

The spread of coronavirus means that businesses are having to deal with unique work situations and put in place business continuity plans that can fundamentally affect their staff and businesses. The Morrisons employment team sets out an action plan for employers and answers some of the tricky questions you may have. This note is up to date as of Wednesday 25 March 2020.

## Seven Point Action Plan for Employers

1. Keep yourself informed and regularly check:
  - Government guidance: [Click here \(1\)](#) - see below for full list of useful links
  - Acas guidance: [Click here \(2\)](#)
2. Communicate clearly with your workers the majority of whom are probably working at home now unless they are key workers, and provide regular updates e.g. relaying latest Government guidance and addressing issues (including for their wellbeing e.g. virtual get togethers) within your own business. Consider having a special intranet page and / or dedicated manager for this purpose.
3. Identify any high risk employees who are vulnerable according to Government guidance and discuss their working arrangements with them
  - Guidance for those 70+ or with underlying health conditions: [Click here \(3\)](#)
  - Further details about extremely vulnerable: [Click here \(4\)](#)
4. Decide on your approach to sick pay. You may decide to continue full pay to such employees for a period even if not obliged to, but will need to weigh this against the costs to your business, taking into account the financial assistance the government has made available.
5. Ensure you have the IT infrastructure and make the other necessary practical arrangements for employees working from home.
6. Check your insurance policies.
7. Have a business contingency plan in case you need to downsize. Are there steps you can take now to avoid redundancies such as staff taking holidays, working reduced hours or implementing the new coronavirus job retention scheme (i.e. furlough leave)?

## How has coronavirus affected the entitlement to Statutory Sick Pay?

Until recently, only employees *unfit* to work were entitled to SSP. However, the rules have temporarily changed. For public health reasons and to avoid penalising those employees who follow Government advice, a person is now deemed to be incapable of work and entitled to SSP where he / she is:

“isolating himself from other people in such a manner as to prevent infection or contamination with coronavirus disease, in accordance with guidance published by Public Health England, NHS National Services Scotland(d) or Public Health Wales(e) and effective on 16 March 2020... and by reason of that isolation is unable to work.” Acas confirm that this group based on guidance as at 16 March, includes employees who have:

- coronavirus
- coronavirus symptoms
- someone in their household who has it
- been told to self isolate by a doctor or NHS 111.

Because the rules on social isolation have changed and as this may affect who is entitled to SSP, you will need to regularly check the guidance (which may differ in England, Wales and Scotland).

There are other changes in the SSP rules. Employees 'whose incapacity for work is related to coronavirus,' will from 13 March be paid SSP from day one of their absence from work, not day four as previously. Employers with 250 or fewer employees as at 28 February 2020, will from 14 March be able to claim coronavirus SSP costs from the Government for the first 14 days of absence from work.

In reality, given the low value of SSP and the fact that it does not currently apply to the self-employed, (although there is increasing pressure on the Government to financially assist this large category) most will no doubt prefer to continue to work if they can rather than struggle to cope financially. Other Government measures to support those affected include their being able to apply for and receive universal credit without attending a job centre and the removal of the seven day waiting time for Employment and Support Allowance.

### **Do employees still have to provide fit notes, even if they are self isolating?**

Employees can still self-certify for the first seven days of absence. After that you can insist on a fit note or, as confirmed on 20 March 2020, employees who cannot get to their GP can obtain isolation notes online via the [NHS website \(5\)](#), [NHS 111 online \(6\)](#) or the NHS App. The user has to answer a few questions and the note will then be emailed to them or someone else on their behalf if they do not have an email address, or it can be sent straight to the employer. The service can also be used to generate an isolation note on behalf of someone else.

The isolation note will be satisfactory evidence that an employee has been advised to self-isolate and cannot work either because they have coronavirus symptoms or live with someone who does. You must keep records of sickness absence to be able to reclaim SSP payments.

### **What does this mean for our company sick pay scheme?**

If you provide an enhanced sick pay scheme, check the rules as it may not apply to situations where an employee is self-isolating because someone in their household has coronavirus, but they are not ill. You may decide to temporarily increase enhanced sick pay for the time for which it is paid. Employers with a generous scheme may be considering whether to pay sick pay at all; particularly if the categories of those eligible for SSP increases. You should take advice on the implications of removing or reducing such a benefit, particularly if it is a contractual entitlement.

### **What about employees who cannot come into work for childcare reasons now that the schools have closed?**

Following measures introduced in Wales and Scotland, the Government has closed all schools, colleges and nurseries except for vulnerable children and those of key workers. This is likely to create a very difficult situation for employers and employees alike. Ideally, with your agreement, non key workers will be able to work from home on their existing hours. However, if this is not practicable, the bottom line is that subject to what your contracts of employment say, an employee not available to work is not entitled to pay.

Difficulties are likely to arise where the individual's job is such that they have to attend work or, if they can only work part time in both cases due to childcare obligations. You may be able to address this in the short term. Some employers will have a compassionate leave policy allowing time off for childcare and employees are legally entitled to take unpaid emergency time off normally of only up to two days, for a dependant such as a child if they need to arrange childcare or if the child is ill. Your staff may also be able to take a period of holiday.

However, the fact that schools seem likely to be closed until September will necessitate longer term

arrangements. Given the alternative, you may reach a pragmatic agreement with such employees about their working arrangements to ensure they are able to work as effectively as possible whilst minimising any time for which they are not paid. You are likely to have several employees in this situation and whatever arrangements you make so as to avoid financial hardship, should be consistently applied across your business. Any agreements varying workers' pay or other terms and agreements should be documented and where possible signed by the employee.

### **Can I require employees to take paid holidays?**

Yes. You can require the employee to take leave to which they are entitled, provided you give them notice of at least twice the length of the period of leave they are being required to take. So for a two week leave period you would have to give four weeks' notice. This is likely to be unpopular as an employee's holiday entitlement can be a sensitive issue. You may not be able to give the required notice.

One option would be to seek to agree shorter notice of your requirement for staff to take leave. Or, you could plan ahead and even if you cannot give the specific dates of the compulsory holiday period still comply with the notice requirements e.g. by informing employees that they will be required to take a specified number of days holiday following the end of a particular project. You may even decide to unilaterally impose a particular leave period. This may put you at risk of claims such as for holiday or holiday pay where an employee disputes the legality of your actions.

### **I am faced with having to close my business and can no longer afford staff salaries. What are my options?**

On 20 March 2020, the government announced a package of measures [click here \(7\)](#) aimed at addressing the financial burden on businesses.

One of these is the Coronavirus Job Retention Scheme (CJRS) which will pay the salaries of those employees who would otherwise have been laid off, for a temporary period. Businesses will be able to apply for an HMRC grant for 80% of the wages (up to £2,500 per month) of employees who are designated to be not working but remain on payroll as furloughed workers. You will need to agree any reduction in pay with the designated employee but faced with the alternative of redundancy, they may readily do so. Information about this new scheme is sparse as yet and hopefully guidance will be provided on how employers select designated furlough workers from their workforce, so as to avoid disputes and on anti-avoidance measures.

CJRS is likely to be the preferred alternative to redundancy and more attractive than the traditional routes of temporary lay offs or short term reduced hours working. However for some employers who need to retain staff at work but cannot afford to pay them and where this is more acceptable to staff, alternatives such as permanent or temporary pay cuts / benefit reductions may be more appropriate. Employees with less than two years' service are normally not eligible to file claims of unfair dismissal and are not entitled to statutory redundancy pay.

Any changes to terms and conditions should be recorded in writing and where possible employees' signed agreement obtained. We strongly advise that you take advice before taking steps unilaterally so as to weigh up the risks of successful employment tribunal claims against the commercial needs of your business.

### **Are there any other emergency measures being considered by the Government?**

Yes. On 17 March the Coronavirus Bill 2019 – 21 was published setting out some proposed emergency measures to apply until 2021. It is expected to be in force over the next few days. Not all measures will be immediately implemented but will be switched on (and off) as required, on the advice of the relevant Chief Medical Officers in the UK.

Included, for those businesses with 10 or more headcount of staff, is a new right for employees and workers to take unpaid Emergency Volunteer Leave of two, three or four weeks providing they are

certified to do so by a relevant authority (such as their local council or NHS Commissioning Board). There will be a UK wide compensation fund to cover loss of earnings and expenses although we do not know as yet whether this will be for full pay. The certificate must be given to the employer at least three working days before the first day on which it applies. Emergency Volunteers will have the right to return to work on terms not less favourable and not to be subjected to detrimental treatment in connection with taking this leave.

**Should you have any queries about the impact of the coronavirus on your business contact your usual Morrisons adviser or Joanne Kavanagh, Partner and Head of Employment by email on [joanne.kavanagh@morrlaw.com](mailto:joanne.kavanagh@morrlaw.com)**

### Useful online guidance referenced in this document:

1. Government guidance: [www.gov.uk/guidance/coronavirus-covid-19-information-for-the-public](http://www.gov.uk/guidance/coronavirus-covid-19-information-for-the-public)
2. Acas guidance: [www.acas.org.uk/coronavirus](http://www.acas.org.uk/coronavirus)
3. Guidance for those 70+ or with underlying health conditions: [www.gov.uk/government/publications/covid-19-guidance-on-social-distancing-and-for-vulnerable-people/guidance-on-social-distancing-for-everyone-in-the-uk-and-protecting-older-people-and-vulnerable-adults](http://www.gov.uk/government/publications/covid-19-guidance-on-social-distancing-and-for-vulnerable-people/guidance-on-social-distancing-for-everyone-in-the-uk-and-protecting-older-people-and-vulnerable-adults)
4. Further details about extremely vulnerable: [www.gov.uk/government/publications/guidance-on-shielding-and-protecting-extremely-vulnerable-persons-from-covid-19/guidance-on-shielding-and-protecting-extremely-vulnerable-persons-from-covid-19](http://www.gov.uk/government/publications/guidance-on-shielding-and-protecting-extremely-vulnerable-persons-from-covid-19/guidance-on-shielding-and-protecting-extremely-vulnerable-persons-from-covid-19)
5. NHS Online: [www.nhs.uk/conditions/coronavirus-covid-19/](http://www.nhs.uk/conditions/coronavirus-covid-19/)
6. NHS 111 Online: <https://111.nhs.uk/covid-19>
7. Package of measures aimed at businesses: [www.gov.uk/government/publications/guidance-to-employers-and-businesses-about-covid-19/covid-19-support-for-businesses](http://www.gov.uk/government/publications/guidance-to-employers-and-businesses-about-covid-19/covid-19-support-for-businesses)

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