

## How to manage team members' overseas summer holiday plans in the light of the Government's quarantine rules.

With effect from the 8<sup>th</sup> June, anyone who returned to the UK from being overseas who was not exempt due to their occupation ([see here for more information](#)) or because they had travelled from the Common Travel Area, was required to self-isolate for 14 days.

From 10 July 2020 individuals will not have to self-isolate when they arrive in England, if they:

- are travelling or returning from one of the [countries with travel corridor exemption](#)
- have not been to or stopped in a country that's not on the [travel corridors exemption list](#) in the previous 14 days

It is an offence to not adhere to the self-isolation requirement, punishable by a fine.

The precise rules for self-isolation differ depending upon where in the UK the employee is returning to – the Government guidance above sets out the rules in detail.

*Unless team members are able to work from home for that 14-day period, how do employers manage the potential for absence from work arising from this self-isolation requirement?*

To answer this question, this note considers:

- First, what steps can employers take to prevent the need for employees to self-isolate after their holiday.
- Second, how to treat that absence, if it does occur?

### **Engage with employees in advance of them taking their leave**

As a start point it would be sensible to engage with your employees who have annual leave booked and try to ascertain whether they are intending to travel abroad, and for what purpose i.e. for a holiday, to visit family, or for religious reasons etc.

If an employee does plan to travel abroad [to a country without travel corridor exemption](#) and therefore, will be required to self-isolate for 14 days upon their return and it is not possible for them to work from home during that period, you will need to consider how to treat the leave in question (see below).

It is unlikely to be a 'lawful and reasonable management instruction' to require an employee not to go on their holiday because of existence of the requirement to self-isolate.

However, you should make your employee aware in advance of how you treat the self-isolation period and make them aware of any possible consequences of them traveling abroad whilst on leave so that they can make an informed choice as to whether they still wish to travel in light of this.

The employee may wish to cancel their leave and rebook it at a point later in the year when restrictions on foreign travel are eased. In such a circumstance you will need to consider whether you are happy for employees to cancel pre-existing leave or whether you still wish for them to take it.

It would be important to lay out the options for employees well ahead of their planned leave so that they have the opportunity to reflect, plan and update their manager

If an employee does still wish to take their leave and travel abroad, you will need to make a decision as to how the business will treat the self-isolation period. We have identified 4 possible options and the potential consequences of each below that you may wish to consider depending the operational impact of the self-isolation period. Importantly which ever option you choose; you should stick to it.

#### **Holidays or unpaid leave:**

If operationally you can withstand a further period of absence from the business, you may wish to allow the employee to use additional holiday to cover the self-isolation period. Alternatively, you could agree that they will take it as period of authorised unpaid leave.

It is unlikely that employers will be able to force employees to take their statutory annual leave to cover the period of self-isolation. Aside from the practical issues of giving notice (the employers would be required to give 28 days' notice before the first day of self-isolation) because employees will effectively be confined to their house, it is arguable that they would not be able to enjoy 'relaxation and leisure' whilst self-isolating. This would mean that the time off work would not be treated as using up their holiday entitlement.

#### **Treat the leave as sickness absence:**

Employees are not currently entitled to Statutory Sick Pay (SSP) if they are self-isolating after entering or returning to the UK and do not need to self-isolate for any other reason.

You may wish to refer to the way the right to Company Sick Pay (CSP) is drafted and the extent to which the organisation has discretion whether to make the payment. If the entitlement is linked to being 'incapacitated', then the employee may be entitled to it. On the other hand, if the payment is linked to the employee being 'unfit for work due to illness', then it's at least arguable that the entitlement to payment does not arise. If you did not wish to pay CSP to an employee self-isolating upon return from a foreign holiday you would need to ensure this does not amount to a breach of contract if your sick pay scheme is drafted in a way which give a right to payment.

If you do decide to pay CSP It would also be prudent to inform the employee prior to them taking the leave that it would be treated as a period of sickness absence for the purposes of the Company's Sickness Absence Policy and what their pay entitlement is. This will then allow employees to make an informed choice about whether to travel abroad or not given the consequences.

#### **Give the employee notice to cancel their leave**

It is possible for the employer to serve employees notice not to take statutory leave providing that the notice is at least equal to the employee's planned period of leave. This may theoretically be possible depending upon when the leave is due to be taken. However, such action is likely to be contentious if the employer has previously authorised the leave and the employee has booked and paid for a holiday in good faith in reliance on this.

#### **Treat the period of self-isolation as unauthorised absence**

Whether or not the self-isolation could legitimately be regarded as a period of unauthorised absence will depend on how the issue is broached with employees before they take their holiday. At the very least the employer would need to set out the circumstances in which, notwithstanding that self-isolation is mandatory, this period of leave would be treated as unauthorised and the potential consequences of breach. This could be the case for example where the parties fail to reach agreement about arrangements for a forthcoming period of leave during which the employee confirms that they intend to travel overseas.

We would strongly advise that you take advice before pursuing any form of disciplinary action for unauthorised absence.

It is also prudent to note that in certain circumstances having a blanket policy around restrictions on holidays/travel or pay may amount to indirect discrimination. For example, 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 new policy disproportionately affects them. Therefore, again we would urge employers to take advice before acting.

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**Vista Employer Services Limited**