

Managing Coronavirus issues at work

Guide for Individual Employers

The outbreak of COVID-19 (also known as Coronavirus) is a current public health issue and as such certain precautions need to be taken with both your own health and also your employees. This guide contains the most common questions we have been asked and some important information when employing personal assistants. Please note that Government guidance and legal provisions are changing almost daily. This FAQ is for guidance only and legal advice should be taken. If you have a Mark Bates Ltd Home Employment policy this is available completely free, 24 hours a day for all your employment needs.

Where can I get medical advice if I am concerned about the Coronavirus?

The Government are urging you to follow the NHS guidance which is being kept up to date on their website

<https://www.nhs.uk/conditions/coronavirus-covid-19/>

At present the public are being asked not to go to the GP or even to call NHS 111 unless you cannot cope with your symptoms at home, your condition gets worse or your symptoms do not get better after 7 days.

What are their rights?

They have the right to remain away from work for a period of 14 days from the symptoms becoming known. You can find detailed Government guidance on staying at home due to a possible Coronavirus infection here:

<https://www.gov.uk/government/publications/covid-19-stay-at-home-guidance>

As the employee is considered to be unfit for work, they are entitled to statutory sick pay (if eligible) from day one of the absence.

Statutory sick pay is payable to employees who:

- are employees or workers (includes zero hours and casual workers) and have earned on average £118 per week over the last 8 weeks, and
- have given you the correct notice

If the employee is not eligible you must provide them with the SSP1 form to explain why, which will allow them to present a claim for possible benefits.

Statutory sick pay is paid at a rate of £94.25 per week, rising to £95.85 from 6th April 2020.

The Government have announced that they will repay payments of SSP, up to 14 days, for each employee.

If your employee is genuinely poorly with the virus themselves, they may well need more than 14 days. The NHS would expect to hear from them if symptoms have not alleviated after 14 days and so it is likely that further medical treatment and testing would be required at that stage. If the sickness absence persists beyond 14 days your normal sickness reporting procedures will apply, as will ongoing payment of SSP. At this stage you may feel it appropriate to obtain medical evidence to support the claim for ongoing SSP.

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Who needs to self-isolate under current measures?

If one person in any household has a persistent cough or fever, everyone living there must stay at home for 14 days.

My employee has self-isolated as they or someone in their household have shown signs of a consistent cough or fever; What do they do?

Self-isolating employees are legally defined as being unfit to attend work. They should therefore notify you of their intention to self-isolate in accordance with your sickness and absence procedures.



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What about medical evidence?

In normal cases of sickness absence, you can ask the employee for a medical certificate, after the first seven days of absence. Under circumstances of self-isolation however, it is not advisable that you press for such evidence as the current guideline to self-isolating employees is that they are not to go to the GP. It would also be impossible for you to demand evidence of another householder's private medical affairs where someone else is the reason your employee is self-isolating.

What do I do to get the support I need?

You can call upon your usual resources when employees are on sick leave.

If you have other employees, you may be able to compel them to attend work to cover absences. Check your contract of employment to see how clear your rights are. Casual workers may be called upon to fill in hours also.

If you have no other employees, use of a temporary agency may work for you. Speak to your local Direct Payments support team urgently if you cannot manage to get replacement cover yourself, particularly if you want to employ family members who live with you on a temporary basis.



I and/or someone in my household have shown symptoms of the virus; What do I do?

The current guidance is that if one person in any household has a persistent cough or fever, everyone living there must stay at home for 14 days. The purpose of this provision is to try to prevent the spread of infection. You can find detailed Government guidance on staying at home due to a possible Coronavirus infection [here](https://www.gov.uk/government/publications/covid-19-stay-at-home-guidance)

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If I self-isolate does that mean I go without care?

No. The Government are urging everyone to stay at home and where possible to allow employees to work from home. However, it is recognised that you may not be able to manage without your Personal Assistant(s) and so you are not under an obligation to remove your employees from the household.

Where you continue to receive employee support at home you remain under an obligation to ensure that there is a safe system of work in place and that the employees are provided with Personal Protective Equipment and clothing (PPE) where necessary. You will find Government guidance on good practices in the following Government guides:

<https://www.gov.uk/government/publications/covid-19-stay-at-home-guidance>

<https://www.gov.uk/government/publications/covid-19-residential-care-supported-living-and-home-care-guidance/covid-19-guidance-for-supported-living-provision>

The Government continue to increase budgets for Local authorities and NHS CCG's to ensure you get the help that you need, and that Personal Protective Equipment (PPE) is available, despite high national demand.

Make sure that new health and safety rules and procedures are always fully explained to your workers and ensure to enforce them. Ideally, a record should be made of the measures you have implemented and keep records of PPE obtained and used in your home.



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What do I tell my employees to do?

Assuming your employees are themselves fit and willing to attend work, they should carry on fulfilling their duties. It is essential that they take very seriously any new rules on health and safety procedures you implement. It is not just for their own protection but also to prevent the spread of infection to other people in the household, fellow colleagues and the public at large when leaving your home.

Employees should not remove stocks of PPE from your home and they should notify you in advance of stocks becoming low to allow you plenty of time to re-stock.



I would rather not have my employees come into my home whilst my household is self-isolating, and I believe I can cope without paid support for 14 days, what are my employee's rights?

For permanent employees who work regular hours you may find that there is a right in the contract to put them on a period of lay off. This means a temporary suspension of their work and pay. Please note that this will only apply if your contract is very clear that you have a right to lay off the employee under these circumstances.

An employee on lay off has a right to statutory guarantee pay which is up to £29 per day (rising to £30 from 6th April 2020) and is only payable for the first five days of absence.

If you do not have a lay off clause you can ask the employee not to attend work and pay them in full during the absence. If there is a lay off clause, but you want to pay your employee anyway, it would be sensible to check with your funding body (Local authority or CCG) to make sure they are happy for you to pay it.

If you use casual or zero hours workers and work has not already been agreed in advance, you do not have to offer them work during this time.

The Government have suggested that people over 70, those who are pregnant and those with serious health conditions are high-risk and should consider social distancing for 12 weeks;

I or someone in my household fall into that category, but I still need care, what can I do?

You can social distance and avoid going out in public as the Government have recommended, but still have workers come into your home to provide care. Of course, if no one in the household has any symptoms of the virus and neither do the workers, there isn't strictly a need to put in place stringent health and safety procedures above and beyond your current regime. However, as you are a high-risk household you can choose to insist on greater standards and hygiene and care from your workers. See the Government guidance on supported living management:

<https://www.gov.uk/government/publications/covid-19-residential-care-supported-living-and-home-care-guidance/covid-19-guidance-for-supported-living-provision>

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I am in the high-risk category and do not want to take the risk of having workers coming into my home, I'd prefer to have unpaid support from family for a 12 weeks period, what can I do?

This depends on your circumstances. Such a large gap in cover from an employee would usually result in terminating the employee's contract on grounds of redundancy, as their work has diminished and they are no longer required. However, you probably want to re-instate the employee once the 12 week period is over and so wouldn't want the suspension of their duties to be permanent.

As you have a direct payment as a result of a care and support plan, any changes you make will need to be agreed with your funding body. Speak to your Direct Payment support team for guidance on the options which can be summarised as the following:

1. Terminate the employee's contract on grounds of redundancy. Your employee would be entitled to a statutory redundancy payment if they have completed two years service. You would also need to pay the employee in full for any notice period and annual leave which has been accrued and not taken.
2. Pay the employee in full whilst they are not attending work. You should seek confirmation from your funding body before making this decision.
3. If redundancy appears to be a very realistic option, meaning the employee faces the permanent termination of employment and there is no way to simply cover their full pay instead, the final option is to lay them off by mutual agreement. The unique circumstances may encourage an employee to go on a period of leave without pay, until such time as the 12 weeks has passed. In agreeing to a period of lay off, the employee gains the chance to keep their continuity of service in place and know they can return to work at the end of the 12 weeks. Holidays also continue to accrue at the same rate that they did while the PA was working. You could offer, in exchange for this agreement, to relax the rules on fidelity which would allow the employee to accept work elsewhere during the 12 weeks.

Please remember that the Government are changing the law regularly to ensure they are taking the steps to protect the UK. It is possible that emergency legislation could be introduced that will allow you to lay off an employee without pay whether a contractual right exists or not. Please ensure you take advice if you are facing a long absence from your workers.

Where 12 weeks of absence isn't a realistic consideration for you remember that the employee has accrued annual leave which can be used to give them time off with full pay.

If you use casual or zero hours workers and work has not already been agreed in advance, you do not have to offer them work during this time.

My worker is in the high-risk category but wants to continue to attend work, can I allow them to?

Yes, you can. The Government have made recommendations for high-risk individuals to stay at home, but it is not mandatory.

If your employee continues to attend work, it would be wise to increase your hygiene and health and safety procedures so you are doing everything you can to prevent the risk of spreading infection between you. Make a written record of steps you have taken to protect each other.



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My worker is in the high-risk category and is refusing to attend work, what can I do?

Under normal circumstances, an employee who isn't sick but is refusing to attend work, would be in breach of contract that would justify disciplinary action, and potentially lead to termination of employment. However, under the circumstances, and given that they are acting upon Government guidance, it is far less likely that a dismissal on such grounds would be reasonable.

Those who are highlighted as being at risk and recommended to stay at home for 12 weeks, are also employees who have protected characteristics under the Equality Act 2010. In cases of those with disabilities, you are under an obligation to make reasonable adjustments and alter working practices so they do not suffer a detriment. In the case of those with a comparably different age to the rest of your work force and pregnant women, you cannot allow them to suffer a detriment as a result of their protected characteristic. You must also not penalise these workers for having attempted to assert their rights.

For these workers, you may be able to simply agree that they remain away from work. You would have no obligation to pay them during this time, but holiday would continue to accrue as normal. Remember that accrued annual leave can be taken during this time. Speak to your local Direct Payment support team if you are struggling to arrange replacement cover.

For those who are pregnant and staying off work without pay, it is important to note that this could impact their rights to claim Statutory Maternity Pay (SMP) when their maternity commences. To be eligible for SMP the employee must have earned an average of £118 per week during the 8 weeks prior to the qualifying week (the 15th week prior to the due date). A period of 12 weeks with no pay whatsoever could interfere with her average earnings. This issue may not stop her from taking the time out, but it is advisable for you to notify her of the risk. If she does not qualify for SMP when the time comes, she will need to apply to the Government for Statutory Maternity Allowance instead.



As I want to self-isolate for a period, can I use the direct payment to employ and pay a family member who lives with me?

Most funding bodies have a restriction on your use of direct payments to employ a family member. However, considering Government guidance and drastic steps to keep vulnerable people from too much social interaction, you may find that the rules are relaxed temporarily. It is essential that you seek advice from your funding body before taking on a family member.

If the position is temporary, you can employ the family member on a casual contract so there is no ongoing obligation beyond the work you offer.

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Can I dismiss my PA and pay my family member instead?

It is generally not fair to dismiss an employee because of a preference for someone else. However, the restrictive measures in place for the movement of vulnerable people may be relevant. It is important to take specific advice before you decide to dismiss anyone.

My employee is employed to help me socialise in the community. As I can't go out anyway, do I have to keep them on?

If you are proposing to stay at home for a long time and you genuinely have no use for your employee, you may want to consider making them redundant as their work has diminished entirely. Make sure you have carefully thought through any alternative options and sought advice, before you decide and discuss with your PA.

I keep hearing about home working, can I ask an employee to work from home?

It depends on the type of work that they carry out for you. Obviously, it wouldn't work for personal care workers who need to be with you. But some employers will have duties to be fulfilled that can perhaps be done elsewhere. A worker who cooks meals could be asked to do so from their own home and deliver them to you. You may have someone employed to socialise with; it may be that with the use of technology this could be adopted from a distance, playing games online, or skype calling for example.

Many contracts will already provide a mobility clause which allows you to insist they work from another location. In cases where you are asking the employee to use their own equipment (such as their oven, telephones, internet access) it would be sensible to agree a payment of additional expenses to cover their costs.

Asking the employee to make changes to their work is fine so long as your request is a reasonable and lawful order. In such difficult times, it is likely that your request would be considered reasonable and most employees would be happy to know that their jobs are continuing in the meantime.

What happens now schools are closing and my PA can't get childcare?

Employees have the right to take emergency leave to care for a dependant. This right includes the unexpected need to care for a child who cannot attend school. The right exists for a reasonable time to allow the employee to make alternative arrangements and the leave is without pay. What is 'reasonable' will entirely depend upon the circumstances. The Government have allowed placements for some children of key workers to continue. Key workers will include those caring for vulnerable people.

Some employees may be able to rely on family members or friends to help with childcare, but the chances are reduced more than usual as more people self-isolate or social distance for some time. The risk of spreading infections to the high-risk category of persons, such as grandparents over 70 or with health conditions, is one of the reasons the Government have held back on school closures so far.

You are encouraged to have good communication with your employee to ensure you are satisfied they have a genuine need to be away from work. Under the circumstances it is expected that a high number of parents will not be able to attend work for some time and will rely on unpaid parental leave rights. If they are eligible for such leave you cannot allow them to suffer a detriment because of it.

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