

UK Employment Guidance and FAQs:

As the UK government has now advised the public to avoid social gatherings, non-essential travel abroad and to work from home where possible, we set out below commonly asked questions relating to Coronavirus and how you can respond and manage staff, based on advice currently available.

Lay Offs and Short-time working

Can we impose short time working or lay off staff?

Lay off and Short time working is a possibility, but unless there is an express clause in the contract, you cannot unilaterally make these changes. In order to implement lay off or short time (time LOST) you need to gain consent. Generally, this would need to be agreement from over three quarters of the workforce and if it was and some still refused you could terminate on notice with the offer of a new contract.

Lay off is defined as a week when an employee is available for work but there is no work and short time as a week when less than half a week's work is available. After 4 weeks continuous time LOST or six weeks in a thirteen week period the employee can serve notice to seek a redundancy payment. The employer can serve a counter notice on the basis that work will be available. The employee could challenge this in Tribunal.

The only payment due to staff during time LOST is a statutory guarantee payment of £29 a day (rising to £30 from 6 April to a maximum of £145 in any three month period (£150 from 6 April). Some employers are gaining consent by offering a more substantial "guarantee payment" although for a specifically limited time, of anything from one month to three months before review.

Can we reduce employee's hours (for example, impose a 4 day week)?

Again, unless there is an express clause in the employment contract, you cannot unilaterally reduce an employee's hours of work (resulting in a reduction in pay) and therefore agreement from the employees is required. Given the unprecedented situation, a fair and reasonable approach is advised whereby it is clearly explained to the employees the gravity of the situation and the possible consequences of not agreeing to a reduction in hours (e.g. business closure and resulting redundancies). If this is something that is considered it is advised that the position is continually reviewed and regular updates provided to employees about a return to normal working hours and pay in the future.

What if we have to make employees redundant?

If more than 20 are being made redundant then representatives need to be elected and consulted with as well as carrying out individual consultation. Notice is then given which could be worked or the employee put on garden leave or paid in lieu. A statutory redundancy payment is also due on termination for all members of staff with 2 years' service or more. This is calculated based on age and length of service with a statutory maximum of a week's pay of £525 rising to £538 on 6 April.



Can we make staff use their holiday as a measure to manage the current situation?

Yes. Employers have the right to tell employees and workers when to take holiday if they need to. For example, you can decide to shut for a week and everyone has to use their holiday entitlement.

However, if you decide to do this, you must tell staff at least twice as many days before as the amount of days they need people to take. For example, if you want to close for 5 days, you should tell everyone at least 10 days before.

This could affect holiday staff have already booked or planned. Therefore, you should explain clearly why you need to close; and try and resolve anyone's worries about how it will affect their holiday entitlement or plans

Other considerations

If working from home is not practicable, some business are looking at split shifts for staff required to come in to reduce contact with others. Again, this would require agreement from staff if their contractual hours are being significantly changed.

Sick Pay and Leave

Do we need to pay an employee sick pay if they self-isolate in line with Public Health England Guidance?

Yes. If any employees self-isolate in accordance with the current Public Health England guidance, they are entitled to be paid in line with the company's sick pay policy in the usual way.

Do we need to pay employees sick pay if they have Coronavirus and, if so, when do they become eligible for this?

Yes. If employees have been diagnosed with Coronavirus, they will be entitled to sick pay in the usual way. Whilst employees would not normally be entitled to Statutory Sick Pay ("SSP") within the first three days of their sickness absence, the Government has announced plans to amend this, meaning that employees will receive SSP on day one of their sickness absence, but this change has yet to come into force.

It is important to check the company's specific sick pay policy as this may entitle employees to be paid sick pay on their first day of absence.

Can we insist upon sick notes being provided by employees?

A sick note is not required for the first 7 days of sickness absence. Thereafter, employers require a sick note from the employee's GP. However, it is sensible for companies to use their discretion regarding employees being in a position to submit sick notes. In view of the Public Health England advice for individuals not to attend GP surgeries or hospitals with suspected cases, it may be that employees are unable to obtain a sick note. Therefore, it is advisable to exercise discretion and to not demand sick notes to evidence diagnosis or a period of self-isolation.



Do we need to pay employees full pay if we have told them not to come into work?

Yes. If you have made the decision to tell employees who are not sick and are capable of attending work in the usual way not to come into work, they should receive their usual full pay.

What if an employee isn't sick but needs to care for a sick or quarantined child or other dependent?

Employees are entitled to unpaid time off work to care for a dependent in an unexpected emergency. Clearly a child or other dependent who has been diagnosed with Coronavirus would fall into this category.

How you pay employees in this situation depends upon the facts and how the company wishes to approach the situation. If the employee requires time off to care for a quarantined dependent and the employee is fit and well, they would usually have unpaid time off. However, companies may wish to use their discretion and pay them sick leave in view of the fact that, if a dependent has been quarantined, the chances are the employee should be quarantined too.

If an employee is caring for a dependent who has been diagnosed with Coronavirus, they will need to be in self-isolation themselves and, again, it is sensible for companies to exercise discretion and pay sick pay to prevent employees from seeking to attend the workplace in between caring for the dependent if they are not receiving pay.

What should we do about pregnant employees?

The latest government guidance provides that all pregnant women should remain at home. Therefore, you should be making arrangements for any pregnant employees to work from home. If this is not possible, they should be placed on leave on full pay until their maternity leave commences, or the government advice changes.

What do we do about employees who simply do not want to attend work?

You should listen to the employee's concerns and fully consider them. If the concerns raised are genuine, companies should consider the health and safety obligations they owe to their staff and should seek to resolve these concerns. Flexible working arrangements may come into operation here, to enable the employee to continue working whilst not needing to come into the workplace. Some businesses are also scanning employees with contactless thermometers to provide reassurance to other staff.

Where an employee's concerns are not genuine or, after discussions, they still do not want to come into work and cannot work from home, provided they have not been told to self-isolate or diagnosed with Coronavirus, companies may wish to discuss whether the employee wishes to take the period of absence as annual leave or unpaid leave. However, it is important to note that an employer does not have to agree to this and, where an employee is unreasonably refusing to attend work, this could lead to disciplinary action.

