

COVID 19—FAQs for United Kingdom Operations

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The spread of the novel coronavirus (COVID-19) in the United Kingdom has caused employers to be increasingly concerned and uncertain regarding the future of their workforces. Below are some answers to frequently asked questions (FAQs) that employers may be facing as the virus affects UK workforces.

Sending Employees Home; Excluding Employees From Work; Requiring Employees to Work From Home; Returning Employees to Work

Question 1. Can an employer send home an employee involuntarily who has or is exhibiting symptoms of COVID-19?

- Answer 1. Yes. The United Kingdom's workplace health and safety laws impose a duty on employers to take reasonable steps to protect employees' health and safety. The UK Government's official guidance note, "[Guidance for employers and businesses on coronavirus \(COVID-19\)](#)" (as of 20 March 2020), states the most common symptoms of COVID-19 to be a "new, continuous cough or a high temperature." Employees showing symptoms of COVID-19 should be sent home immediately and advised to follow the government's "[Stay at home: guidance for households with possible coronavirus \(COVID-19\) infection](#)" (as updated on 20 March 2020), which specifies that those in single-person households should self-isolate for 7 days and those in multiperson households, where anyone shows symptoms, should self-isolate for 14 days to reduce the risk of cross-infection. The 14-day period starts from the day when the first person in the house became ill; however, if after 7 days the first person to become ill feels better and no longer has a high temperature, that person can return to his or her normal routine. There is now a [stay-at-home guidance illustration](#) (criteria and guidance as known on 17 March 2020) that can help explain the self-isolation process.

Q2. Can an employer send home or require to work from home an asymptomatic employee who has been in close contact with someone with COVID-19 (e.g., a family member, close friend, etc.)?

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- A2. Yes. The law permits employers to immediately send home employees who have been exposed to someone showing symptoms of COVID-19 and ask them to follow the government's "[Stay at home: guidance for households with possible coronavirus \(COVID-19\) infection](#)" (as updated on 20 March 2020). (See question 1.)

Q3. What are the rules on statutory sick pay (SSP) related to COVID-19? Does an employer need to pay SSP from the first day of COVID-19-related absence or the fourth day?

- A3. Regulations providing statutory sick pay for those who self-isolate in accordance with the public health guidance on coronavirus were brought into force on 13 March 2020. These regulations provide that an employee will be entitled to SSP from [the first day](#) of the isolation period for sickness absence related to COVID-19.

Employers may also want to consider the [ACAS \(Advisory, Conciliation and Arbitration Service\) guidance](#), "Coronavirus (COVID-19: advice for employers and employees," which states that employers might consider paying contractual sick pay rates for any period during which an employee is required to self-isolate, although this is not a statutory requirement. Where employees are able to work remotely during self-isolation, they are entitled to receive their normal pay.

Q4. Can an employer send home or require to work from home an asymptomatic employee returning from travel to an area with "widespread sustained" transmission?

- A4. There is currently no specific guidance on what those returning from overseas should do, but it would seem prudent that they follow the general self-isolation guidance if they believe they may have been exposed to COVID-19 and stay at home for 7 or 14 days as appropriate for their households.

The Foreign and Commonwealth Office (FCO) has issued its guidance note, "[Travel Advice: Coronavirus \(COVID-19\)](#)" (as of 18 March 2020), advising against all nonessential overseas travel worldwide due to the risk of unexpected border closures. This advice took effect 17 March 2020 and applies initially for a period of 30 days. British citizens who are already abroad or employers whose staff are abroad can consult the FCO's [country by country](#) advice for updates on a regular basis.

Q5. Can an employer require an asymptomatic individual with no known exposure to COVID-19 to work from home for a certain period as a preventive or precautionary measure?

- A5. Yes. The "[Guidance for employers and businesses on coronavirus \(COVID-19\)](#)" (as of 20 March 2020) states that "businesses and workplaces should encourage their employees to work at home, wherever possible." Where an employee's duties do not allow work from home, the government is not yet requiring that businesses close or employees be sent home, but those employees who can work from home should be encouraged to do so. Businesses can keep monitoring the [government response page](#) for the latest details.

Q6. When can an employee who was sent home for exhibiting symptoms (fever, cough,

difficulty breathing) return to work?

- A6. At the moment, the government recommends that no employees should be at work (regardless of symptoms) if they are able to work from home.

Employees who cannot work from home and who live in single-person households may stop self-isolating after 7 days if their symptoms are progressively improving and they no longer have a high temperature. The government advises that those living in multiperson households must self-isolate for 14 days; however, if after 7 days the first person to become ill feels better and no longer has a high temperature, that person can return to their normal routine. There is now a [stay at home guidance illustration](#) (criteria and guidance as known on 17 March 2020) that can help explain the self-isolation process. Any individual whose symptoms have not improved after this time or whose condition deteriorates should contact the National Health Service (NHS) 111 medical helpline or local medical services for specific medical advice.

Employers considering implementation of policies beyond the government guidance (e.g., a longer “return to work” time period) may want to consider the impact on employee relations and on their businesses and make business decisions as to whether they wish to exceed minimum guidelines. An employer may want to meet with any returning employees to remind them to practice good respiratory etiquette and hand hygiene, avoid close contact with individuals outside the workplace who appear to be sick, and stay home if they begin to exhibit any COVID-19 symptoms, for the health and safety of those employees and their coworkers, as well as the continued operations of the employer.

Q7. Can an employer require a return-to-work doctor’s note for an employee to return to work after exhibiting COVID-19 symptoms?

- A7. Employers may want to allow employees to self-certify within the company’s normal sickness absence policies. A doctor’s note should not be a prerequisite for returning to work. This is in part because this requirement would place a high burden on the healthcare system, and the NHS may not be able to provide documentation in a timely fashion. Employees who are confirmed to have contracted COVID-19 will be provided with individual advice by the NHS regarding when they can return to work.

Q8. If an employee cannot work from home and says he or she is ready to return to work, but the employer is concerned the employee will not be able to safely perform his or her duties, can an employer refuse to allow the employee to return to work?

- A8. Yes, if the employee would create an unsafe or unhealthy work environment or is a direct threat to himself or herself or others. Often, having a one-on-one conversation with the employee will reveal the reason for his or her desire to return to work (e.g., he or she has exhausted all paid sick leave, has an important project to finish, etc.) and perhaps result in a shared conclusion that he or she is or is not ready to return to work. Employers may want to be flexible and exercise a degree of discretion around normal sick leave policies given the unusual and fast changing circumstances.

Holidays and Vacations; Paid Time Off; Paid Sick Leave

Q9. Can an employer require an employee with COVID-19 to use his or her vacation time and/or other paid time off for the absence?

- A9. No. In confirmed cases of COVID-19 infection employees are entitled to sick leave as per their employer's normal policies.

Q10. Can an employer require an employee who is self-isolating to use his or her annual leave and/or other paid-time-off leave for the absence?

- A10. No. Employees who need to self-isolate should not be required to use annual leave in order to fulfill this requirement. Instead, employees may be counted as absent due to sickness.

Q11. Can an employer set up a plan to excuse or otherwise not count absences related to COVID-19, whether for an actual illness or a quarantine period?

- Q11. Yes. Employers may want to be prepared to apply normal policies flexibly given the changing nature of the situation and determine any deviation from their normal policies, including how and when it will apply. Employers may want to ensure that any such policy deviations are consistently applied to everyone.

Q12. Can an employer opt to pay contractual sick pay to an asymptomatic employee who has been quarantined, even if the employer's policy does not provide for paid leave in this situation?

- A12. Yes. Employers may want to clearly establish any deviation from their normal contractual sick pay policies and be specific as to how and when it will apply. The UK government has stated that employees who are required to self-isolate in line with government guidance will receive statutory sick pay from the first day of any isolation period.

Q13. Are employees entitled to paid time off to look after their children now that school closures have been announced?

- A13. No. There is no obligation on employers to grant employees additional paid time off to look after children.

Employees are entitled to time off work for dependents in an unexpected event or emergency. The amount of time off an employee takes to care for a dependent must be reasonable for the situation. There is no statutory right to pay for this time off; however, some employers might offer pay depending on the employment contract or workplace policy. Employees also have an entitlement to take unpaid parental leave for up to 4 weeks per child per year.

Employees may request to use some of their annual leave entitlement to look after their children during the school closures, either in blocks or spread over a number of weeks. If an employer exercises its discretion to grant employees additional paid time off, it is prudent to do so fairly and in a nondiscriminatory manner.

Following Prime Minister Boris Johnson's announcement on 18 March 2020, and given the unusual circumstances, employees and employers may wish to be flexible in how they approach working from home. If someone says they can work, whether their full hours or part-time hours around childcare, employers may want to arrange to pay their employees their normal or potentially pro-rata salary (i.e. reducing hours (and pay) by agreement). For example, employees may wish to split working time and childcare with partners and/or share childcare with other parents. Some employers may be willing to allow employees to work from home on full pay with the exception that they do as much work as they can. Again, it is prudent to take this approach fairly and in a nondiscriminatory way. Employers and employees will need to agree on a working pattern that will work for both the business and the employee.

It is important that the employer highlight that the new working arrangements will be kept under review. Also, when putting together options for employees, employers may want to consider whether their home working policies need to be updated, specifically if they currently contain a restriction on home working whilst looking after children.

Confidentiality

Q14. Is an employer's knowledge that an employee has COVID-19 subject to privacy restrictions?

- A14. Employers can ask employees about the state of their health where the health and safety of other employees may be at risk—as with the COVID-19 infection. However, any information relayed to the employer by the employee about the employee's health remains special category personal data under the General Data Privacy Regulations (GDPR).

Q15. Can an employer disclose an employee's actual or probable COVID-19 diagnosis to others?

- A15. Employers may inform employees if there is a risk that they have been exposed to COVID-19 on work premises. However, unless the affected employee freely consents, they may not divulge the identity of any employee diagnosed with the illness. Employers may want to give employees the information necessary to adequately inform them of their potential workplace exposure. For example, employers can communicate to nonexposed employees that there has been a COVID-19 diagnosis within a workplace without sharing additional identifying information. The Information Commissioner's Office (ICO) has stated that employers that inadvertently share too much information in a bid to protect employees' health will not be penalized.

Workplace Health and Safety

Q16. Can an employee refuse to come to work due to a fear of becoming infected with COVID-19?

- A16. Potentially. While each situation is different, and a generalized fear of contracting COVID-19 is not likely to justify a work refusal in most cases, employers may want to conduct

a thorough review of the facts before any disciplinary action is taken against an employee who refuses to perform his or her job for fear of exposure to COVID-19.

Q17. Can an employer refuse an employee's request to wear self-provided respiratory protection and/or gloves?

- A17. Yes, if such measures are not otherwise required by health and safety legislation or if the employer determines that the employee's use of respiratory protection or gloves in and of themselves presents a hazard to the employee (e.g., if they interfere with the employee's ability to work safely). The NHS states that the use of masks or respirators is not required and not protective for the general public working in non-healthcare settings. Employers may bar employees from wearing self-provided respirators, because there is not a recognized health and safety risk in this scenario.

Q18. What are the health and safety compliance implications of COVID-19?

- A18. The Health and Safety Executive does not have a specific standard or regulation that requires employers to take any particular actions with regard to COVID-19. However, employers are required to protect and safeguard the health and safety of all employees under the [Health and Safety at Work etc Act](#).

The NHS has issued specific guidance for workers in healthcare settings who may be at risk of contracting COVID-19 due to occupational exposure. This guidance will be circulated throughout the NHS and allied workforces.

Non-healthcare employers may wish to consider commonsense measures, such as providing alcohol wipes to sanitize keyboards and work areas, encouraging employees not to shake hands, and providing employees with hand sanitizers in order to limit the risk of COVID-19 transmission in the workplace.

General Guidance for All Workers and Employers

Following [guidance](#) from the NHS, for all workers, regardless of specific exposure risks, it is sound practice to:

- Frequently wash hands with soap and water for at least 20 seconds.
- When soap and water are unavailable, use an alcohol-based rub with at least 60 percent alcohol. Always wash hands that are visibly soiled.
- Avoid touching the eyes, nose, or mouth with unwashed hands.
- Avoid shaking hands or other close physical contact as much as possible.
- Avoid close contact with people who are exhibiting signs of illness.

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