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CORONAVIRUS AND YOUR EMPLOYEES: **WHAT YOU NEED TO KNOW – PART II**

Following my previous update on the position regarding sick pay for your employees and the prospect of how to deal with employees in self-isolation, with many employees now working from home and businesses forced to temporarily close, I answer some of the questions that we are being asked by our clients about the options available to you and your business:

Do you have to pay sick pay?

If an employee is off sick due to coronavirus the normal rules for sick pay apply and subject to satisfying certain criteria, as a minimum they will be entitled to Statutory Sick Pay (SSP), now from day one of sickness absence rather than day four. Any contractual entitlement to sick pay should be paid as normal and any discretionary element of sick pay should be considered fairly and without discrimination to avoid arguments of unfair treatment.

What has now changed is that in addition to any employees who are off sick due to coronavirus, those who are self-isolating following medical and government advice and are unable to work, will also be entitled to SSP even if they do not have any symptoms.

For small employers with less than 250 employees, the first 14 days of SSP will be refunded by the government in order to ease the financial burden but this does not solve the problem if a business is struggling with immediate cash flow.

Should you still ask for a “fit note” if employees are off sick?

In light of government advice to now stay at home, employees should certainly not be going to their normal GP practice for a fit note and therefore “isolation notes” are now available by contacting 111 and obtaining an isolation note from <https://111.nhs.uk/isolation-note>. As an employer, you will inevitably need to be more flexible in terms of the evidence that you require from your employees during this time.

What do you need to do if employees are now working from home?

If your workforce regularly work remotely then this may not be a significant adjustment for your business but if your employees are normally office based, then working from home will be very different for everyone.

It is important that you have a Homeworking Policy that will set out the guidelines for working from home and what the expectations will be. It should cover the practical matter of providing any computer equipment or telephones, how to maintain

confidentiality and your data protection obligations, health and safety, both in relation to the use of any equipment but also the requirement to take regular breaks and how to maintain contact.

So for example, whilst you would probably not normally agree to a homeworking arrangement if your employee also has childcare responsibilities at the same time, this situation is so unusual following the closure of all schools, that you will need to be more flexible and will have to ask your employees to try to manage both their work and family commitments during normal working hours. The way you deal with your employees now is important to maintain a committed workforce who can help you through this difficult time.

As an employer, you have a duty of care towards all your employees, whether they are working in the office or working remotely. Mental health is an issue that we all need to be aware of and now more than ever, it is important to keep in touch with colleagues, whether that's over the phone, by email or by using video conferencing facilities. There is useful guidance being provided by many organisations and charities specialising in mental health, including Mind (<https://www.mind.org.uk/information-support/coronavirus-and-your-wellbeing/>) with practical tips and suggestions to keep your workforce healthy.

Above all, communication in this situation will be key in order to maintain an engaged workforce who are ready to come back to work as normal when these unprecedented times come to an end, which they will.

Technology allows us to do this more effectively than ever before but be creative. Think about the way that emails may be misconstrued when you do not have that physical proximity to your colleagues and consider using video conferencing facilities such as Zoom or Google Meet (other resources are of course available!) when keeping in touch with your staff.

What if you need to close the workplace on a temporary basis?

You will need to plan and organise how your business will operate if you need to close the workplace on a temporary basis. There are various options available to you as an employer including asking employees to take unpaid leave, laying off the employees without pay (but only if you have the contractual right to do so in your contracts of employment), or now, following the government's introduction of the Coronavirus Job Retention Scheme, putting employees on furlough leave.

What is furlough leave?

This is a new type of leave, never used before and has been introduced in response to the coronavirus crisis in order to try to save jobs under the Government's "Coronavirus Job Retention Scheme".

On 26th March 2020 the Government issued its guidance on how the scheme will operate, details of which can be found at <https://www.gov.uk/guidance/claim-for-wage-costs-through-the-coronavirus-job-retention-scheme>. The scheme is open to all UK employers that had a PAYE system in place on 28th February 2020 and a UK

bank account. It applies to all employees on PAYE, including those on full time, part time or zero hours contracts.

The main features of furlough leave are:

- HMRC will reimburse 80% of wage costs (up to a maximum of £2,500 per month) plus (not including) the associated employer National Insurance Contributions and minimum auto-enrolment pension contributions on that wage. Fees, commissions and bonuses are not included;
- The employer can choose to top up the 80% to 100% but they are not obliged to do so. However, this is subject to employment law and renegotiating any existing contractual entitlements;
- For full time or part time employees who have a fixed salary, their actual salary, before tax, as at 28 February 2020 should be used to calculate the 80%;
- If the employee's pay varies, the employer can claim for the higher of either the same month's earning from the previous year (eg earnings from March 2019) or the average monthly earnings in the 2019-20 tax year;
- The National Minimum Wage (NMW) will not apply to employees on furlough leave as they will not be working. However, if they are expected to undertake any work related online training then their employer will need to ensure that they are paid at least the NMW for that time;
- Furlough leave must be taken in minimum blocks of three weeks;
- Furlough leave can be rotated between employees if required so long as the blocks of leave are for a minimum of three weeks;
- Employees who are already being paid sick pay or are self-isolating cannot be furloughed but can be furloughed once they are able to 'return to work';
- Employees who are shielding can be placed on furlough leave;
- Holiday entitlement will continue to accrue during furlough leave;
- The employee is taxed as normal through PAYE but payroll systems may need to be updated in order to operate the scheme;
- Payments can only be made once every three weeks to employers and will be backdated to 1st March 2020. This should be available from April 2020 but will be subject to the HMRC portal being up and running which is expected may not be until the end of April, when inevitably there will be teething problems. Further guidance on the mechanics of the system is currently being prepared;
- If an employee has already been made redundant but was on the payroll on 28th February 2020, they can be rehired and placed on furlough leave;

- The scheme will initially run from 1st March 2020 for 3 months, but may be extended; and
- Employees are not permitted to do any work if on furlough leave.

As the scheme will take some time to set up, employers will need to be in a position to pay their employees on furlough leave in March and April until such time as the scheme is running and they can apply for the reimbursement available. This may therefore not be the immediate help for businesses struggling with cash flow issues that they need and they may still also need to apply for a Coronavirus Business Interruption Loan.

To place employees on furlough leave you will need to take the following steps:

- Decide which employees to designate as furloughed employees; ask for volunteers or if necessary, undertake a selection process;
- Notify those employees of the intended change;
- Agree the change with the furloughed employees;
- Confirm the employees' new status in writing;
- Submit information to HMRC about the employees that have been furloughed and their earnings through the new online portal;
- Ensure that the employees do not carry out any further work while they are furloughed; and
- Consider how you will deal with and potentially incentivize employees who are unhappy at not being selected for furlough leave and are still required to work.

As explained above, it is important that you record this change to your employees' terms and conditions as their employment will continue during this time, with all the associated employment rights that go with that including accruing annual leave. The agreement should make it clear when the period of furlough leave starts, what pay the employee will receive, when and how furlough leave will come to an end (although this might be difficult in the circumstances and therefore a review period should be set instead) and confirm that their employment continues and therefore they are not permitted to work for anyone else or for themselves.

Need Help?

If you have any questions about how to safeguard your workforce and your business in light of the risk from coronavirus, the options available for your business or how to implement furlough leave, please contact Julie Edmonds, Head of Employment, by email (jedmonds@jpclaw.co.uk); telephone (0207 644 7286) or contact her on LinkedIn <https://www.linkedin.com/in/julie-edmonds-7a608346/>