

Coronavirus: Practical Guidance for Employers

Alastair Currie, Partner

alastair.currie@bevanbrittan.com 0370 194 7893

Yasmin Allan, Associate

yasmin.allan@bevanbrittan.com 0370 194 3099

The coronavirus (COVID-19) outbreak is rapidly becoming more widespread, raising numerous issues for employers. To assist in this challenging period, our advice below sets out how to manage some of the key emerging workforce issues in the healthcare sector, although far more detail is available at our COVID-19 insights hub at:

<http://www.bevanbrittan.com/insights/articles/?serviceid=14402&marketid=0>.

Self-isolation and staff absence

Public Health England (PHE) has published advice about the groups of people who should self-isolate. Although this guidance is currently advisory, employers will need strong reasons and risk assessments to not follow it. We are conscious that some Trusts are at the point of considering alternative approaches in order to continue to provide services, but the “new normal” position should be to make it clear that if an employee falls within one of the groups, they should refrain from attending work.

Where staff are not attending the workplace, employers will want to clearly communicate an expectation that they should nonetheless work from home wherever possible. It will be important to tackle any expectation that self-isolating equates to not working.

Clear communication and ensuring consistent application across the workforce will be key in managing a changing situation. Employers are likely to want to manage these risks informally rather than through formal processes.

Where staff are not in isolation but required to care for dependants and are unable to work from home, other options could include taking annual leave, or exercising rights to parental, dependency leave and unpaid leave. There is no statutory right to be paid during dependant's

leave, but employers should be clear as to any locally agreed terms and/or whether some discretion to pay staff may be exercised for a limited period.

Homeworking

The latest Government advice is that those who can work from home should do so. If an employee refuses to work from home, employers should check the contract of employment to see whether this includes a mobility clause. If it does, then this will usually be sufficient to cover the contractual right to require an employee to work from home. Even without a mobility clause, given the current circumstances it is still most likely a reasonable management instruction to require an employee to work from home.

There are many factors that need to be considered in relation to homeworking including health and safety considerations, providing equipment to employees, costs of homeworking expenses, data security and monitoring and supervising staff. These issues should be addressed in a comprehensive homeworking policy.

Employers should also consider the mental health and well-being of their employees, many of whom may not be used to homeworking. Measures such as implementing or promoting mental health first-aid champions or resources are worth bringing to the fore at this time.

The Government has recommended that people at “increased risk” (including pregnant women, those aged 70 or over or who have a condition that may increase their risk from coronavirus) should be particularly stringent in following the social distancing measures. Certain other individuals considered to be “extremely vulnerable” should isolate for at least 12 weeks. Employers should follow this guidance and make necessary arrangements for affected employees. Employers could offer flexible working arrangements including working from home, annual leave or unpaid leave.

Sick pay

Different pay regimes will apply to different circumstances:

- If an employee develops symptoms of coronavirus then they are entitled to sick pay during a period of self-isolation.
- If they are being required to self-isolate by their employer and cannot work from home, this is likely to be akin to a period of medical suspension and they are likely to be entitled to full pay.
- If they are an asymptomatic employee who chooses to self-isolate, perhaps for preventative reasons, the situation is less clear and this will depend on how the contract defines the right to sick pay.

ACAS recommends that it is good practice for employers to treat isolation as sick leave because there will otherwise be a risk that employees will come to work in order to get paid, which would risk spreading the virus to others.

The Government has implemented the Statutory Sick Pay (General) (Coronavirus Amendment) Regulations 2020, effective from 13 March 2020, which provide that those who self-isolate in order to prevent infection or contamination with coronavirus are deemed incapable of work and entitled to SSP (if they meet the other requirements). Given the latest PHE guidance on self-isolation, this means that a wide range of individuals are entitled to SSP, including those who have to self-isolate because they live with someone displaying coronavirus symptoms. The Government also announced that SSP will be available from the first day of absence rather than the fourth to encourage those who need to self-isolate to do so.

In relation to NHS employees, NHS England have advised that any member of staff, including bank staff and sub-contractors, who have to be physically present at an NHS facility to carry out their duties, receive full pay for any period in which they are required to self-isolate as a result of PHE advice.

Employees who refuse to come in to work

If an employee has concerns and does not wish to attend work, the employer should listen to their concerns and especially consider the needs of employees who are pregnant, elderly or have compromised immunity. If an employee has a disability within the Equality Act 2010 which results in a higher risk of developing severe coronavirus, employers may be under a duty to make reasonable adjustments to mitigate that risk, perhaps by accommodating flexible or home working requests more.

Keep updated

The picture surrounding coronavirus is changing on a daily basis and employers should keep up-to-date with PHE and government advice: <https://www.gov.uk/government/collections/coronavirus-covid-19-list-of-guidance>. If you require specific advice or support in managing any of the workforce issues arising from this ever changing situation, including assistance with drafting home-working policies or business continuity plans and communication statements, please get in touch.