



## Employment Law Brief

*with*

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**Perhaps the most important thing an employer can do in response to the novel Coronavirus, Covid 19, is stay up-to-date. The situation is changing on a more than daily basis and measures that may seem overcautious today may be standard government advice by tomorrow. At the same time it is important not to get things out of proportion. Social media is a breeding ground for false information and employers need to respond to concerns that employees may have with up-to-date official information.**

Nevertheless Covid 19 has the potential to be extremely disruptive to working patterns across the country and it is worth thinking about the some of the employment law issues that might arise as the virus spreads.

Much of the public debate about the employment law impact of Coronavirus has focussed on potential changes to SSP entitlement. The Government has announced that the three 'waiting days' for Statutory Sick Pay will temporarily be removed so that those who are off-sick can be paid from day one of their absence. While the Government is making these changes it would also be useful if they could clarify the status of those who do not have the virus but may have had contact with someone who does. SSP is based on a period of 'incapacity' for work and the legislation makes it clear that this means some sort of injury or illness. It can also cover those placed in formal quarantine but it does not seem to extend to those who are merely self-isolating. The Government can extend the circumstances in which SSP is payable and should clearly do so.

But we should remember that Statutory Sick Pay is a benefit that pays just £95 (or thereabouts) per week. Employers are not obliged to enforce the technicalities of SSP as the amount paid is no longer recoverable from Government and there is no formal record-keeping requirement. Whatever the new rules say, there is nothing to prevent an

employer from paying sick pay to those who may not technically qualify for it.

This is even more true in the case of employees – like those of local authorities - who have a contractual sick pay entitlement. While the contract is unlikely to deal expressly with the self-isolation of employees who are not actually ill, it is surely inconceivable that a local authority would refuse to pay sick pay in those circumstances. After all, the last thing an employer would want is for an employee to defy the advice to self-isolate and come into work.

It does seem that one thing we need to be prepared for is a significant increase in the number of employees who are off sick at any one time. This presents a number of logistical challenges – but is legally straightforward. Those off sick with the virus will be entitled to sick pay on exactly the same basis as any other employee. Some employees will of course already have a level of absence that has caused concern and may face the prospect of warnings or even dismissal if they take further time off. Normally an employer would want to encourage employees to return to work as soon as possible, but with Covid 19 that is obviously not a good idea. It would therefore make sense to declare an amnesty for employees subject to the absence management procedure so that their absence due to the virus does not trigger any further action. As the numbers grow it may also



make sense to relax the reporting requirements for employees who are off sick. In particular, fit notes may not be available as employees are told not to visit their GP if they have symptoms. Employees can still be required to stay in contact with the employer, but it would be unreasonable to expect employees to obtain a fit note for absences of just a week or two.

As the virus spreads employers should do what they can to protect their staff. This may mean being more open to requests to work from home – especially if the alternative is the employee coming in to work on public transport. However, we are not yet at the stage where employees will have a positive right to stay away from work for fear of infection. There is a statutory right to refuse to work ‘in circumstances of danger’ that the employee reasonably believes to be ‘serious and imminent’. A non-specific concern about the possibility of catching Covid 19 will not meet this threshold. An employee might, however, be able to sustain an argument that they are entitled to stay away from work if the employer is not taking appropriate precautions or complying with government advice. An employer should also deal sympathetically with employees who as a result of some underlying condition may be more concerned than most at the prospect of catching the virus.

Employees also bear a responsibility for taking appropriate precautions in their work. Those working in high risk areas such as the care sector will of course have a particular set of standards to meet, but other employees too should be made aware of the latest guidelines and given appropriate instructions. Paying particular attention to cleaning regimes and the provision of hand-sanitizer and anti-bacterial wipes for working surfaces would also be helpful. Employers might also want to revisit hotdesking arrangements to prevent employees from sharing equipment and furniture that might spread the virus.

In some worst-case scenarios schools, leisure centres, libraries or other public facilities may be closed. In that situation, employees will be in a position where they are ready willing and able to work but the employer is unable to offer them any work to do. Unless there is something in the

contract allowing the employer to lay off employees without pay (in which case they would be entitled to a rather modest ‘guarantee payment’ of £29 per day for 5 just five days) then the default position is that the employer continues to be liable to pay non-casual employees as normal during any shutdown period. If we reach that stage, however, then employment will be the least of our concerns.

**Don't forget to check more about Darren Newman on his blog at [A Range of Reasonable Responses](#) or on twitter at [@DazNewman](#)**