

**KIDD RAPINET LLP GUIDE TO C19 – SELF ISOLATION, ABSENCE AND PAY –
WHAT ARE YOUR OBLIGATIONS AS AN EMPLOYER?**



INFORMATION CORRECT AS OF 9 APRIL 2020 – THE SITUATION IS COMPLEX AND FAST-MOVING.

YOU SHOULD CALL US TO DISCUSS ANY SPECIFIC ISSUES THAT YOU ARE FACING

Why is the Employee not at work?	Employers obligations
<p>Employee unable to work due to illness (whether or not they have tested positive for coronavirus).</p>	<p>The employee will have a right to sick pay which is either: (1) due under their contract called Contractual Sick Pay or (2) Statutory Sick Pay (SSP). The rules about SSP are changing in light of recent events and most importantly will be paid from the first day, not the third day. The current rate of SSP is £95.85/week.</p>
<p>Employee is able to work and is not ill BUT following medical / government advice to self-isolate i.e:</p> <ul style="list-style-type: none"> • has symptoms of coronavirus; or lives with someone who has symptoms 	<p>If an employee is well enough to work from home, and they are actually able to work from home, you can require them to work at home and, of course, pay them in the normal way. However, if they cannot work from home because they are not set up to do so or because the nature of the job doesn't allow it:</p> <p>Statutory sick pay (SSP)</p> <p>If a person is self-isolating to prevent infection or contamination (in accordance with guidance published by Public Health England and because of that isolation is unable to work they are deemed to be incapable or work and therefore eligible from day 1 for SSP (if they meet the other conditions) .</p> <p>Prior to 13 March 2020, both the government and ACAS were recommending that you pay SSP to these individuals.</p> <p>Additional contractual sick pay</p>

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	<p>The terms of an employee’s contract will determine whether they are entitled to additional contractual sick pay (over and above SSP).</p>
<p>Employee doesn’t have symptoms of coronavirus, and doesn’t live with anyone who has symptoms, HOWEVER they fall into the coronavirus 'high-risk' category i.e:</p> <ul style="list-style-type: none"> • Existing health issues which increases their risk • Aged over 70 years 	<p>Government advice is that these groups should stop non-essential contact with others, and unnecessary travel. Anyone with a serious health condition should avoid social contact for 12 weeks.</p> <p>Despite this, if possible, these individuals should work from home and pay them in the normal way. If they can’t work at home, and you need or want them to come to work, you must carry out a risk assessment. Bear in mind that no matter what the outcome of that risk assessment, it is likely that you will be in breach of your health and safety obligations if you were to insist on them coming into the workplace as this would involve social contact unless robust procedures are put in place.</p> <p>If they cannot work from home, and they cannot come into the workplace then:</p> <ul style="list-style-type: none"> • For those with existing health issues (click here for a list) they should be treated as being off sick and follow the guidance on statutory and contractual sick pay is as above (for those over 70). • For those over 70, the position on SSP is not currently very clear and ACAS and the Government ought to provide some more information soon. As ever, check their contract. On an <i>ex gratia</i> basis you might be willing to pay normal sick pay, but with many businesses struggling, this may not be an easy decision.
<p>Employee told to isolate by the employer</p>	<p>If you tell the employee to stay away when none of the other reasons (above) apply, then you will have to pay that employee in the normal way.</p>

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CAN WE ASK FOR PROOF FOR AN EMPLOYEES NEED TO SELF-ISOLATE?

You are only ever entitled to ask for 'reasonable evidence' of incapacity after the first 7 days of sickness absence in any case (not just coronavirus) when paying SSP. You cannot insist on medical evidence for the first 7 days of sickness absence as a condition of paying SSP.

Bear in mind that an employee can now obtain an isolation note using the NHS website.

ONE OR MORE OF THE STAFF HAVE TESTED POSITIVE – WHAT DO WE DO?

You may find this guide useful: <https://www.gov.uk/government/publications/guidance-to-employers-and-businesses-about-covid-19/guidance-for-employers-and-businesses-on-covid-19>

DO WE NEED TO PAY EMPLOYEES WHO NEED TO TAKE TIME OFF AS THEIR CHILD'S SCHOOL HAS CLOSED?

There is a statutory right to take a reasonable amount of 'time off for dependants'. This right is for unpaid time off work unless your employment contract says otherwise.

IF AN EMPLOYEE IS NOT HIGH RISK AND NOT COVERED BY GOVERNMENT OR MEDICAL ADVICE TO SELF-ISOLATE BUT REFUSES TO WORK, WHAT CAN WE DO?

If employees are refusing to come to work, when they are able to, they will not be entitled to statutory sick pay.

However, if you require an employee to come into work and there is no genuine reason for them not to, you may, depending on the circumstances, be able to discipline them (breach of a reasonable instruction) - as always, you must follow a fair disciplinary process.

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It is possible that given the current situation that an employee becomes so worried about contracting COVID19 that it causes anxiety symptoms to occur, or worsen if they already suffer from anxiety. If an employee is off sick with anxiety, they would have a right to sick pay, in accordance with the terms of their contract.

SHOULD EMPLOYEES BE EXPECTED TO USE THEIR OWN EQUIPMENT AT HOME?

It is reasonable to ask an employee to utilise their own laptop, printer, mobile phone etc for work. If they need additional equipment or IT, then you should provide that.

CAN WE PROHIBIT EMPLOYEES FROM COMING INTO WORK?

Your contract may allow you to put an employee on garden leave. Even if the contract does not, you may still be able to do so. Your duty to ensure the safety of all employees is paramount, so anyone who should be isolating, and who is not, ought not to be allowed into the premises. In drastic cases you could suspend an employee but you should take specific advice about this

IS MY BUSINESS RESPONSIBLE FOR THE COSTS ASSOCIATED WITH HOMEWORKING?

This is largely dependent on any home working policy or agreement you have in place with employees. Some employers will meet all costs, for utilities and stationery. Others may want to see receipts for certain items.

When deciding how to approach this you should bear in mind the employee may be saving money by working at home, most obviously because they do not incur travel costs.

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HOW DO WE MANAGE HOLIDAY REQUESTS WHEN WE NEED STAFF TO BE WORKING AND HOW DO WE MANAGE MULTIPLE REQUESTS FOR HOLIDAY LATER THIS YEAR?

You can refuse a request for leave provided you give as much notice of your refusal as the amount of leave requested (i.e. 3 weeks' notice if 3 weeks' leave is requested). However, many contracts of employment disapply these rules so you will need to check employment contracts. Please do contact Kidd Rapinet for help in this area.

It is important you balance requests but also are mindful of discrimination risks that can arise if, for example, you refuse holiday for someone with protected rights with primary school children who requests time off over school holidays.

You should not refuse requests if it means that an employee will be unable to take their full statutory annual leave entitlement in the relevant leave year. Workers are entitled to 5.6 weeks' statutory annual leave each year - you must allow them to take 4 of these weeks in the relevant leave year, and the remaining 1.6 weeks' statutory leave can be carried over if your contracts allow for this. For anything over and above the basic 4 weeks' statutory holiday, check whether the employment contract gives you the right to insist on carry-over. If not, you will need to get the employee's agreement to this. If you don't usually allow carry-over, you should clarify that your normal policy will continue to apply in the future, and that this is a one-off given the exceptional circumstances.

WHAT HEALTH AND SAFETY STEPS DO WE NEED TO TAKE FOR EMPLOYEES WORKING FROM HOME?

You are still responsible for their health and safety while working, even if at home. You can't realistically carry out risk assessments though. Any equipment you supply must be safe.

CAN WE INSIST EMPLOYEES TAKE HOLIDAY AT THIS TIME?

Yes, provided you give appropriate notice. This must be at least twice the length of the period you are asking the employee to take. So if you want your employee to take 1 weeks leave you must give them at least 2 weeks notice.

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DO WE HAVE TO AGREE TO A WORKER'S NEED TO CANCEL OR CHANGE PRE-BOOKED HOLIDAYS?

You should follow your contracts of employment/holiday policies in this regard. If no pre-existing rules apply you are not obliged to agree to the worker's request, but it suggested you act reasonably under the circumstances. Take into account your business, your employee's circumstances and the reason for cancelling.

CAN WE CANCEL AN EMPLOYEES PRE-BOOKED HOLIDAY DATES?

Yes you can if you act reasonably and with the appropriate notice period. You must give as much notice as the amount of leave requested – e.g. if you are cancelling 14 days of pre-booked holiday you would need to give 14 days notice. Contracts of employment may disapply such rules so check you policies/procedures before doing so.

WHAT YOU CAN DO IF YOU ARE FACING A DOWNTURN IN WORK DUE TO THE CORONAVIRUS OUTBREAK

You can do the following to protect your business/staff:-

- ❖ Ask employees to take annual leave or give them notice that you require them to
- ❖ See if anyone might volunteer to take unpaid leave.
- ❖ Agree a reduction in pay whether temporary or permanent
- ❖ Furlough some of the staff on the Government's Job Retention Scheme

For further advice on these issues, please contact Kidd Rapinet.

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FURLOUGH – JOB RETENTION SCHEME

All employers are eligible so long as they were on the PAYE scheme of 28 February 2020 and have a bank account. You must document the change in the employee's status to "furlough" in writing. Most employees will agree to this. Keep a copy of this. All employees who are subject to PAYE (including part-time, agency, zero-hours) are covered so long as they started on or before 28 Feb 2020. It applies to anyone the employer would otherwise have made redundant or laid off.

The Government will pay the lower of 80% of the employee's gross monthly wage or £2,500.

DATA PROTECTION

In managing the outbreak, you may need to collect personal information that concern the employee's home life, travel and health.

Only collect the information you need and use it for that purpose. Think very carefully about disclosure of a worker's health to colleagues. You are likely to be more justified in disclosing some information in regard to attempts to contain the coronavirus but only in so far as is necessary.

The Information Commissioner's advice is that you should keep staff informed about cases of coronavirus in your organisation, but that you probably don't need to name individuals, and you shouldn't provide more information than necessary.

If employees are working from home, ensure they are aware of the data protection issues arising from this – such as IT security, and appropriate destruction of documents if these are printed.

There is, unfortunately, a worrying rise in scams and phishing attacks online that take advantage of people's anxieties. All employees should be reminded that they must adopt a strict approach to cybersecurity and even more so when working from home.

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WHAT PRACTICAL STEPS CAN WE TAKE?

- ❖ Avoid all business travel – Consider flexible working and working from home as a priority.
- ❖ Encourage high levels of hygiene – provide hand wash and encourage employees to be extra careful with their personal hygiene
- ❖ Keep employees advised of your approach to C19 virus.
- ❖ Highlight the government guidance to employees and make it clear that they will need to self-isolate if they or any immediate members of their family display any C19 symptoms
- ❖ Ensure you have a contingency plan for home-working – ensure staff can access data safely and are they aware of the risk of phishing emails etc. Provide alternative communication channels e.g skype, facetime, telephone conferencing etc. Keep the situation under review and be alert to the most up-to-date guidance from the government.

Please get in touch with Kidd Rapinet if you would like to discuss any of the points raised in this document.

Visit: kidrapinet.co.uk/c19employeradvice or call: Cyrus Medora – Slough Office – t: 01753 439089 e: cmedora@kidrapinet.co.uk or Graeme Bellenger – London Office - t: 020 7205 2115 e: gbellenger@kidrapinet.co.uk