage them to do so; it would be unusual for an employee to withhold such information unless they feared they would be forced to take sick leave and lose income. It is feasible for you to argue that, in order to meet your implied duties towards employees to maintain health and safety, it is a reasonable instruction to require an employee to disclose this information.

Q: Can I prevent an employee from travelling to a higher risk country?

A: It is difficult to insist on this, unless it is business travel. You can ask them not to, however we are likely to be disproportionately interfering with an employee's leisure time and private life.

You can reaffirm the government guidance, reiterate your obligation to protect the welfare of all employees and ask employees to keep you informed of any travel plans or other circumstances which may put the employee at increased risk of exposure to the COVID-19.

Q: Can I force an employee to submit to a medical examination?

A: You may have grounds within your contract of employment or absence policies to require an employee to submit to a medical examination. Any request must be made on reasonable grounds and you should ensure that you are not asking employees to consent to an examination for discriminatory reasons.

There may be grounds to consider the matter as a disciplinary issue if an employee unreasonably refuses to submit to a test although, again, this would depend on the level of justification you have for requiring an examination.

What if an employee's child's school closes due to the virus or they need to look after a dependant because of the virus?

A: Employees are entitled to time off work to help someone who depends on them (a 'dependant') in an unexpected event or emergency. This would apply to situations to do with COVID-19. For example:

- ☞ if they have children they need to look after or arrange childcare for because their school has closed;
- ☞ to help their child or another dependant if they're sick, or need to go into isolation or hospital.

There is no statutory right to pay for this time off, but you might offer pay depending on the contract or workplace policy.

Q: What if employees ask to work from home?

A: There is no obligation to allow this, but you should now be considering contingency planning to work out how you could accommodate this if needed.

If an employee still does not want to go in but it is not practical for them to work from home, then you should consider allowing them to take the time off as holiday or unpaid leave, although you do not have to agree to this.

Q: Can I discipline someone who refuses to come in to work for fear of contracting/ spreading the virus?

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A: We need to understand the circumstances. Are they self-isolating for a valid reason? If not, arguably they are taking unauthorised absence and we could potentially consider disciplinary action.

Q: Do I have to provide equipment for employees such as hand gel?

A: No, but we have a duty of care to protect health and safety which means not exposing employees to a higher risk of contracting the virus. You should therefore promote standards of hygiene at the very least e.g. advising employees to wash their hands regularly and to catch coughs and sneezes with tissues.

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