Ius Laboris UK Global HR Lawyers
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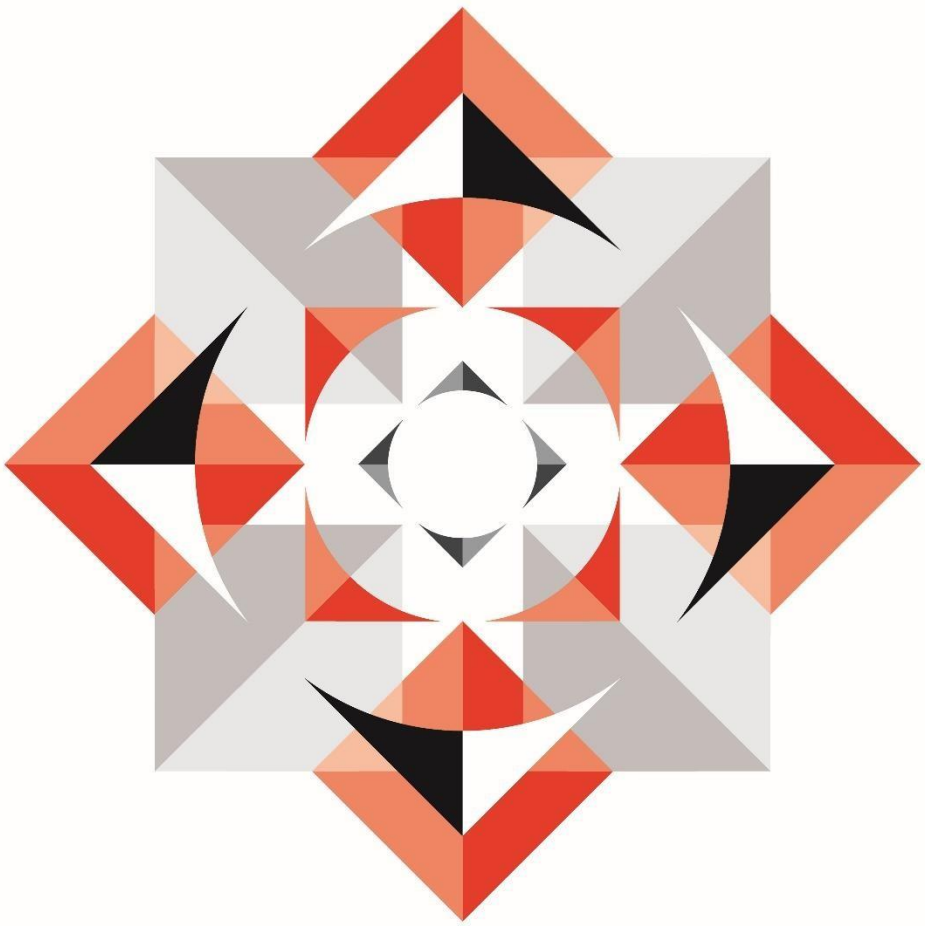
Coronavirus – FAQs for employers



Updated as of 20 March 2020

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Coronavirus – FAQs for employers

The new strain of Coronavirus (COVID-19) is spreading rapidly. As it becomes more widespread, it is giving rise to a number of issues for employers. We have prepared the following Q&As for employers, with guidance on how businesses should respond based on questions we have been asked. They should be read in conjunction with the latest government information and advice on the outbreak and the government's Coronavirus action plan (published 3 March 2020).

We will keep these Q&As updated in light of the changing situation and new government advice.

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Travel

1. Can we require employees to travel to China or other severely-affected areas for work?

No, probably not.

Employers can normally require employees to undertake reasonable duties that fall within their contractual remit. So, if it is part of any employee's contractual duties to undertake reasonable travel, employers should, in most circumstances, be able to insist they do so. However, in this case, to do so might put the employee's health at risk.

Employers have a duty to take steps that are reasonably necessary to ensure the health, safety and welfare of all their employees, including those that are particularly at risk for any reason.

The Foreign & Commonwealth Office (FCO) is currently advising against all travel to some countries, and all but essential travel to the rest of the world. The worldwide situation is changing rapidly, so employers should ensure they have checked the latest FCO advice for each specific country if requiring an employee to travel.

Employers would therefore be in breach of their duty to ensure the health and safety of its employees and to provide a safe place and system of work if it insists on employees travelling to anywhere the government is advising against all travel to or, unless the travel is essential, to anywhere else in the world. Employees who contracted the virus in these circumstances may have a personal injury claim.

If an employer tried to discipline or dismiss an employee who refused to travel to an affected area because of health and safety concerns, the employee would almost certainly have a claim. Employees have a right not to be subjected to detriment or dismissal in circumstances of danger which they reasonably believe to be serious and imminent, if they refuse to return to their workplace or take appropriate steps to protect themselves (S. 44 & 100 Employment Rights Act 1996 ("ERA")).

Even if the specific health and safety provisions of the ERA don't apply, an employer insisting that an employee travel against government guidance is likely to be a breach of the term of trust and confidence. (This term is implied into all contacts of employment and is that the employer must not, without reasonable and proper cause, conduct itself in a manner calculated and likely to destroy or seriously damage the relationship of trust and confidence between employer and employee.) In such circumstances, an employee could resign and claim constructive unfair dismissal.

Employers would still risk breaching the health and safety duty even if the employee wants to travel for work – the employer still has to take care of the employee's safety. The employee may also have a personal injury claim if they become unwell after having willingly travelled to an affected location. It is generally not possible to waive a claim for future personal injury (this would contravene the Unfair Contract Terms Act 1977 and possibly the Law Reform (Personal Injuries) Act 1948), so an employer cannot ask an employee who is willing to travel to agree not to make a claim in these circumstances.

Employers should also consider whether their employer's liability insurance will still cover them in this situation, and investigate whether other relevant forms of insurance (e.g. travel insurance, private medical insurance, death in service cover) would still provide cover where an employee has travelled against FCO advice.

2. Can we require employees to travel to places other than severely-affected areas for work?

Probably not.

The employer should do its own risk assessment, taking into account all current information, to determine whether it thinks there would be any risk to the employee in travelling. An employer would probably not be in breach of its health and safety duties if it continues to require work travel which is not in breach of current government advice or any other reputable and up-to-date advice source. However, the FCO has now advised generally against all "non-essential" travel worldwide in order to limit the spread of Coronavirus, and because of the risk of borders being closed, so it would be difficult to take action against an employee who refuses to travel in these circumstances.

Before asking an employee to travel it would be wise to investigate whether the employee has any particular reason for not wanting to travel (e.g. pregnancy or a pre-existing health condition, see section on vulnerable employees). Employers should also weigh up how important the travel is and whether it could be postponed or whether business could be conducted by telephone or video-conference call instead.

3. Should we restrict all work travel?

Yes, in most cases unless essential.

The FCO has now advised generally against all "non-essential" worldwide travel in order to limit the spread of Coronavirus and because of the risk of borders being closed.

In keeping with their duty to protect the health, safety and welfare of all employees, employers should review their work travel requirements in light of this guidance. Employers should review what travel is genuinely essential and what could be postponed or replaced with telephone or video-conference calls.

4. Can we stop employees' personal travel to affected areas?

Probably not.

Employers can instruct employees not to do any work travel but do not normally have a contractual right to restrict employees' personal travel. The FCO has now advised generally against all "non-essential" travel in order to limit the spread of Coronavirus, so employers can encourage employees to follow this guidance but cannot insist on it.

Preventing travel to affected regions may also indirectly discriminate against certain employees, e.g. staff of Chinese ethnic origin, because such a ban would disproportionately affect them. It is a defence to a claim of indirect discrimination that the action is a proportionate means of achieving a legitimate aim. Trying to protect the health and safety of all staff would be a legitimate aim but an absolute travel ban might be disproportionate in the current situation, as an employer could instead ask employees to notify them of travel to an affected area and require them to take extra holiday (or unpaid leave) to self-quarantine at home for 14 days on their return.

If the employer cannot do without the employee for that length of time (the holiday plus 14 days quarantine), or if the employer considers that the travel to affected regions is irresponsible, it might be able to refuse (or revoke) holiday approval on those grounds (see section on holiday). Again, this might be indirectly discriminatory but provided the employer's aim is legitimate and it is acting proportionately, it will be able to defend against such a claim

5. Can we stop employees attending football matches, pop concerts, etc?

Employers can restrict work social events but, in most circumstances, will not have a contractual right to prevent employees doing what they choose in their free time.

But employees do have a duty to take reasonable care of their own health and safety and that of the other people they work with. They must cooperate with their employer to enable it to comply with its duties under health and safety legislation.

The current government guidance is for everyone to avoid gatherings and crowds, and avoid non-essential social contact – although as yet there is no outright ban on events. Employers should encourage employees to abide by the guidance and point out that they should do this as part of their health and safety duties.

6. Should we encourage staff not to use public transport?

Employers could encourage this but not insist upon it.

Employers should keep government guidance under review. They may want to consider encouraging staff to walk, cycle or drive to work if the Coronavirus becomes widespread in the UK. But this will not be practicable for many employees. If it is not possible to avoid public transport, employers who can do so might consider adjusting start and finish times so that employees can avoid the busiest times. Employers should also permit employees to work from home, if the job can be done from home and employers have sufficient cover in the workplace. Current government guidance is that employees should work from home where possible, and public transport provision is being scaled down.

Quarantine

7. Can we require people to inform us about their health and ask them not to come into work?

Employers can ask employees for information about their health where this is relevant to the workplace, particularly if required to protect the health and safety of others. However, this is special category personal data and so should be treated confidentially.

Employers have a duty to protect the health and safety of their staff, and so can ask employees not to come to work where this is reasonably required to protect others. An employer can usually suspend an employee from work for a temporary period even if the employee is not unwell, so long as they continue to pay the employee's usual pay (see questions 11 and 12 for more detail about pay). It is important to treat everyone consistently where possible in order to avoid grievances or claims of discrimination.

8. Can we ask people to stay away from work in the following situations?

(a) If showing symptoms?

Employers should check the latest government guidance on when individuals should self-isolate if they are showing symptoms. The current COVID-19: stay at home guidance is that anyone with a "new, continuous cough" or a high temperature is advised to self-isolate for 7 days.

(b) If no symptoms but have returned from somewhere with an outbreak?

Employers should check the latest government guidance. The current guidance has recently changed to advise self-isolation only if individuals are showing symptoms or live with someone who has symptoms. Employers can also potentially take a more cautious approach than this guidance if this is required to protect the health and safety of others in the workplace, such as requiring employees who have travelled to certain areas not to come into work for a quarantine period even if they do not have any symptoms. (See questions 11 and 12 for details about the impact on pay.)

(c) If no symptoms but have had contact with someone who has been diagnosed, or who has travelled from affected area?

Employers should check the latest government guidance. The current guidance is that anyone who lives in the same household as someone showing symptoms should self-isolate for 14 days. If the individual then starts showing symptoms, they should self-isolate for 7 days from when the symptoms started. It is also likely to be reasonable to require an employee to inform their employer and stay away from work for a quarantine period if they have had close contact with someone else who has been diagnosed, or with someone who has travelled from an affected area. (See questions 11 and 12 for details about the impact on pay.)

(d) If diagnosed with Coronavirus?

Yes, employees can be required to inform their employer of a Coronavirus diagnosis. Usually the employer's sickness absence/pay policy will require an employee to provide a reason for sickness absence. Even if it does not, it would be reasonable for an employer to require employees to provide this information and not come into work in order to protect the health and safety of other employees.

Pay

9. Do we have to pay employees who are off sick with diagnosed Coronavirus?

Yes, employees will be entitled to the employer's usual sick leave and pay provisions, including statutory sick pay. The government has announced that the three-day waiting period for statutory sick pay will be removed temporarily for absence related to Coronavirus, backdated to 13 March, and regulations to implement this are expected soon. The Chancellor also announced on 17 March that it will reimburse employers with fewer than 250 employees any Coronavirus-related statutory sick pay they pay to employees for the first two weeks of sickness, backdated to 14 March.

It may be necessary to relax requirements for evidence of illness. The government has now launched online "isolation notes", which can be used to provide evidence of the need to self-isolate when someone is absent for more than 7 days due to having symptoms of Coronavirus (available from NHS 111 online service for those with symptoms).

10. Do we have to pay employees who are off sick with Coronavirus symptoms, but who have not been diagnosed?

Yes, if the employee has symptoms which mean they are too unwell to come to work they will be entitled to the employer's usual sick leave and pay provisions, including statutory sick pay. The government has announced that the three-day waiting period for statutory sick pay will be removed temporarily for absence related to Coronavirus, backdated to 13 March, and regulations to implement this are expected soon.

It may be necessary to relax requirements for evidence of illness. The government has now launched online "isolation notes", which can be used to provide evidence of the need to self-isolate when someone is absent for more than 7 days due to having symptoms of Coronavirus (available from NHS 111 online service for those with symptoms).

11. Do we have to pay employees who aren't actually sick but are quarantined according to medical/government advice?

On 13 March the Statutory Sick Pay (General) (Coronavirus Amendment) Regulations 2020 came into force. These extend statutory sick pay to anyone who is self-isolating to prevent the spread of Coronavirus in accordance with guidance published by Public Health England, NHS National Services Scotland or Public Health Wales, and "*by reason of that isolation is unable to work*".

This means that an individual who is otherwise capable of working but who is in self-isolation in accordance with PHE (and other devolved authority) guidance is entitled to SSP. That individual does not have to have been diagnosed with Coronavirus. Current guidance requires self-isolation for 7 days by those who are sick, however mildly. The guidance also requires self-isolation for 14 days for individuals in the same household as someone with Coronavirus symptoms even if they are well in themselves. If an individual in this situation then starts showing symptoms, they should self-isolate for 7 days from when the symptoms started. The change to the law gives these individuals a right to statutory sick pay.

This only applies to those who cannot work because of self-isolation, so people who can continue to work from home will not be entitled to sick pay. The government has announced that the three-day waiting period for statutory sick pay will be removed temporarily for absence related to Coronavirus, backdated to 13 March, and regulations to implement this are expected soon. The government has also launched online "isolation notes", which can be used to provide evidence of the need to self-isolate when someone is absent for more than 7 days due to living with someone who has symptoms of Coronavirus (available from the NHS website for those living with someone with symptoms).

Employees that are legally required to stay away from work are entitled to statutory sick pay (see question 17 below).

If the employee is able to work remotely, they will be entitled to usual pay.

If the employee is not able to work remotely, they will still be entitled to full pay if the employer's policies give a right to pay in these circumstances.

Employers will need to consider whether to apply the new statutory sick pay rules to company sick pay as well. This will depend on the wording of the company sick pay rules – some schemes may be linked to SSP, while others may require an employee to actually be ill. There are also practical reasons why an employer may choose to provide enhanced pay (or perhaps even full pay) in this situation, including ensuring that employees comply with the government guidance and do not try to come to work. It is important to treat everyone consistently in order to avoid grievances or claims of discrimination.

12. Do we have to pay employees if we ask them not to attend work?

This could happen if an employee does not follow medical/government advice about a recommended quarantine period. It could also happen if an employer is being cautious, e.g. where an employee has recently returned from an affected country but does not fall within the current guidance on self-isolation or has had contact with someone else who has been diagnosed (as in question 8).

If the employee is in self-isolation in accordance with PHE (and other devolved authority) guidance, they are entitled to SSP (as in question 8). It is strongly arguable that an employee who is not sick but falls within this guidance is not "able" to work, because government guidance says they should not (currently self-isolation for 14 days if they live in the same household as someone with symptoms). They would be entitled to SSP but would not be entitled to full pay if they try to come to

work and the employer sends them home.

In other circumstances, if an employee is not sick but their employer tells them not to come to work, they should usually be paid their usual pay. See also question 24 on lay off and short time working.

If an employee is sick and is asked not to attend work, they will be entitled to the employer's usual sick leave and pay provisions, including statutory sick pay. The government has announced that the three-day waiting period for statutory sick pay will be removed temporarily, backdated to 13 March, and regulations to implement this are expected soon.

13. Do we have to pay employees if we had advised them not to travel but they did anyway?

If an employee becomes unwell after travelling they will be entitled to the employer's usual sick leave and pay provisions, including statutory sick pay. The government has announced that the three-day waiting period for statutory sick pay will be removed temporarily, backdated to 13 March, and regulations to implement this are expected soon.

The employer's advice not to travel should not usually make any difference to what the employee is paid if they are later quarantined or are asked not to attend work. The employee's decision to travel is unlikely to be conduct which would justify the disciplinary sanction of withholding pay

It may be reasonable to withhold pay in some circumstances, for example, during a self-isolation period during which the employee is not actually unwell. If the employee was specifically warned that they would not be paid if they chose to travel to a destination where it was known that a quarantine period would apply on their return, the employer may be able to withhold pay – although current guidance only advises self-isolation for those who have symptoms or who live in the same household as someone with symptoms.

14. Do we have to pay employees due back at work who are stuck abroad?

There is no right to statutory sick pay if the employee is fit for work.

If the employee is able to work remotely from their location abroad, they will be entitled to their usual pay.

If the employee is not able to work remotely, there is no legal entitlement to pay – unless the employment contract or policy gives a right to pay in these circumstances. The employee is not able and willing to work if they are abroad and unable to do their job remotely.

It would be good practice for the employer to talk to the employee and discuss the options, including whether it is possible for them to take extra paid holiday. If not, the employer is not obliged to pay the employee.

If the employer had required the employee to travel for work and they are now stuck abroad, it would be advisable to continue paying usual pay. The employer should check if this is required by the relevant contract or work travel policy. Even if this is not legally required, the employee will have a reasonable expectation of payment and is likely to feel very aggrieved if they are in this situation due to work and then have their pay stopped.

15. Do we have to pay employees who just refuse to come into work because they're scared?

If an employee refuses to come to work due to genuine concerns that the employer has been unable to resolve, the employer could agree for the employee to work from home or take time off as holiday. The employee would then be paid as usual. If this is not agreed and the employer wants the employee to come to work, there is no obligation to pay the employee.

Current government guidance is that employees should work from home where possible.

See section on vulnerable employees who may have specific reasons for not wanting to come to work.

16. Do we have to pay employees if we decide to close the workplace?

If an employer decides to close the workplace for a temporary period, they will usually need to keep paying their employees full pay. In many cases employees may be able to continue working remotely. If not, the employees who are unable to work would still be entitled to full pay, as they are able and willing to work but the employer is not providing them with work.

The exception to this is lay-off. Laying off employees means providing them with no work or pay for a period of time. Some employers may have contracts of employment which allow them to lay-off employees, but this is not common. Unless the employer has a clear contractual right to lay-off or the clear consent of employees could be obtained (which is unlikely), an employer imposing a lay-off would face potential claims for unlawful deduction from wages, breach of contract and constructive dismissal (see question 24 on lay-off).

17. Do we have to pay employees if it is illegal to come to work due to compulsory quarantine?

The government has powers to introduce compulsory quarantine under the Civil Contingencies Act 2004 and the Public Health (Control of Disease) Act 1984. So far the government has introduced measures in England under the Health Protection (Coronavirus) Regulations 2020. This allows the Secretary of State or a registered public health consultant to detain people for testing, impose restrictions on travel and activities, or require a person to be kept in isolation. It is a criminal offence not to comply – meaning it would be illegal for an employee to come to work if they are compulsorily detained, restricted or in isolation.

Detention and restrictions on travel and activities can only be required if there are reasonable grounds to believe a person might be infected, or if they have returned from Wuhan or Hubei province within the last 14 days. Isolation can only be required if there are reasonable grounds to believe the person may be infected, and it is necessary and proportionate to isolate them to reduce or remove the risk of infecting others.

We are not currently aware of these powers having been used.

If they are used, the affected employee will be entitled to statutory sick pay. The statutory sick pay rules apply to a person who is deemed incapable of work. This includes where a person is prevented from working pursuant to an enactment (i.e. these new regulations), and it is known or reasonably suspected that the person is infected or has been in contact with a case of a relevant infection. A person's entitlement to contractual sick pay in this situation will depend on the wording of the relevant contract or sick pay policy.

Working from home

18. Do we have to allow employees to work from home (or take holiday)?

Not at the moment, although see the section below on vulnerable employees.

Employers should assess the health and safety risk regularly, and make sure they check the latest government guidance. Current government guidance is that employees should work from home where possible.

Employers should also consider their staffing requirements and how many people they need on their premises. Depending on the job, it may be possible to allow employees that wish to do so to work

from home or to take holiday (see section on holiday).

Employers should be mindful of the fact that they might need to require people to come into work if others fall sick and there is insufficient cover. Employers who permit remote working or holiday should therefore consider whether they need to reserve the right to require workplace attendance on short notice. If employers reserve this right, they should make it clear that they may take disciplinary action if employees unreasonably refuse to attend work.

Before any disciplinary action is commenced, the situation should be discussed with the individual, because it may be possible to allay their concerns. For example, if their real fear is the risk of infection on public transport, it might be possible to adjust their hours to enable them to travel outside rush hour.

If the individual refusing to come into work is pregnant or otherwise at high risk, you should tread carefully and may have to be more flexible (see below).

Refusing to allow employees to stay at home, or disciplining them for not attending work, could potentially lead to legal claims. For example, an employee might try to claim constructive unfair dismissal if there is a genuine health and safety risk from being required to attend work. Or they might try to bring a claim under S. 44 or 100 ERA 1996 (see question 1). However, provided employers do not act unreasonably, follow relevant government guidance and employees are not placed at undue risk, such claims would be unlikely to succeed.

Treat employees consistently. It is alright to give special consideration to vulnerable individuals provided you are consistent as between individuals of a particular class and fair and transparent about the grounds on which you are acting.

19. Do we have to enforce home working or close the workplace?

Not at the moment.

Current government guidance is that employees should work from home where possible. The government is not currently recommending workplaces be closed.

The government has powers to introduce compulsory quarantine under the Civil Contingencies Act 2004 and the Public Health (Control of Diseases) Act 1984. So far, the government has introduced measures in England under the Health Protection (Coronavirus) Regulations 2020. This allows the Secretary of State or a registered public health consultant to require a person to be kept in isolation, including at home (see question 17). We are not currently aware of these powers being used.

Employers should keep the government guidance under review.

20. Can grievances and disciplinaries be dealt with remotely?

Yes, if the grievance or disciplinary process can be handled remotely then it does not need to be paused just because the people involved are now working from home.

The Acas Code of Practice on Disciplinary & Grievance Procedures does not deal with the possibility of holding meetings remotely. However, it does emphasise that issues should dealt with promptly and without unreasonable delay. In our view, it is possible to organise a fair process remotely and this may be better than delay. If, therefore, an employee insists on a disciplinary process being postponed because of the Coronavirus outbreak, then employers should not automatically agree to this. However, there are some important issues to consider:

- Can the employer carry out a full investigation remotely?

- How will any formal meetings be dealt with? Some kind of video option (rather than audio only) is almost always going to be preferable.
- How will the employee's companion take part, and how will they be able to confer with the employee during the meeting?
- How will witnesses attend and how will everyone view the relevant documents and materials?
- Consider how to ensure confidentiality – it is usual to deal with this at the start of face-to-face meetings and it will be important to address this where the employee is participating from home.
- Conduct a test of the equipment in advance to avoid any unnecessary reasons to postpone the meeting.

Holidays

21. Can we make employees take their holiday allowance?

Yes, this may be possible.

This might be a solution for a number of problems, for example when an employee does a role which cannot be done from home. Employers should first check what the contract of employment says. The contract may give the employer the right to make the employee take holiday at any time during their employment by giving, for example, one day's notice. The employer should comply with whatever has been agreed in the contract.

If the contract does not say anything about the process for making employees take holiday, or if the contract is unclear about the process, the default arrangements in the Working Time Regulations 1998 ("WTR") are likely to apply to the 5.6 week entitlement under the WTR (the position on any extra contractual holiday is unclear, but we suggest employers treat this in the same way). The arrangements in the WTR give employers the right to make employees take holiday at any time during their employment by giving the required period of notice. The required period of notice is double the amount of leave the employee is being told to take. So if an employer wants an employee to take 2 weeks' holiday, it must give them 4 weeks' notice. These notice requirements can be displaced by the contract, which is why it's important to check what the contract says.

However, the position is different if the employee is sick. A sick employee can agree to take holiday, but can't be compelled to do so. Whether this applies to all holiday, just the 4-week entitlement under the EU Working Time Directive, or the 5.6-week entitlement provided by the WTR, has not been resolved by caselaw.

The position may also be different if the employee is taking emergency time off for dependants. As far as we know, there is no caselaw on whether an employer can require an employee to take holiday in preference to exercising a statutory entitlement to emergency time off for dependants. This will become an issue as schools close for an extended period of time from Friday 20 March. Many parents will prefer to take paid holiday over unpaid time off, but some may be reluctant to use up their holiday allowance.

22. Can employees cancel their pre-approved holiday requests?

Generally not unless the employer allows them to do so.

This question is beginning to come up because many employees are finding themselves unable to travel to their chosen holiday destinations. With their travel plans cancelled, some employees want to come into work rather than taking their holiday allowance.

In many situations, employers will be happy to let the employee cancel their holiday request. In fact, in some situations, employers are considering pro-actively withdrawing their approval for holiday rather than risk the employee choosing to travel irresponsibly (see section on travel). However, in other situations the employer will want the employee to use their holiday allowance even if they can't travel as planned. In those circumstances, the employer does not have to let the employee cancel their holiday request unless the contract allows the employee to cancel holiday requests after approval has been given. If the contract does allow the employee to cancel approved holiday requests, the employer could still consider making the employee take their holiday allowance by giving notice under the WTR (as explained in question 21).

The position is different if the employee is sick. A sick employee is entitled to postpone their holiday until they are better. However, unless the contract says otherwise, employees can only carry forward their 4-week EU entitlement from one holiday year into the next if it unused because of sickness (other holiday will be lost at the year end).

Resourcing

23. Can we change an employee's duties/hours to cover the duties of other sick employees?

It depends on the contract.

Many contracts of employment give employers express powers to vary duties and hours. Such a contractual right would be subject to the implied term of trust and confidence. (This term is implied into all contacts of employment and is that the employer must not, without reasonable and proper cause, conduct itself in a manner calculated and likely to destroy or seriously damage the relationship of trust and confidence between employer and employee.)

Employers probably have a limited right to make small changes to hours and duties as part of the employees' implied duty to obey lawful and reasonable instructions. It is very difficult to say how far this implied right would extend, and for that reason employers should be wary of relying on it.

Before changing hours or duties employers should consult with the employees affected, in case there are particular circumstances which would make it difficult for them to comply, such as child-care commitments. Such employees might have an indirect discrimination claim if the employer unilaterally changes their hours.

If there is not a contractual right, employers could still change employees' hours and duties with their agreement.

24. Can we lay off employees or put them on short-time working if demand decreases in the following situations?

(a) Employees with a contractual right to a particular number of hours

Lay off means providing employees with no work and no pay for a period whilst retaining them as employees. Short-time working means providing employees with less work for a period and with correspondingly less pay. Neither could be done unilaterally without a clear contractual right to do so. So, unless employees consented, an employer attempting to impose lay-off or short-time working unilaterally would face potential claims for breach of contract, constructive dismissal and unlawful deduction from wages.

Even where an employer has a contractual right to lay off without pay, this is subject to the implied term of trust and confidence. This means, for example, the employer should consult with employees first and give reasonable notice of any lay off to avoid being in breach of contract.

There is a specific statutory provision which provides a right for employees who have been laid off or kept on short time for four or more consecutive weeks or six weeks in any 13-week period to claim a statutory redundancy payment in certain circumstances. This is rarely used in practice and would only apply if the contract of employment permits lay-off or short-time working. The scheme also requires employees to resign to receive their redundancy payment which employees might be very unwilling to do.
The scheme also requires employees to resign to receive their redundancy payment, which employees might be very unwilling to do. Where employees are entitled under their contract to enhanced redundancy pay, however, they might regard claiming a statutory redundancy payment under the lay-off/short-time working provisions as a route to their contractual entitlement.

There is also a system of "guarantee pay" for employees who are laid off without pay. They can claim a guarantee payment for the days on which they would normally be required to work but the maximum is only £29 per day and entitlement is limited to five days in any three-month period.

Without an express contractual right, it would be a breach of contract to send employees home indefinitely (even if you pay them) but employers would almost certainly be able to do so for a limited period provided they pay them in full.

(b) Employees without a contractual right to a particular number of hours

Employers could reduce hours for those employees who do not have a contractual right to any particular level of work (e.g. those on zero-hours contracts).

25. What can we do if we have new joiners and it is now difficult for them to start work?

There may be practical issues with inducting a new joiner if most or all people are working from home, but employers can consider altering the usual process to allow for remote onboarding using technology. It is also possible to conduct right to work checks without meeting an individual face-to-face (see question 42 for more information). Although it is not ideal to parachute new joiners into a remote working scenario, communications can be put in place to help with making them feel included as much as possible.

If circumstances have changed and the new joiner is no longer needed at the current time, the employer could agree with the new joiner that their start date will be postponed. Although the new joiner may have a contractual right to start on a specific date, these are unprecedented circumstances and individuals may be willing to accommodate this. If the new joiner agrees, the employer can then confirm a revised start date in writing.

If the individual does not agree to a revised start date, or if this is not possible, it may be necessary to withdraw a job offer or terminate the contract.

If a potential new joiner has not yet accepted the offer, it can be withdrawn because no contract is in place yet. If the new joiner has accepted an offer, the employer should check the offer letter and/or contract with the new joiner, and in particular what notice period has been agreed. The employer can terminate the contract before the new joiner was due to start by making a payment in lieu of notice. Failing to pay notice in this situation would give the individual a potential breach of contract claim. An employer only needs to pay notice for the period when the employee was due to be working and

receiving pay, so it may be possible to give a new joiner notice which expires before they were due to start work and not make an actual payment.

Individuals who are asked to postpone their start date, have offers of employment withdrawn or have their contracts terminated may try to allege that the reason for this is unlawful, for example because it was unlawful discrimination. It is advisable for employers to document carefully their thinking behind taking any of these steps.

26. Can employers use the "special circumstances" defence to a failure to consult about collective redundancies?

This is a difficult and fact sensitive area, so employers should always seek advice on their particular situation.

Section 188(7) of the Trade Union and Labour Relations (Consolidation) Act 1992 ("TULRCA") provides a defence to a failure to collectively consult where there are "special circumstances which render it not reasonably practicable" for the employer to comply with the requirements. The collective consultation obligations apply where there are proposals for 20 or more redundancies at an establishment or changes to that many employees' terms by way of a "fire and rehire" process. This defence applies to failures to consult in good time, failures to consult on the required topics with a view to reaching agreement, or failures to provide the required statutory information on which consultation is based.

There is no definition of "special circumstances", but an impending insolvency situation on its own is not sufficient. The caselaw also indicates that it is difficult to rely on this defence to justify a complete failure to consult except in the most extreme circumstances. If a business has cash to keep it going and is making redundancies to remain profitable (or to make a smaller loss), it will be practicable to consult, even though it may be costly - consultation is regarded as a "cost of business".

The Chancellor has announced measures to be put in place to support businesses, including meeting up to 80% of wages (up to £2,500 per month) for employees who are unable to work due to the effects of Coronavirus but who are kept on by employers. This is part of a national effort to protect jobs, and the new measures (which also include guaranteed loans, no business rates for the retail, hospitality and leisure sector, and deferral of VAT payments) are specifically to enable businesses to pay wages, rent, suppliers etc so that they don't need to make difficult decisions affecting staff. This will make it difficult for employers to rely on the special circumstances defence to justify no or short collective consultation because it's unlikely that they will otherwise go under if they take advantage of the government's financial support. It is therefore important that if employers decide to make collective redundancies, or changes to terms by way of a "fire and rehire" process, they should comply with the collective consultation requirements under TULRCA as best they reasonably practicably can.

Coronavirus has created a situation where many employees are working from home, self-isolating or practising social distancing, and some workplaces such as shops and restaurants may have had to close during a consultation period. This makes it practically difficult to elect appropriate representatives if there aren't any already, and to carry out face-to-face consultation with the representatives - but employers should still do what they can to inform and consult, taking into account their particular circumstances.

The defence may work best if there is a procedural failing, so long as the employer takes what steps it can. The steps an employer took in the particular circumstances it was facing can also reduce the

size of the penalty award for failing to consult, even if they are found to have breached the consultation requirements. The starting point is 90 days' uncapped pay with the employer required to show why that amount should be reduced – so taking all practicable steps is very important in reducing what might otherwise be a large penalty. Employers should be creative in considering use of technology and virtual communications.

Caring responsibilities

27. Do we have to let employees have (paid) time off to care for a dependent who is sick? Or now that the schools have closed?

Only if it is a contractual right. Otherwise staff have a statutory (and limited) right to unpaid time off.

Employers should check contracts and policies. Some employers offer paid leave for employees who have to deal with emergencies concerning dependents. If this is a contractual right, it would be a breach of contract not to allow paid time off in accordance with its terms.

If it is merely discretionary, employers should think about whether they will want (or be able) to offer paid time off now that all schools are closed from Friday 20 March.

Employers should try to be consistent between employees because of the risk of indirect discrimination claims if they treat employees differently without good reason.

A right might have become contractual through custom and practice if employers always pay for time off in such circumstances and employees have a reasonable expectation of being paid.

There is also a statutory right to unpaid time off to deal with emergencies.

Employees have a right to a reasonable amount of unpaid time off where it is necessary to deal with unexpected events involving their dependants. This would include a situation where they have to provide immediate care or arrange care for a dependant who is sick or where a school or nursery has unexpectedly closed. It is irrelevant if taking the time off will cause disruption to the employer.

The right to the time off is to "reasonable" time off to deal with the situation. Although an employee might have to take time off to care for a sick dependant in the short term, the employee is expected to arrange for their care if this is possible, rather than having a right to indefinite time off to do it themselves.

There are various conditions employees must fulfil, such as notifying the employer as soon as reasonably practicable about the reason for their absence and how long they think they will be away.

Employees who are refused permission to take the time off or who are subjected to a detriment for doing so can bring claims in an employment tribunal. They can also bring claims for automatically unfair dismissal if they are dismissed for exercising the right.

Alternatively, employers should consider whether to allow employees to take holiday.

Under current government guidance, anyone who lives in the same household as someone showing symptoms should self-isolate for 14 days (see question 8(b)). (See questions 11 and 12 for more detail on the impact of self-isolating in these circumstances on pay.)

Parents might also have a statutory right to (unpaid) parental leave which they could use. That right is also subject to conditions.

28. Do we have to allow employees to work from home if a dependant needs care?

Employers should consider any requests from employers to work from home for this reason. See

question 27 on dealing with requests from employees to work from home.

If the job can be done from home, employers might well want to agree. But they do not have to agree if the employee cannot do the job from home for any reason, including if they cannot work from home because they are doing childcare. Young children need constant supervision and an employee will not be able to do any work if they are caring for a small child. Older children might be able to entertain themselves with minimal oversight, in which case an employee could do some work from home whilst being there just in case anything occurred.

If many employees wish to work from home and/or there are a lot of people off sick and the employer needs cover in the workplace, the employer should probably give parents and other carers priority when deciding who can work from home. There is a risk of indirect sex or age discrimination claims if employees are required to attend the workplace and they cannot comply because of their caring responsibilities (because such requirements will disproportionately impact on women and on certain age groups). It is a defence to a claim for indirect discrimination that the action is a proportionate means of achieving a legitimate aim (such as meeting its staffing requirements).

Employers could also consider allowing people to use holiday or giving them unpaid leave if the job cannot be done from home (subject to the employer's staffing needs).

Vulnerable employees

29. Should pregnant employees be working from home now?

Yes, if possible.

The government's latest advice on social distancing and protecting older people and vulnerable adults (published 16 March) includes those who are pregnant in the list of vulnerable people. The government is advising all vulnerable people to be particularly stringent in following social distancing measures. These measures include avoiding non-essential use of public transport, steering clear of large gatherings and working from home, where possible. Employers should therefore allow pregnant employees to work from home if they can.

If working from home is not feasible, employers should discuss the position with their pregnant employee. It is not clear that a pregnant employee who chooses to stay at home even though they cannot work from home is entitled to statutory sick pay, unless they fall within the government's main guidance to self-isolate because they have symptoms or are in the household of someone with symptoms. However, there is an argument that the advice on protecting vulnerable adults is also part of the "guidance" which gives a right to statutory sick pay under the Statutory Sick Pay (General) (Coronavirus Amendment) Regulations 2020. In any event employers will need to be flexible, for example by allowing such employees to take paid holiday, and should bear in mind their health and safety responsibilities (see section on health and safety below).

30. What other steps (besides working from home) do we have to take for pregnant employees?

All employers have a general duty to carry out a risk assessment for pregnant employees which must take into account current circumstances, and this risk assessment must be reviewed if the circumstances change. Employers should therefore conduct a risk assessment with each pregnant employee in light of Coronavirus.

Where it is not possible to avoid exposure to risks by other means, pregnant employees must be offered suitable alternative employment on a temporary basis or may be suspended from work on medical grounds (on full pay) for as long as necessary. If the period of suspension continues into the

fourth week before the expected week of childbirth, or the employee is ill after the start of the fourth week, this will trigger the commencement of maternity leave.

31. What obligations do we have towards older people, people with respiratory conditions or other underlying health conditions?

Employers have a duty to protect the health and safety of their staff, which includes taking additional care with employees who are known to be vulnerable. The government's latest advice on social distancing and protecting older people and vulnerable adults (published 16 March) explains who is considered to be particularly vulnerable, and advises them to be particularly stringent in following social distancing measures. These measures include avoiding non-essential use of public transport, steering clear of large gatherings and working from home, where possible. Employers should ask employees to let them know if they are in one of the categories of vulnerable people, and should allow them to work from home if this is possible.

It is not clear that a person who is vulnerable and chooses to stay at home even though they cannot work from home is entitled to statutory sick pay, unless they fall within the government's main guidance to self-isolate because they have symptoms or are in the household of someone with symptoms. However, there is an argument that the advice on protecting vulnerable adults is also part of the "guidance" which gives a right to statutory sick pay under the Statutory Sick Pay (General) (Coronavirus Amendment) Regulations 2020. In any event employers will need to be flexible, for example by allowing such employees to take paid holiday, and should bear in mind their health and safety responsibilities (see section on health and safety below).

32. What are our obligations if an employee lives with or cares for a vulnerable person (e.g. an older person, someone with a long-term condition, someone having chemotherapy)?

The employer's duty to protect the health and safety of their staff does not extend to the health and safety of an employee's relatives or friends. However, employers should be sympathetic to concerns expressed by employees in this situation.

An employer should discuss the employee's concerns and consider whether there is a practical way to assist – e.g. by allowing working from home if there is an identified risk in the workplace or altering working hours so it is not necessary to travel on public transport during rush hour. If an employee refuses to come to work for this reason, it may be reasonable for the employer to allow this while refusing similar requests from other employees who do not have a direct link with a vulnerable person.

Health and Safety

33. What steps do we have to take to meet health and safety duties in workplace?

Employers have a duty to take steps that are reasonably necessary to ensure the health, safety and welfare of all their employees, including those who are particularly at risk for any reason. Employees also have a duty to take reasonable care of their own health and safety and that of people they work with. They must cooperate with their employer to enable it to comply with its duties under health and safety legislation. Employees who refuse to cooperate, or who recklessly risk their own health or that of colleagues or customers, could be disciplined.

Employers should take simple precautions to protect their staff's health and safety, such as:

- Limit work trips. The FCO is currently advising against all travel to some countries and all but essential travel to the rest of the world. Use telephone or video conferencing where possible

instead.

- Educate staff without causing panic. For example, send emails or display posters outlining the current situation and any government advice.
- Provide tissues and hand-sanitisers, encouraging their regular use. Encourage staff to wash their hands or use hand-sanitiser on arriving in the building after using public transport and after coughing or sneezing.
- Consider displaying posters on “cough etiquette”, hand and respiratory hygiene and safe food practices.
- Regularly clean frequently-touched communal areas, including door handles, kitchens, toilets, showers, and hotdesk keyboards, phones and desks.
- Ensure that anyone with Coronavirus symptoms (cough, sore throat, fever, breathing difficulties, chest pain) does not come into work. Current government advice is that anyone with Coronavirus symptoms should self-isolate for seven days. They should not return to work until all symptoms have gone.
- Ensure that staff self-isolate in accordance with government guidance whether or not they have any symptoms.
- Carry out a risk assessment to gauge whether the working environment of high-risk individuals presents a risk of infection (e.g. because they will be exposed to individuals who are infected with the virus).
- Consider allowing high-risk individuals to work from home, particularly if cases are confirmed near the workplace, or consider whether they should be moved to another location. Consult with them before taking any action. (See section on vulnerable employees.)

Keep the situation and government guidance under review. If the situation worsens, employers may have to take additional measures such as discontinuing all work-related travel.

34. What advice should we give suppliers/contractors?

Contact any suppliers or contractors who will be visiting your premises to confirm your rules and policies. Advise them that in light of your duty to ensure the health and safety of your employees and any visitors to your premises, you will not allow access to your premises to anyone who should be self-isolating pursuant to current government guidelines (or who has been diagnosed with Coronavirus). Also advise that they must comply with this policy and inform any of their staff/contractors who might be attending the premises and ensure they comply.

35. Can we require visitors to our premises to inform us about whether they’ve been to an affected area in the last 14 days or been in contact with someone who has?

Yes. In order to comply with your health and safety duties to all employees and visitors to your premises it would be reasonable to ask any visitors to inform you if they have been to an affected area or have been in contact with someone who has been infected or are experiencing any Coronavirus symptoms. Abide by the latest government guidance on affected areas and quarantine periods.

If someone has been potentially exposed to the virus, ask them not to attend your premises and offer to postpone any meetings until after the quarantine period or to hold them by telephone or video conference.

36. Do employees have a right to be notified if a colleague has contracted Coronavirus?

No, there is no specific right. But employers have various responsibilities to their staff, which means that in most cases they should tell at least some other employees.

Employers owe employees a duty of confidentiality which would normally apply to health matters, but they also have a duty to protect the health of all employees so far as they reasonably can. They also need to think about data protection but, while information about health is subject to strict processing conditions, they should still be able to inform relevant colleagues of an employee who has the virus.

In this situation, the best practical approach in the first instance to ask the individual to consent to colleagues with whom they have been in contact being told they have Coronavirus. The employee is very likely to give their consent.

In the unlikely event of the employee refusing consent, the employer could probably rely on the processing being necessary for the purposes of obligations imposed by law in relation to employment (which should cover an employer's health and safety duties). Any communication of health data must be in order to meet the employer's health and safety obligations and must be necessary and proportionate to that purpose.

If an employee has been diagnosed with Coronavirus, it would seem the employer has a duty to warn individuals who have been in contact with that employee and whose health may be at risk. They should be asked to self-isolate until the quarantine period has expired, or they have fully recovered (after contracting the virus). (See section on medical testing.)

The employer should consider whether the individual needs to be named. If not, the employer should be careful not to inadvertently reveal who it might be by, for example, only cleaning their workstation. In most cases, it will be necessary to identify the individual, in which case the employer should not reveal the information any more widely than necessary. This will depend on the size and organisation of the workforce and who is likely to be at risk of infection.

As the Coronavirus symptoms may be similar to those of any cold or flu, it would probably not be reasonable or necessary to inform other staff just because someone is displaying Coronavirus symptoms, unless you have more information to suggest it could be Coronavirus.

37. Can we insist on taking the temperature of anyone entering our premises (employees, contractors and visitors)?

It's not certain that this would be lawful.

There is a risk under data protection legislation that collecting the information is disproportionate. The data protection risk should be weighed against the employer's health and safety duties to staff and visitors to their premises.

Employers can process some health information for the purposes of complying with health and safety duties / duty of care towards staff (Sch1(1) Data Protection Act 2018).

The Information Commissioner's office (ICO) has said in COVID-19 guidance:

> ***Can I collect health data in relation to COVID-19 about employees or from visitors to my organisation? What about health information ahead of a conference, or an event?***
>
> *You have an obligation to protect your employees' health, but that doesn't necessarily mean you need to gather lots of information about them.*
>
> *It's reasonable to ask people to tell you if they have visited a particular country, or are experiencing COVID-19 symptoms.*

You could ask visitors to consider government advice before they decide to come. And you could advise staff to call 111 if they are experiencing symptoms or have visited particular countries. This approach should help you to minimise the information you need to collect.

If that's not enough and you still need to collect specific health data, don't collect more than you need and ensure that any information collected is treated with the appropriate safeguards.

https://ico.org.uk/for-organisations/data-protection-and-coronavirus/

Data collection should be proportionate. Employers should consider whether it is necessary to take temperatures to meet their duty of care to protect the health and safety of staff and visitors and whether any less invasive measures would be sufficient.

Less invasive measures could include:

- Requesting that people take their own temperature before attending the office and stay away if it is above 37.8C.
- Asking about other symptoms (e.g. new, continuous cough).
- Asking for travel information (have they been to seriously affected areas).
- Asking about contact with confirmed cases (or suspected cases).
- Giving clear guidance about when not to come in.
- Implementing working from home measures.
- Implementing good health and safety practices (hand washing, cleaning surfaces, distance restrictions, etc).

Because of the other steps that could be taken, in many workplaces there is a good chance enforced temperature checks on entry would be disproportionate. However, for some workplaces that contain many vulnerable people (e.g. care homes) it may be proportionate.

Employers who need to protect staff who can't work from home may still choose to go ahead with it anyway, despite ~~with~~ the data protection risk.

If an employer chooses to accept the risk, there are various things that can be done to mitigate it:

- Don't retain the information for longer than needed – do the check on access and delete the data, unless preventing entry is necessary (in which case the reasons for this should probably be recorded).
- For anything that is stored, use for no other purposes and restrict access to very small number of people.
- Carry out a data protection impact assessment setting out clearly why the measure is necessary for the specific workplace (which should include why the above measures are not sufficient).

38. Should we insist that employees wear facemasks?

No.

The government is not currently advising people to wear facemasks (except in certain circumstances in healthcare situations or if they have been infected to prevent them spreading the infection). The current advice is that proper handwashing is more effective in stopping the spread of the virus than wearing a face mask.

If employees wish to wear facemasks you could choose to permit this. You do not have to do so if they are working at front-of-house or otherwise are ambassadors for your brand and it might reflect badly on your organisation. But give due consideration to requests from vulnerable individuals (see section on vulnerable employees.)

39. What steps do we have to take to meet health and safety duties for people who are working from home?

Employers owe a duty to take steps that are reasonably necessary to ensure the health, safety and welfare of all their employees, and provide and maintain a safe system of work, including for employees working from home. Employers must conduct a suitable and sufficient risk assessment of all the work activities carried out by their employees to identify hazards and assess the degree of risk and take measures to reduce any associated risks.

An employer's health and safety obligations to employees (including homeworkers) are set out in a range of legislation made under the Health and Safety at Work Act 1974, including regulations which cover the use of work equipment in the home, the supply of appropriate first aid provision (although these are generally not extensive), the reporting of serious injuries or accidents and in relation to particular mental health challenges for people working alone at home.

With increasing numbers of employees using computer equipment to work from home (whether personal equipment or equipment provided by the employer) particular obligations may arise under The Health and Safety (Display Screen Equipment) Regulations 1992 ("DSE Regulations"). The DSE Regulations require employers to carry out a suitable and sufficient assessment to identify any health and safety risks for individuals who regularly use display screen equipment ("DSE") as a significant part of their usual work and to reduce the risks identified to the lowest extent reasonably practicable. This applies not only to desktop computers, but also to laptops where these are used for prolonged periods (and possibly tablets, personal digital assistant devices and mobile phones where these are used to compose, edit or view text for sufficiently long periods).

For employees working from home, albeit for a temporary period, employers should consider how best to conduct this risk assessment. One solution is to ask employees to undertake their own risk assessments, for example by using a checklist, alongside providing information on causes of DSE related problems (such as the importance of posture, how to make equipment adjustments, the need to take breaks and to change activity, and arrangements for reporting problems with workstations or ill-health symptoms). While employers are unlikely to be required to conduct an assessment to the same degree as for office-working with DSEs, employers should ensure the home environment is adequately assessed and take measures to control risk. If the homeworking is only for short periods of time an employer may be able to conclude that non-compliance with the full risk assessment requirements would not have an adverse effect on health and safety. However, employers should make it clear that employees must keep them informed of any particular concerns or issues that arise during any period of homeworking.

There is no legal obligation on an employer to provide the equipment necessary for homeworking, although it would be sensible for the employer to pay for and provide equipment if the employee cannot work otherwise (eg because the employee has no laptop) and provide other equipment or flexibility for employees who are identified at being at risk. Employers can consider alternatives if this is not practical – such as agreeing holidays or unpaid leave. If a homeworker has a disability, the provision of equipment (or reimbursement of equipment expenses) may be required as a reasonable adjustment under the Equality Act 2010.

Breach of health and safety obligations is an offence and there is a risk of civil liability if an employee suffers injury or damage to health caused by their work as a result of an employer's

negligence. However, such risks need to be considered against the possible risks to the employee's health by requiring them to attend their place of work, when the government is advising them against doing so. Whilst this is not a balancing exercise, both employers and employees will need to show flexibility.

Medical testing

40. Can we require staff to undergo tests for Coronavirus – either routinely or for those with symptoms only?

No, employers cannot require employees to undergo tests for Coronavirus, either routinely or if someone has symptoms.

Current guidance is that anyone who shows symptoms is advised to self-isolate for 7 days. Those who live in the same household as someone showing symptoms are advised to self-isolate for 14 days (and if that individual starts showing symptoms, they should self-isolate for 7 days from when the symptoms started). An employer can encourage someone in this situation to seek medical advice, although testing for Coronavirus is currently only being carried out for cases admitted to hospital.

Racial harassment

41. Are we liable for racial harassment of employees who are nationals from badly-affected areas, or are assumed to be from such areas?

If done by another employee, yes, probably.

Employers can be vicariously liable if their employees racially harass colleagues, even if the employer does not know and would disapprove of such behaviour. The employee themselves will also be personally liable.

Employers will only avoid liability if they can show that they took "all reasonable steps" to prevent employees behaving in such a manner. Taking reasonable steps might mean having well-publicised diversity and harassment policies and training all staff on the issue. Managers in particular must be trained about their responsibility to identify and prevent discriminatory behaviour.

If the harassment is done by a third-party (such as a customer or visitor), the employer might not be liable for race discrimination, but the employee may have other claims.

Employers will be liable if they fail to protect employees from harassment by third parties and the employer's failure is itself due to discriminatory reasons. Otherwise, the employer is unlikely to be responsible. However, in keeping with their duty to ensure the health, safety and welfare of all employees, employers should seek to protect staff from harassment. Consistently failing to do so might well be a breach of the implied duty of trust and confidence and it may give the employee grounds to resign and claim constructive unfair dismissal.

Immigration

42. How do we conduct compliant right to work checks for new starters where this can't be done face-to-face?

Under the government's current code of practice for right to work checks ("RTW"), it is possible to conduct fully compliant RTW on all new starters without face-to-face contact.

For anyone who has a Biometrics Residence Permit or Pre-Settled/Settled Status under the EEA

Settled Status scheme, it is possible to conduct an online RTW. As part of this, the employer will need to review the individual's profile online along with what employment they are allowed to undertake on their visa status, checking the photograph depicted as well as any employment restrictions that are advised on their record. The employer should also view the person via a live video call, in order to confirm they are the person depicted, as would be the case for a standard face-to-face RTW.

For those falling outside this group, employers can conduct the RTW by asking individuals to courier their original passport and then checking its validity etc in the usual way but via a video call. The person conducting the check must see the original document to verify it against the video call of the person. Care should be taken to ensure that only secure and recorded methods of delivery are used given the personal nature of the documents being transported.

Only the above RTW are considered compliant - although the Home Office has produced guidance for leniency around immigration requirements as a result of the coronavirus situation, at present this does not cover RTW. Employing someone to work illegally is generally a strict liability offence and a fully compliant RTW is the only way to be sure of reducing the £20,000 penalty to £0. It can also affect the employer's Sponsor Licence. Although the Home Office does have the option to reduce the penalty where there are mitigating factors but no fully compliant RTW, employers should ensure there are robust compliance systems in place.

For further information see our advice on pandemic right to work check procedures.

43. Apart from right to work checks, what else should we be considering in relation to immigration?

There are a number of other areas employers should consider in light of the current Coronavirus pandemic, including:

- Ensuring sponsorship duties continue to be met in relation to sponsored workers. For example, there may be delays or changes to start dates or locations due to travel restrictions, or changes to pay if reductions to pay (or unpaid leave) are agreed.
- When considering business continuity and workforce planning, consider non EEA-nationals who can still be hired and start working remotely overseas, and plan ahead in terms of visa applications for travel to the UK when this becomes possible.
- Reviewing current visa applications and assessing potential implications of current travel restrictions.