

International Travel and COVID Guide

The employment law position regarding travelling
abroad during the coronavirus pandemic

Employee travel



Introduction

At present (December 2021), there remains in place restrictions on travel abroad. This raises some questions in the employment context about what employers, and employees, can and can't do. This note addresses some of those issues.

As with most things COVID-related, the government guidance and requirements are constantly changing, so please ensure that you check the government's site for the most up-to-date guidance. Also, most of these issues remain untested in the Tribunals and Courts, so please take advice before proceeding down a particular course.

Current position regarding travel abroad

Links to relevant guidance have been copied below.

Also, travel issues are a devolved issue, i.e. each nation within the UK has the power to make their own decisions on whether and what travel restrictions should be in place. At present, there are some differences across the UK and it's changing regularly, so it's important to check the most up-to-date information where you are.

A failure to follow quarantine requirements can result in a fine of up to £10,000.

It's also important to bear in mind that individual countries and regions will have their own entry requirements.

Q. Can I restrict an employee going on holiday to a country where restrictions are in place?

There may be a number of reasons why an employer might want to restrict an employee from travelling to a country where quarantine requirements are in place, including concerns around becoming ill while away or on return.

However, it's likely that the control an employer can have over what an employee does in their own leisure time will be restricted considerably.

One problem is the employee's right to private and family life, under the European Convention of Human Rights, implemented in the UK by the Human Rights Act 1998. These provisions are not affected by Brexit and remain in force. This right can be restricted in limited circumstances, although it will require a balancing exercise between the reason why the employer wants to restrict it and the employee's right in this regard, so will depend on why the employer is seeking to restrict that right.

This would also be relevant in considering whether an instruction not to travel to a particular country or area amounts to a reasonable management instruction.

Again, this will depend on the reason for the instruction, but if the instruction is not reasonable (and if it triggers the human right mentioned above, this may be a struggle), then the employer may not be able to do a great deal if that instruction is ignored by the employee.

In addition, in some circumstances there is now the possibility of avoiding quarantine requirements because you have been fully vaccinated, so such an instruction may be even less reasonable for those employees (although note from 30 November 2021, because of the new Omicron variant, there is a requirement for all individuals returning to England to take a PCR test by day two of their return and to quarantine until a negative result is received, regardless of age or vaccination status). This does raise the question, though, of how you will know whether someone is vaccinated or not. Such information will amount to special category data under the GDPR and Data Protection Act 2018, so care will need to be taken when processing it. The Information Commissioner's Office has some information on its website regarding this, [here](#). As per the alternative options below, one way of dealing with this is for the employer to make clear to the employee that any period of leave, including any period of quarantine, must be authorised prior to booking and leaving, which may negate the need to request that information – if this turns out to be incorrect and they do have to quarantine, then disciplinary action might be an option.

Another potential issue would be discrimination if the employer attempts to restrict travel to certain countries. Employees who are nationals of those countries could, potentially, claim indirect discrimination on the basis that the employer's policy disproportionately affects them. Whether this is the case will, again, come down to the reasons for the instruction and whether that was proportionate when balanced against the discriminatory impact.

Finally, it might be that such an instruction breaches trust and confidence in that it places restrictions on what someone can do in their private life, which could entitle them to resign and claim constructive dismissal. Once again, the reasons for the instruction and the manner in which it is communicated will be important.

There are options available to employers, though, to limit the impact of the quarantining rules currently in place. You could encourage employees not to travel abroad if they will have to quarantine on their return, unless it was necessary to do so, in accordance with public health advice. You could also advise employees that if they are absent from work because they are required to quarantine on their return, they will not be entitled to pay, unless they take annual leave to cover that period, which would have to be booked beforehand in accordance with annual leave procedures – for options regarding pay, see below. This may have the effect of discouraging some employees from travelling to such countries, although it may be dependent on whether they are able to work from home during that period.

In addition, if someone knowingly travels to a country where restrictions apply and hasn't addressed what will happen regarding quarantine on return, for example annual leave has not been requested or approved for that period, this might be treated as unauthorised absence, although this would be different if the status of the country changed while they were away.

Q. Can I make an employee work during a period of mandatory quarantine after returning from a country where restrictions apply?

The first point to note is that requiring an employee to work somewhere other than where they are self-isolating can result in the employer being fined up to £10,000. See details [here](#).

Therefore, you can't ask them to come into the workplace if they are required to self-isolate. As mentioned above, there are some circumstances in which a fully-vaccinated individual does not have to self-isolate or quarantine – it's important to check the rules where you are.

However, subject to any conditions placed on the mandatory self-isolation or quarantine, they could work from home if that is possible.

Q. What do I pay an employee if they are stranded abroad?

There are several possibilities:

- If they are sick, then they will be entitled to statutory sick pay (SSP). If you have contractual sick pay, then check the wording of this to see if that also applies. The position is less clear if they are not sick but have to self-isolate/quarantine in accordance with local requirements and that period is not authorised by the employer, for example the employee has failed to factor in this period in any annual leave request. In those circumstances, no pay may be payable, and you revert to the third option below.
- If they can work while they are abroad, then they will be entitled to be paid their normal pay. Double check any immigration/visa restrictions and tax issues before allowing this, though.
- If they are not sick and cannot work, then they will arguably not be ready and willing to work and therefore not entitled to be paid for the period of absence. Check the contract to see if there are any terms governing this type of situation. You might also agree for them to use annual leave to cover that period.

One point to note – it's unlikely that you would be able to discipline the employee in these circumstances, although this may depend on the reason why they are stuck, e.g. did they know before travelling that they would not be able to return and failed to obtain authorisation for that period? If you were to dismiss an employee with two or more years' service, they may have a claim for unfair dismissal. Also, if they claim they can't travel because of concerns about serious and imminent risk to health, they may also be protected from any disciplinary action at all, irrespective of length of service.

Q. What is an employee entitled to be paid during mandatory quarantine after returning from a country with such restrictions?

This will depend on how that period of absence is treated which, as per above, should be discussed and agreed with the employer before the employee travels.

It is possible that the employee could take the period as annual leave, for which they would be entitled to their normal pay.

If it is agreed that they can work from home, they would be entitled to their normal pay since they will be working.

It may be that they can be treated as not ready and willing to work, for which they would not be entitled to any pay. There is some uncertainty around this, though, so advice should be sought before deciding not to pay an employee in these circumstances, since getting this wrong can amount to an unlawful deduction of wages. It would also be necessary to check any contractual terms to see if such a situation is covered.

It may be that the employee is entitled to SSP. Under the Social Security Contributions and Benefits Act 1992, in order to qualify for SSP, an employee must be “incapable by reason of some specific disease or bodily mental disablement”. However, some sources have suggested that employees who are required to quarantine may be entitled to SSP, even if they don’t have coronavirus, as they are nonetheless prevented from working.

Regulation 2(1)(b) of the SSP Regulations provides that a person is deemed incapable of work where they are:

“(i) excluded or abstains from work, or from work of such a kind, pursuant to a request or notice in writing lawfully made under an enactment; or

(ii) otherwise prevented from working pursuant to an enactment,

by reason of it being known or reasonably suspected that he is infected or contaminated by, or has been in contact with a case of, a relevant infection or contamination.”

However, whether this can be relied upon in relation to quarantined employees is debatable, particularly if the employee is returning from an area with lower infection rates than the UK. Can these individuals be “reasonably suspected” to have contracted the virus? That will likely depend on where they have come back from.

[Government guidance](#) regarding SSP suggests there is no entitlement for simply having to quarantine following international travel. Also, [Acas guidance](#) states that employees and workers are not automatically entitled to SSP if they are self-isolating after returning to the UK and cannot work from home, but employers can choose to pay them SSP, or a higher rate of sick pay, at their discretion.

The information in this note is correct as at 2 December 2021. Please check government guidance for the most up-to-date position regarding international travel, bearing in mind that there may be differing rules across the UK.

Travel advice links

[FCO guidance: Travel abroad and coronavirus \(COVID-19\).](#)

The [International travel](#) section of [Guidance: \(COVID-19\) Coronavirus restrictions: what you can and cannot do](#) (applicable in England only).

[Travel abroad: step by step.](#)

[Guidance: Coronavirus \(COVID-19\) testing before you travel to England.](#)

[Guidance: Entering the UK.](#)

[Guidance: Booking and staying in a quarantine hotel when you arrive in England.](#)

[Guidance: How to quarantine when you arrive in England.](#)

[Guidance: Coronavirus \(COVID-19\): Test to Release for international travel.](#)

[Guidance: Coronavirus \(COVID-19\): jobs that qualify for travel exemptions.](#)

[Guidance: Coronavirus \(COVID-19\): advice for the freight transport industry.](#)

[Guidance: Travel to England from another country during coronavirus \(COVID-19\).](#)

[Guidance: Demonstrating your COVID-19 vaccination status when travelling abroad.](#)

For information on domestic and international travel from the devolved administrations see:

[Welsh Government: Guidance: Travel and transport advice.](#)

[Welsh Government: Guidance: Arriving in Wales from overseas.](#)

[Welsh Government: Guidance: Testing for people travelling to Wales: coronavirus \(COVID-19\).](#)

[Scottish Government: Coronavirus \(COVID-19\): guidance on travel and transport.](#)

[Scottish Government: Coronavirus \(COVID-19\): international travel and managed isolation \(quarantine\).](#)

[Traveline Scotland: Coronavirus \(COVID-19\): Public transport information.](#)

[NI Direct: Coronavirus \(COVID-19\): international travel advice](#) (applicable in Northern Ireland).