

## **COVID 19 - What should I pay an employee/worker who is in self-isolation?**

### **Self-isolation in accordance with the government guidance:**

The latest government guidance provides that employees and workers should self-isolate if either:

- They have been advised to shield and are therefore unable to work
- They have been advised to self-isolate for one of the below reasons and there are unable to work:
  - Experiencing symptoms of COVID-19
  - Living with someone (or in an extended household with someone) who is isolating due to having symptoms of COVID-19
  - Developed symptoms of COVID-19 while already self-isolating due to a member of the employee's household having symptoms
  - Notified to self-isolate by a government 'test and trace' service for the duration specified in the notification
  - Tested positive for COVID-19
  - Living with someone (or in an extended household with someone) who has tested positive for COVID-19
  - Advised to self-isolate at home for a period of up to 14 days before their admission date to hospital for a surgical or other hospital procedure

"Symptoms" means a continuous cough, a high temperature, or a loss of or change in their normal sense of taste or smell

If someone has symptoms and lives alone, they must self-isolate for 10 days.

If someone has tested positive, they must stay at home for 10 days. If symptoms develop during this period, the 10 days restart from the date the symptoms first appeared.

If someone lives in a household and is the first to have symptoms, they must self-isolate for 10 days. Everyone else in their household must self-isolate for 14 days. If anyone else in the household starts displaying symptoms, the person with the new symptoms must self-isolate for 10 days from the date their symptoms develop. This is regardless of where they are in the 14-day isolation period.

If someone has high temperature which persists after 10 days, they must continue to self-isolate until their temperature returns to normal and seek medical advice.

If a person is told to self-isolate by the "test and trace" service, they must self-isolate for 14 days. If they develop symptoms, everyone in their household must self-isolate for 14 days from the date the individual's symptoms develop.

In such circumstances as above, employees and workers are entitled as a minimum to statutory sick pay (SSP) from the first day of absence.

From the 16 April 2020, employees or workers in the clinically extremely vulnerable category who were written to by the NHS or their GP and advised to shield, are also entitled to SSP<sup>1</sup>. However, shielding in England, Scotland and Northern Ireland was paused indefinitely on 1<sup>st</sup> August 2020 and on 16<sup>th</sup> August 2020 in Wales although there is the potential for it to be reactivated on a local level for some of the very high alert level areas subject to the Chief Medical Officer's advice. Therefore, there is no further entitlement to SSP from these dates unless the individual meets one of the other eligibility criteria, or if the individual has been sent a further shielding letter. Therefore, please make reference to the Government guidance for the most up to date position.

If you offer a more generous contractual sick pay entitlement, then employees who are unable to work due to being unfit should receive pay in line with their contractual entitlement. In the event that the employee is self-isolating in accordance with the above guidance but has no symptoms, but they cannot work from home, then it would be best practise to pay company sick pay<sup>1</sup>.

Employees/workers should still be required to report their absence in accordance with your usual sickness absence reporting procedures. However, you may need to relax the rules regarding provision of fit notes for absences over 7 days given individuals are advised to refrain from attending G.P. surgeries/hospital. Instead, the government has now introduced online Isolation notes which will provide employees/workers with evidence for their employers that they have been advised to self-isolate due to coronavirus, either because they have symptoms or they live with someone who has symptoms, and so cannot work.

The notes can be accessed through the NHS website and NHS Mobile Phone App. The user is required to answer a few questions, following which the note will be emailed to them or direct to their employer if they chose. The service can also be used to generate an isolation note on behalf of someone else.

As the note is provided without contacting a doctor, the system relies on the good faith of individuals answering the questions honestly. Given the current climate you would hope that most people will do this. However, if you have reason to believe that an employee is being dishonest and are not genuinely self-isolating (for example there are social media posts of them out in public) then this could be considered gross misconduct and will need to be investigated in accordance with your disciplinary policy.

Employees who are shielding will have received a letter from either the NHS or their GP letter telling them to stay at home because they are at high risk of severe illness from COVID-19.

Employees who have been told self-isolate by the “test and trace” service will have the notification from the NHS or public health authorities notifying them of the requirement to self-isolate because they have come into contact with someone with COVID-19. If they then develop symptoms themselves, they will need to restart the self-isolation period in accordance with the above guidance.

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<sup>1</sup> There is a technical legal argument that company sick pay may not be due in these circumstances, however please contact us if you would like to discuss this further.

Employees who are due to undergo an operation will have been notified in writing by a registered medical practitioner (or other person or body permitted to make the notification) that they are to undergo a surgical or other hospital procedure and are advised to stay at home for a period of up to 14 days before their admission date to hospital for the operation.

Of course, if an employee/worker is still able to work whilst self-isolating, they should continue to receive their normal pay.

#### **Employee/worker wishes to self-isolate**

If an employee/worker does not want to go to work due to concerns about either themselves catching the virus or because they live with someone who is vulnerable, you should listen to any concerns that the individual has and discuss whether they could be mitigated. For example, the ACAS guidance suggests employers could offer extra car parking where possible so that people can avoid using public transport.

If the concern is in relation to the employee/worker's own health, it may be prudent to ask them to provide medical evidence or refer them to Occupational Health (which may then entitle them to SSP or company sick pay).

If the employee/worker still has concerns and does not want to attend work, employers could consider whether home working is an option or whether holidays or unpaid leave could be given. There is no obligation on an employer to agree to this and in such circumstances, in the absence of medical evidence the employee/worker would not be entitled to SSP or company sick pay.

Ultimately if an employee refuses to attend work without a valid reason, it could result in disciplinary action. However, we would advise employers to take advice in these circumstances.

At present the government guidance is being updated daily so please look out for any further changes affecting the above.

We'll keep you posted.

**Vista Employer Services Ltd**

**21<sup>st</sup> October 2020**

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<sup>i</sup>This was confirmed by The Statutory Sick Pay (General) (Coronavirus Amendment) (No. 3) Regulations 2020 which came into force on 16 April 2020.