

## **COVID-19 and Absence Management**

*What if an employee triggers your Absence Management Policy as a result of being infected or self-isolating in accordance with government guidance?*

### **Fairness:**

Employers are under a duty to act reasonably in all the circumstances.

Therefore, we foresee that an Employment Tribunal would take a dim view if an employee on a final written warning for absence, then had a further absence due to either being infected or self-isolating on medical advice and as a result lost their job.

Case law demonstrates that if an earlier warning was “manifestly unfair” this could subsequently result in a finding of unfair dismissal.

We would therefore advise employers to consider either taking no action or re-issuing the previous warning.

### **Reporting procedures and evidence:**

Employees 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 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 111 online](#). 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.

### **Sick Pay:**

If the employee has exhausted their contractual or statutory sick pay entitlement prior to a period of coronavirus related absence, then there is no right to additional pay. Therefore, they would only be entitled to either SSP or if SSP had also been exhausted, depending on eligibility, they may be entitled to claim certain statutory benefits such as universal credit. Further, from 28<sup>th</sup> September 2020 some low-income employees in England may be entitled to a £500 self-isolation payment.

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

For considerations relating to mandatory self-isolation, please see [our guidance on the coronavirus advice hub here.](#)

We'll keep you posted.

Vista Employer Services Ltd

29<sup>th</sup> September 2020