
CORONAVIRUS – KEY CONSIDERATIONS FOR EMPLOYERS OF UK STAFF

The situation with Covid-19 (**Coronavirus**) is still developing and is being followed worldwide with great interest and obvious concern. In this briefing, we consider some of the key issues that employers of UK-based staff should be considering. We address the practical steps you can take to reduce any disruption to your business and the key issues around your duties as an employer. At this early stage, the value of having clear policies in place, from both business protection and employee relations perspectives, should not be underestimated.

1. WHAT KEY ISSUES SHOULD WE CONSIDER NOW?

At the time of writing the number of confirmed cases of Coronavirus in the UK is relatively low. The UK's Chief Medical Officers still class the virus as a "low" threat to individuals and a "moderate" threat to the public. It is still not clear what the impact of the virus will be worldwide or specifically in the UK. However, given the significant impact it has already had in China and elsewhere, all employers are advised to put in place robust preparatory and contingency measures now. This is particularly true given the possible long-term nature of the disruption which Coronavirus presents. These measures should include:

- giving a small group of employees (for example, in HR) responsibility for monitoring the latest World Health Organisation and UK Government advice on Coronavirus and reporting back regularly to management, advising on potential policy changes;
- ensuring effective communication with staff regarding Government advice and the approach of the business to Coronavirus issues;
- introducing a (flexible) policy to cover employment issues specific to Coronavirus, including any proposed departures from normal employment policies;
- minimising the impact of absences from the office and creating a consistent policy on how absences will be managed; and
- adopting a management plan to protect business continuity in the event of a severe outbreak. For some businesses, for example those regulated by the FCA, this is required by regulatory rules in any case.

2. WHAT ARE OUR DUTIES AS AN EMPLOYER? HOW DO WE PROTECT OUR STAFF?

General health and safety duties. Employers have a duty to ensure the health, welfare and safety of all staff in the workplace. They are required to provide and maintain a working environment that is, so far as is reasonably practicable, safe, without risk to health and adequate as regards facilities and arrangements for their welfare at work. Failure to do so could result in both civil and criminal liabilities. This duty is likely to extend to ensuring that staff are not placed at undue risk of infection from Coronavirus. We recommend considering the issues set out in this briefing with that duty in mind. Communication with staff will also be key, including communicating that staff are expected to follow the latest Government guidance.

We also recommend the adoption of additional hygiene measures. Many employers are already, for example, providing anti-bacterial wipes and gels in offices and toilets and arranging for all surfaces and equipment to be cleaned regularly with anti-bacterial products.

Special groups of staff. Employers should, in accordance with their statutory obligations, conduct risk assessments and monitor the risks posed by Coronavirus to anyone at particular risk. This includes those with pre-existing health conditions, pregnant employees and those who otherwise have compromised immune systems. Although there is currently a low risk of infection in the UK, you should monitor the situation. If the risk profile increases, businesses may want to consider steps to reduce the risk to these individuals such as asking them if they want to work from home. Where somebody's condition represents a disability under equalities law, the employer may be under a specific duty to make reasonable adjustments.

Employers also have statutory obligations to take steps to avoid risks to which pregnant workers are exposed at work. Therefore, if the situation develops it may be necessary to introduce adjustments to pregnant employees' roles, ask them to work from home, or suspend them on medical grounds. Remember that if pregnant employees are on paid suspension or are off sick in the fourth week before the expected week of childbirth, their statutory maternity leave will start early.

Should we be providing staff with face masks? The medical evidence on the benefit of face masks outside of a clinical setting is not well-established and incorrectly worn masks will not effectively prevent infection. Public Health England advises that the best form of prevention is good hygiene including carrying tissues, washing hands often with soap and water (especially after using public transport), avoiding touching your eyes, nose and mouth with unwashed hands and avoiding close contact with people who are unwell. However, it is important that employers continue to monitor the Government advice.

3. HOW DO WE MANAGE STAFF MEMBERS WHO HAVE BEEN ABROAD?

Some employers may find themselves in a situation where staff members are unable to attend the workplace. For instance, some countries have introduced travel restrictions which may prevent staff from getting to work, or they may be in quarantine or self-quarantine in accordance with Government rules or guidance. Indeed, it will be important for employers to be able to 'keep track' of staff members' travel plans (whether business or personal) in order to be able to assess which employees should be following Government guidance on self-quarantine. Equally important will be ensuring that the workforce is kept apprised of how fast guidance is developing on which countries to avoid unnecessary travel to.

Our advice is that employers should:

- encourage all staff members to avoid any travel to high risk countries;
- where staff have returned from any countries subject to self-quarantine guidance, try to agree with the individual what, if any, work they can carry out remotely;
- if it is not possible for the individual to perform any duties whilst absent from the workplace, decide on an approach for your business in relation to pay entitlement, with the aim of applying it consistently.

Whilst agreeing to pay staff who are unable to work (potentially for a prolonged period) may appear cost prohibitive, this needs to be weighed against the adverse reputational risk of being seen to punish those who self-isolate. It is also possible that staff members could fail to disclose that they have travelled to high risk countries or regions in order to avoid financial hardship, which would increase the risk to the rest of the workforce. As we explain below, an employer's approach to this issue must be carefully considered and the outcome may depend on the particular circumstances. Maintaining flexibility to accommodate changing circumstances is recommended. Some possible scenarios include:

Those trapped in mandated quarantine abroad. The legal position here will depend upon the terms of the staff member's contract and could also engage issues of whether the individual is "able and willing" to work. Businesses may in any event benefit from reflecting their approach to paying those who are in self-quarantine in the UK, in the interests of fairness (see below).

Those who have returned from abroad and meet Government guidance for self-quarantine. If a staff member falls within the Government guidance for self-quarantine, they should follow that guidance. The guidance is [here](#) and the Government has stated that the Department of Health and Social Care will update the page at 2pm daily until further notice. At the time of writing the Government guidance advises the following:

- that those returning from some areas (which we will call High Risk Areas), stay indoors and avoid contact with other people and call 111 even if they do not have symptoms; and
- that those returning from a number of other countries or regions (which we will call Higher Risk Areas – recognising the countries meeting this definition is likely to change as the situation develops) and who are displaying symptoms, however mild, stay indoors and avoid contact with other people and call 111.

Where staff members meet the conditions for quarantine, they should self-quarantine.

Those who have returned from abroad and do not meet Government guidance for self-quarantine.

Some businesses are considering taking a more cautious approach to self-quarantine and asking employees not to come to work for 14 days after they (or in some cases their close family members) have returned from any Higher Risk Area even where they have no symptoms. This has the advantage of reducing infection risk – and thereby protecting other staff members – in comparison to strictly following Government guidance. Employers who ask staff not to come to work on these preventative grounds should pay their staff in full, even if they are not able to work from home.

Employers should consider carefully whether, and what, limits should be placed around any encouragement to self-isolate in excess of Government guidance, and any related pay. For example, businesses may wish to make clear that self-isolation is only encouraged (and paid) for those returning from High Risk Areas and Higher Risk Areas as set out in Government guidance, but not elsewhere. It would be prudent to reserve an element of discretion to make ad hoc decisions as the situation changes. For instance, if a staff member returns from an area in which an outbreak developed while they were there but is not yet classified as a Higher Risk Area, you may still wish to encourage self-isolation.

Businesses that are offering some form of enhanced pay during sickness or quarantine absence may wish to make it clear that staff members who book travel to a High Risk Area or Higher Risk Area after that country has been added to the Government's list, or who travel after the FCO advises against all but essential travel to that area, will be required to self-quarantine but will not (necessarily) receive any pay above their minimum legal entitlement. However, this may be resource-intensive or difficult to police in practice.

For businesses whose staff do not or cannot work from home, the above considerations may need to be taken into account alongside issues of potential cost and business continuity. Businesses should particularly bear in mind the upcoming Easter holidays which will most probably result in a lot of staff members travelling abroad, and the potential costs of such a policy in the event of mass absences.

It is important in all cases to clearly communicate expectations to your staff.

4. SHOULD WE RESTRICT BUSINESS (AND OTHER) TRAVEL?

The Foreign & Commonwealth Office (FCO) currently advises against travel to a small number of specific regions unless it is essential. Employers should therefore suspend all business travel to these areas, and any other countries or regions in respect of which the FCO issues guidance, during this outbreak unless it is essential. The FCO's guidance is available [here](#).

Despite these limited restrictions, public concern is likely to result in staff members being less willing to travel abroad for work, especially for conferences with international attendees. Some conferences are already being suspended as a precaution. We recommend that businesses consult with staff members who are concerned about travel to other destinations about whether this travel is necessary and proportionate.

Businesses may also want to ask their staff members to let them know if they are planning travel to the above countries and regions, and/ or other areas as the situation develops. See further below on the indirect discrimination issues that should be considered before making decisions of this type.

5. WHAT IF SOMEONE REFUSES TO COME TO WORK?

The recent news coverage of the virus is understandably causing concern among the general population. However, at this stage, the vast majority of individuals are at a low risk of infection so speaking to your staff about any concerns they have is a good first step and is advised by ACAS. Where working from home is usual or technologically possible businesses may want to consent to this on an ad hoc basis, provided the

individual understands that the situation may change in future. If the individual is pregnant or otherwise at a higher risk, we recommend being more accommodating about requests to work from home or take holiday.

6. WHAT IF ONE OF OUR STAFF MEMBERS DEVELOPS CORONAVIRUS?

It would be prudent to consider the approach your business would take in the case of a staff member contracting Coronavirus or being placed in quarantine preventatively. This should include:

- Whether this should be announced and if so in what form (e.g. email, team meeting). Bear in mind the data protection rights of the staff member in question regarding their health data, which may mean any communication should be anonymised. Any such announcement should be aimed at reassuring staff members about the current situation;
- If Government advice at the time requires that people who have been in contact with a confirmed case are informed and/ or self-isolate, how will you identify and approach those people in an appropriate way without causing unnecessary alarm;
- How the individual will be dealt with under your sickness procedures; and
- How to reduce infection risk. For example, you may want to arrange a thorough clean of the area that the staff member has worked in. Some businesses already have processes of this type in place for when staff members contract contagious illnesses such as shingles.

7. HOW WOULD WE REACT TO HIGHER LEVELS OF ABSENCE?

This is a key issue to address in business continuity plans, and if you have not reviewed yours this is a good opportunity to do so. It is good practice to have plans in place which address the possibility of high levels of absence and inability to use the normal workplace (for example, if travel restrictions are put in place). At this stage we recommend businesses carry out an initial review to identify any potential areas of difficulty. We suggest this should include reviewing the following:

- How your business can operate with reduced staffing levels. Are there staff members with transferable skills such that people can be redeployed to cover core business functions? Although a significant change in job role might allow an employee to argue a fundamental breach of contract (thereby entitling them to resign and claim constructive dismissal), provided their proposed temporary responsibilities are within their capabilities, it may be arguable that it is reasonable for the employer to require them to cover business critical tasks as part of reduced workforce in times of emergency;
- What scope your business has to ask people to work from home and communicate with their colleagues if they are unable to reach the workplace, for instance due to travel difficulties or caring for dependants (see below), or if the workplace needs to close temporarily. If a workplace closure seems likely, this should be discussed as early as possible with staff;
- What your procedures are for speaking to staff at short notice, particularly if people are already working from home. You should also ensure that employees' contact details and emergency contact details are up to date in case individuals need to be contacted at short notice;
- What scope the business has to ask or require staff members to work different or longer hours. Good practice would be to raise this possibility at an early stage and be up-front about expectations and any additional pay. Businesses should check any statements on these issues in existing employment contracts. Employers should also bear in mind that statutory rights which are not normally an issue might need to be considered, such as those around maximum weekly working time, rest periods and the national minimum wage;
- If remote working or redeployment are impractical or undesirable, your business could recruit temporary or agency staff, particularly in administrative roles. This is, of course, likely to result in additional costs and such individuals will be entitled to the same health and safety protection as the permanent employees for whom they are covering; and
- What the procedures are where staff members need to take time off to care for dependants who are unwell or whose schools/ nurseries have closed. Normally employees can take unpaid time off to care

for dependants or make arrangements for their care in unforeseen circumstances. However, you should consider what expectations will be communicated around working from home during this period, and / or arranging alternative care. Any communications around this should emphasise that they apply only to this as a response to this particular outbreak.

Employers should make sure that all staff members, particularly managers, are aware of the applicable procedures.

8. DISCRIMINATION RISKS

News reports already show that concern about the virus is leading to incidents of racist behaviour. Employers should be mindful that, if this happens in your workplace, it can create a difficult working environment for your staff and can lead to liability for the business. As in all cases of harassment, having a well-publicised anti-harassment and/or equal opportunities policy and mandatory training is important. This should reduce the incidences of harassment and also give the business a potential defence in the case of any harassment by individual staff members.

Businesses should also be mindful of indirect discrimination risks when asking staff members to restrict their travel or to work from home or self-isolate after travel to a particular area. While this may be justified, any such requests should be considered carefully in light of Government guidance.

ACAS has also noted the importance of ensuring that any policies addressing the outbreak should not be discriminatory, for instance requiring employees of a certain race or ethnicity to wear face masks at work, but not others.

9. A FINAL THOUGHT

People spend a large amount of time at work and inevitably the messages they receive from their employer about Coronavirus will influence their feelings on the matter. There is significant value in clear communications that show your business is considering staff welfare and responding in a measured way. The virus is still at an early stage with limited reported cases in the UK and, while being prepared is always valuable, a measured approach is advisable.