Coronavirus and the workplace – twelve key questions

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Coronavirus and the workplace – twelve key questions

The Government has declared the coronavirus to be a "serious and imminent threat to public health" and that it is highly likely that the virus will become widespread. Indeed, it has been estimated that up to one fifth of the UK workforce may be off sick at the peak of an epidemic. Employers need to take steps to protect their workers and be ready to deal with the disruption that the coronavirus will cause. In this briefing, we consider twelve frequently asked questions from employers.

1. **None of our employees have the coronavirus – do we need to do anything?**

Yes. Even if there are no instances of the coronavirus in your workplace, you must still take steps to meet your legal duty to protect the health, safety and welfare of your workers. This duty requires you not to expose people to material risks and this includes risks posed by the coronavirus. You should assess and document risks generally for all workers and specifically for those who are vulnerable to the coronavirus (e.g. those with underlying respiratory problems, heart conditions, diabetes, cancer and older workers). Special consideration should also be given to any specific risks to pregnant workers, those who have given birth in the last 6 months or who are breast feeding.

You will be expected to take reasonable steps to control or eliminate identified risks. The Government's latest guidance for employers highlights that the virus is most likely to spread by touching or standing close to an affected person and, possibly, by touching contaminated surfaces and then touching the face. Risk control measures could include steps such as:

- Circulating the Government's latest guidance to staff and giving them a point of contact within the business to discuss any concerns.
- Reminding staff about the recommended hygiene measures.
- Discouraging physical forms of greetings such as handshakes and kisses.
- Temporarily banning attendance at non-essential meetings, conferences and social events.
- Cancelling any large gatherings such as internal conferences or parties.
- Providing plenty of free tissues and additional bins.
- Providing access to anti-bacterial handwash and hand sanitiser.
- Providing anti-bacterial surface spray or wipes in

kitchen and eating areas;
- Engaging additional cleaning services.
- Designating a special area for breastfeeding mothers to wash and store breast pump equipment and expressed milk.
- Designating a special area for anyone who is displaying symptoms of coronavirus whilst at work.
- Allowing vulnerable workers and pregnant workers to work from home.
- Allowing other staff to work from home wherever possible.

2. **One of our employees feels unwell and thinks they might have the coronavirus – what should we do?**

If the employee is at work, they should immediately be removed to an isolated area until they are able to go home. The Government's latest guidance is that such individuals should not go to a GP or hospital and nor should they contact NHS 111 for advice. Currently, such individuals will not be tested for the coronavirus. The employee will need to self-isolate for 7 or 14 days depending on their household arrangements (see 8 below).

The Government's advice is that employers in this situation do not need to take any special measures such as sending staff home or deep cleaning the workplace. This is because most suspected cases turn out to be negative.

3. **One of our employees has been in direct contact with someone who has a confirmed case of the coronavirus – what should we do?**

The employee should be advised to call NHS 111 for advice. They will probably be advised to self-isolate for 14 days even if they are displaying no symptoms. If they subsequently become unwell, they should contact NHS 111 for reassessment, and they may be tested for the virus. If the test result is negative, the employee will be advised to remain in self-isolation until 14 days has passed. However, you won't need

to take any special measures.

4. **One of our employees has been diagnosed with the coronavirus – what should we do?**

The employee will either be treated in hospital or cared for at home. The employee should not attend work until they have fully recovered and have medical clearance to do so. You should pay sick pay to the employee in the normal way (see 9 below).

You should notify other staff that a colleague has been diagnosed with the coronavirus, however, you should not usually need to name the individual and you should only disclose necessary information. The Information Commissioner's Office has published some short guidance for employers on this issue.

You will be contacted by Public Health England's local Health Protection Team to identify those who have been in contact with the employee and discuss any special measures to be taken. This may affect the following staff members:

- anyone who has been in close face-to-face or touching contact;
- anyone who has talked with, or been coughed on, for any length of time while the employee was symptomatic;
- anyone who has cleaned up bodily fluids; and
- close friendship or work groups.

They may advise that anyone who had contact with the affected employee should self-isolate for 14 days and be tested for the virus. They will advise you how to undertake a deep clean of the premises and how to collect and store any rubbish produced by the affected employee.

Staff who have not had close contact with the affected employee do not need to take any precautions and can continue to work.

5. **Should we restrict or cancel overseas business travel?**

Depending on the destination, yes. Currently, the Foreign and Commonwealth Office (**FCO**) is advising against **all** travel to the Hubei province in China and the cities of Daegu, Cheongdo and Gyeongsan in South Korea (known as the "special care zones"). All proposed travel to these destinations should be cancelled.

The FCO is also advising against **all but essential** travel to:

- Italy
- USA
- Mainland China outside of the Hubei province.
- South Korea outside of the special care zones.

Any proposed travel to these areas should be restricted to business-critical trips only. In addition, the Government's latest guidance is that everyone should now try to avoid **all** unnecessary travel. If you wish to proceed with a business trip to one of these areas, be prepared for resistance from the affected employees. In that situation you should obtain legal advice on the safest way forward.

Separately, the European Union has announced that it will suspend non-essential travel between the EU and non-European countries for 30 days from 17 March 2020. However, this restriction does not apply to the UK.

As the situation is changing rapidly, you should track the FCO's travel advice on a daily basis here.

6. **Can we ask employees to change or cancel their personal travel plans?**

No, you cannot force an employee to change or cancel their travel plans. The best thing you can do is keep staff updated about the Government's latest travel advice and explain what will happen if they elect to travel to a high-risk area (i.e. self-isolation for 14 days and what that will mean for their

pay – see 9 below). In addition to avoiding high-risk areas, the Government has advised that those aged 70 or over and/or with certain underlying health conditions should avoid cruise ship travel and that everyone else should try to avoid all unnecessary travel.

7. **Do we need to take any special measures for employees returning from recent overseas trips?**

Again, depending on the destination, yes. If an employee has returned from certain areas in the last 14 days, then they **must** self-isolate for 14 days and call NHS 111 for advice even if they have no symptoms. Currently, the affected areas are:

- Italy
- Iran
- The Hubei province in China.
- The special care zones in South Korea.

On top of this, if an employee has returned from certain areas in the last 14 days **and** has a cough, a high temperature and/or shortness of breath then the advice is the same: self-isolate for 14 days and call NHS 111 for advice. Currently, the affected areas are anywhere else in mainland China and South Korea not listed above. Other affected areas are: Cambodia; Hong Kong; Japan; Laos; Macau; Malaysia; Myanmar; Singapore; Taiwan; Thailand; and Vietnam.

You should consider whether you have any employees returning from these areas. If you do, you should alert them to the Government's advice and direct them to stay at home and call NHS 111. If an employee turns up at work having visited one of these places in the last 14 days, you should immediately remove them to an isolated area (preferably a separate room with a separate bathroom) and tell them to call NHS 111 and follow their advice.

8. **What exactly is self-isolation and who needs to do it?**

Self-isolation means staying at home, not attending work or other public areas and limiting contact with other people for a period of either 7 or 14 days. The Government has produced guidance on self-isolation here and here. Currently, the following people are required to self-isolate:

- those living alone who have symptoms of the coronavirus (e.g. a continuous cough or fever) must self-isolate for 7 days from when the symptoms started;
- all of those who live in a household with others where one person has symptoms of the coronavirus must self-isolate for 14 days from when the ill person's symptoms started (i.e. everyone in the household must self-isolate);
- those awaiting a coronavirus test result must self-isolate for 14 days;
- those entering the UK from certain countries must self-isolate for 14 days; and
- those who have been in direct contact with someone who has the coronavirus must self-isolate for 14 days.

At present, nobody outside of these groups is required to self-isolate.

9. **What should we pay to an employee who self-isolates?**

The pay entitlement for employees in self-isolation will turn on their situation – we explain the entitlements for the different scenarios below. Employers should also note that the Government has committed to helping employers with fewer than 250 employees by refunding the cost of Statutory Sick Pay (**SSP**) paid out as a result of the coronavirus. The scheme will be limited to 2 weeks' worth of SSP per employee. At the time of writing, this scheme is not yet up and running, but further details are expected shortly.

Too unwell to work, diagnosed with the coronavirus

You should pay sick pay in the normal way, save that SSP may

be payable from the first day of absence rather than the fourth. The Government has committed to change the usual rules on entitlement to SSP for coronavirus-related absence. At the time of writing, however, this change has not come into force. You should also not insist upon receipt of a Fit Note (see 10 below).

Too unwell to work, not diagnosed with the coronavirus

If an employee self-isolates and is too unwell to work but has not been diagnosed with the coronavirus (either because they have not been tested or are awaiting a test result), then you should pay sick pay to them in the normal way. Again, SSP may be payable from the first day of absence rather than the fourth day. You should not insist upon a receipt of a Fit Note (see 10 below).

Not unwell, self-isolating because of medical advice or Government guidance

Even though the employee is not sick, they will be entitled to be paid SSP because they are following medical advice or Government guidance to self-isolate. Again, SSP may be payable from the first day of absence rather than the fourth day. You would probably not be obliged to pay contractual sick pay because the employee is unlikely to satisfy the terms of your policy.

However, both Acas and the CIPD recommend that employers should elect to pay contractual sick pay to an employee in this situation. This is to ensure that the employee follows advice to self-isolate and does not attempt to return to work due to concerns about not being paid. You may wish to outline your approach in an addendum to your Sickness Absence Policy. For example, you could say you are willing to pay contractual sick pay in this situation, save where the employee has elected to travel to a high-risk area or embark on cruise ship travel contrary to the Government's advice.

Not unwell, self-isolating because of employer's advice

If you have instructed an employee to self-isolate, then the employee should be paid their normal pay (not sick pay). This is because they are complying with your instructions.

Not unwell, self-isolating out of choice

If an employee wishes to self-isolate out of fear of catching the coronavirus then you should discuss the way forward with them. In light of the Government's latest guidance on social distancing (see below), you should aim to agree that the employee can work from home where possible. Where this is not possible, you could agree that the employee takes a period of paid or unpaid leave. Ultimately, if the employee is not unwell or self-isolating, is unable to work from home and is refusing to come to work, then you could consider disciplinary action.

Not unwell and working from home

The Government's latest guidance on social distancing is that everyone (and especially those based in London) should:

- stop non-essential contact with others;
- work from home where they can; and
- stop all unnecessary travel.

This kind of social distancing is said to be very important for the over 70s, those with underlying conditions and pregnant women. It is also expected that by the weekend of 21st – 22nd March 2020 those with the most serious health conditions should be largely shielded from all social contact for 12 weeks.

Accordingly, employers should be directing employees to work from home wherever it is possible to do so. If the employee is working from home, you should pay them their normal pay (not sick pay).

10. **Should we insist upon a Fit Note to certify sickness absences of more than 7 days?**

Medical evidence is not required for the first 7 days of sickness absence. After 7 days, employers usually ask employees to provide a Fit Note from their GP to certify their absence. However, the Government has advised employers to use their discretion around the need for medical evidence where an employee has been advised to self-isolate. In other words, do not insist upon the production of a Fit Note at the moment. The Government has also announced plans to allow a special notification via the NHS 111 helpline to be used where an employer requires evidence.

11. **Do we have to allow employees time off work if their child's school or childcare setting has closed? Do we have to pay them?**

Employees are entitled to take a reasonable amount of dependent's leave to care for their children in emergency situations. Typically, such leave should be taken for no more than a few days. If an employee needs a longer period of leave, they may be entitled to take parental leave (up to a maximum of 4 weeks per year per child). Both dependent's leave and parental leave are unpaid (unless you choose to enhance the basic right and pay for some or all such periods of leave).

Alternatively, an employee could ask to take paid annual leave or to work from home. Whether working from home is feasible will depend on the nature of the employee's job and the ages and/or numbers of children they will have to care for.

12. **What other preparatory steps should we be taking?**

There are several helpful steps that you can take now to put your business in the best position to deal with the unfolding situation. These include:

- Assembling a team to be responsible for developing and operating your contingency plan.
- Implementing an internal communications strategy.
- Cancelling or restricting business travel to the affected areas.
- Ensuring managers understand the approach to be followed regarding sickness absence, self-isolation and pay.
- Ensuring staff contact numbers and emergency contact details are up to date.
- Considering control measures such as segregation or shift working to limit the number of people in the workplace at one time.
- Testing out homeworking arrangements and allowing staff to work from home wherever possible.

Should you require any further advice on your response to the coronavirus, please contact Amanda Steadman or your usual BDBF contact.

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