

# Common Employment Scenarios

| Scenario   | Advice  |
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| 1. Your employee has symptoms of coronavirus and is isolating in accordance with the published rules.  | <ul style="list-style-type: none"> <li>• If they have mild symptoms and can work from home, they can do that. If they can't work from home, they are entitled statutory sick pay (SSP).</li> <li>• It was possible to reclaim COVID-related sick pay from HMRC until 30 September 2021, although it was announced on 21 December 2021 that this would be reintroduced in mid-January 2022. Details <a href="#">here</a>.</li> <li>• For eligible care and housing support workers in Wales, support may be available (currently until 31 March 2022) in order to pay full pay during this period. See <a href="#">here</a>.</li> <li>• If they are incapacitated by the illness, your usual sickness absence policy and procedure applies, including company sick pay where relevant.</li> <li>• Absence must be recorded using the usual procedure.</li> <li>• You should also assess the risk that the employee has passed on the virus to colleagues and take appropriate steps. Consider contacting Public Health England (PHE) for further guidance.</li> </ul>  |
| 2. Your employee is not sick but cannot attend work as they need to take care of a sick relative or because a school has closed.               | <ul style="list-style-type: none"> <li>• Employees are permitted unpaid emergency time off to arrange care for dependants. This is time off to arrange care, not to take care, so usually limited to 24/48 hours, although this will depend on the circumstances. This is normally unpaid but check any contractual entitlement to pay.</li> <li>• If, say, more than two days' absence is required and/or the reason for being off to care for the dependant arises from the coronavirus crisis, alternative arrangements may be needed. The employee could: <ul style="list-style-type: none"> <li>- Work from home if feasible, considering job type and caring responsibilities; or</li> <li>- Agree that the period of leave be unpaid, subject to any contractual entitlement.</li> </ul> </li> <li>- The right is for a "reasonable" amount of time off work in order to take action which is necessary to deal with particular situations affecting their dependants and to make any necessary long-term arrangements. Anything beyond this could result in disciplinary action, although in the current circumstances this is complicated. Take advice if you encounter this situation.</li> </ul> |
| 3. Your employee is not sick, is not shielding or in any of the high-risk categories but refuses to come to work because of risk of infection. | <ul style="list-style-type: none"> <li>• Speak directly with the employee to understand their concerns.</li> <li>• If they are following advice regarding self-isolation as per below, treat it as sick leave. Although note below in 6 re: pregnant employees who self-isolate.</li> <li>• In some areas of the UK, it is recommended that employees be allowed to work from home where possible. Check local rules for details.</li> <li>• You could allow them to take annual leave.</li> <li>• You could allow unpaid leave.</li> <li>• You are also permitted to insist on attendance if concerns are unfounded but practically it may be difficult to get the employee to attend work. Consideration should be given to whether this is a reasonable management instruction – a failure to follow said instruction could result in disciplinary action, although care should be taken with this, especially as there may be health and safety or whistleblowing considerations at play. It will be imperative to ensure that, at the very least, a risk assessment is in place for the workplace.</li> </ul>  |
| 4. Your employee cannot attend work as they live with someone who has symptoms of COVID-19   | <ul style="list-style-type: none"> <li>• If the employee is asymptomatic and cannot work from home, this should be treated as sick leave. They will be entitled to SSP.</li> <li>• Your usual sickness absence policy and procedure applies, including sick pay where relevant.</li> </ul>  |

and they are following the published self-isolation rules.

- Absence must be recorded using the usual procedure.
- The employee can self-certify for the first seven days and can obtain an isolation note from the NHS website, although for absences starting between 10 December 2021 and 26 January 2022, employees can self-certify for up to 28 days in order to receive SSP.

5. Your employee has been advised to “shield” as they are at very high risk and have been written to directly by the NHS.

- At the present time, no group of individuals is being advised to shield.
- However, if individually they are advised by their doctor to shield, if the employee is asymptomatic and can work from home, this should be utilised.
- Since 16 April 2020, employees who cannot attend work because they are shielding are entitled to receive SSP. However, this may be limited to situations where the shielding advice mandate is in place. As mentioned above, at this time this is not in place.
- Ensure that you refer to the most up-to-date government guidance regarding shielding. Note that this is a devolved issue and the situation could differ across the UK.

6. Your employee falls into one of the categories that the government has “strongly advised” to practice social distancing (e.g. the over 70s, pregnant women or those with underlying health problems).

- The guidance in respect of this may be different across the UK. Please check local guidance to see whether this particular mandate is in force.
- If it is, and the employee is asymptomatic and can work from home, this should be utilised.
- If the employee cannot work from home, whilst it is possible that they could be compelled to attend work, we believe that this is likely to be unreasonable and should be avoided if possible. As mentioned in point 3 above, it will be imperative to ensure that suitable risk assessments have been undertaken before even considering this avenue.
- Employees in this category would not be entitled to SSP unless they are diagnosed or develop symptoms themselves, live with someone who is diagnosed or has symptoms, or are contacted by Test and Trace (and are not exempted from isolation because they are fully vaccinated).
- Whilst they could be placed on unpaid leave, that could well be discriminatory, so please take advice before doing so.
- Pregnant women have additional protection where they cannot attend work due to health and safety concerns (for example, the work environment is unsafe due to COVID-19) and may be entitled to full paid leave, so please take advice if they are refusing to attend work.

7. Your employee is not sick but cannot travel to work due to the lockdown restrictions on travel or public transport.

- Currently there are no restrictions on travel in the UK. Some operators require passengers to wear masks.
- If someone refuses to come to work because of health and safety concerns around using public transport to work, they may have certain protections from detriment and/or dismissal. Take advice if an employee falls into this category.
- The situation will change if they are subsequently required to self-isolate or fall ill, in which case they may be entitled to SSP or contractual sick pay (where applicable).

8. Your employee is not sick but has been contacted under the government’s Test and Trace scheme.

- Currently in England, if an individual has received both doses of an approved vaccine, they will not be obliged to self-isolate as long as they take a lateral flow test for seven consecutive days and do not either develop symptoms or test positive in that time.
- Slightly different rules apply in [Scotland](#), [Wales](#) and [Northern Ireland](#).
- Anyone required to self-isolate will be entitled to be treated as sick for SSP purposes.
- For eligible care and housing support workers in Wales, support may be available in order to pay full pay during this period. See [here](#).
- It is unlawful for an employer to allow such an employee onto the work premises – see details [here](#).
- Your usual sickness absence policy and procedure applies, which may include payment of contractual sick pay where relevant – check the contractual terms.

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9. Your employee has returned from abroad and is now in quarantine.

- Absence must be recorded using usual procedure.

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10. Your employee is not sick, but you require them to stay away from work for a period of time as a precautionary measure.

- The rules on quarantine and international travel vary across the UK – please check local rules in order to establish if quarantine is required.
- If it is, where possible the employee can work from home or hotel quarantine.
- If working from home is not possible, this would be a period of unpaid leave or you could agree that they will take further annual leave.
- This absence would not qualify as sick leave, so there would be no entitlement to SSP.

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11. What are the current rules around SSP?

- As you have made the decision not to allow the employee to work, the employee is entitled to full pay, UNLESS:
  - You have a contractual right to lay the employee off without pay in these circumstances;
  - The employee is instructed to work from home if feasible; or
  - The employee agrees to take annual leave.
  - Please note that even if the employee does not agree to take annual leave, if you were requiring staff to take, say, two weeks' leave, you can force them to do so from day eight of absence by serving notice to take holidays on the first day of absence.
- If the employee falls ill or follows advice to self-isolate as per point 8 above, they can be treated as sick.

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12. I have heard that if we don't have enough work for employees to do, HMRC will pay up to 80% of their salary?

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- On 29 March 2020, legislation was passed confirming that SSP would be payable from day one for any COVID-19-related absence with retrospective effect from 13 March 2020. Anyone who has been off from that date due to COVID-19 and receiving SSP will be entitled to an additional three days' pay at current SSP rates.
  - The rules on what evidence an employer can request temporarily changed on 17 December 2021. Previously, an employee could self-certify that they were ill for up to seven days. From 17 December 2021 to 26 January 2022, an employer cannot request proof of sickness for the first 28 days of sickness. This is because of the pressure GPs are currently under. More information can be found [here](#). Note that this only applies for SSP purposes. Therefore, it may be possible to have differing rules for contractual sick pay policies.
  - From mid-January 2022, the Coronavirus Statutory Sick Pay Rebate Scheme will reopen, which will enable employers to reclaim up to two weeks' SSP for COVID-related absences. See [here](#).
  - For eligible care and housing support workers in Wales, support may be available in order to pay full pay during sick leave periods. See [here](#).
  - This was correct until 30 September 2021, when the Coronavirus Job Retention Scheme came to an end. The scheme is no longer available.
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