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Coronavirus and Addressing the Employment Issues

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Biography

Tina Chander is a Partner and Head of the Employment team at leading Midlands law firm, Wright Hassall (<https://www.wrighthassall.co.uk/expertise/employment-hr/>) where she deals with contentious and non-contentious employment law issues. She acts for employers of all sizes from small businesses to large national and international businesses, advising in connection with all aspects of employment tribunal proceedings and appeals.

Wright Hassall (<https://www.wrighthassall.co.uk>) is a top-ranked firm of solicitors based in Warwickshire, providing legal services including: corporate law; commercial law; litigation and dispute resolution; employment law and property law. The firm also advises on contentious probate, business immigration, debt recovery, employee incentives, information governance, professional negligence and private client matters.

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Abstract

The increasing severity of the coronavirus outbreak (officially Covid-19) has moved beyond just a risk to health, as it begins to impact stock markets around the world and the way businesses undertake their commercial activities. Despite the relatively low number of cases in the UK, employers with globally connected workforces will need to monitor the impact of the outbreak and take steps to protect their employees where necessary.

In this article, the author discusses how employers need to consider how best to mitigate the risks facing their employees and the organization as a whole, whilst addressing issues like sick leave when dealing with cases of quarantine and self-isolation, home working whilst remembering the duty of care they owe employees under UK health and safety law.

Introduction

While the coronavirus outbreak (officially Covid-19) has raised serious health concerns, its impact on stock markets around the world has become an issue for businesses and the way they undertake commercial activities.

The Government has now confirmed that workers will get statutory sick pay from the first day off work, not the fourth, to help contain coronavirus, arguing people



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who self-isolate are helping protect others from the virus and should not be penalized, but this raises more questions about sick-pay and working from home.

Reducing the risk to employees

Despite the relatively low number of cases in the UK, employers with globally connected workforces will need to monitor the impact of the outbreak and take steps to protect their employees where necessary. The sensible course of action for employers to take at this stage is to note the advice given by official bodies and ensure that this is shared throughout the workforce.

Given the action that should be taken if an employee suspects they may have picked up the virus, it would be sensible to designate an available space as an 'isolation room', to which any such employee could retire whilst calling 111.

Other steps to take include:

- Ensure that the contact numbers and emergency contact details of all members of staff are up to date.
- Ensure that managers are aware of the symptoms of the virus and how to spot them.
- Disseminate information across management on issues such as sick leave and sick pay and the procedures to follow if an employee develops symptoms of the virus.
- Ensure that facilities for regular and thorough washing of hands are in place, including hot water and soap.
- Dispense hand sanitizers and tissues to employees.
- Weigh up the pros and cons of supplying protective face masks to employees who may be working in particularly high-risk scenarios.

Given the advice around hand-washing in particular and the length of time suggested to do it properly, organizations should advise all their employees to wash their hands thoroughly and let them know they will not be penalized for the extra time taken.

Good practice starts with good communication and regular updates for all employees, by email, note on the desk, poster on the noticeboard, update on the intranet, etc., will demonstrate the organization is taking the situation seriously and doing all it can to protect its workers.

What to do if an employee becomes unwell

If an employee exhibits the symptoms of the virus, they should be removed from the proximity of other employees, placed in the designated 'isolation room' and encouraged to follow precautions.



The employee when calling NHS 111 should be advised to give the operator the following details:

- Their symptoms;
- The name of any country they have returned from in the past fortnight.

Uncertainty over the seriousness of the virus, the exact nature of the symptoms and concern about the situation regarding issues such as sick pay may lead to some employees coming to work despite having contracted the virus, without necessarily feeling unwell.

If this does happen, then an employer should contact the local Public Health England (PHE) health protection team and they will discuss the details, identify anyone who has been in contact with the employee in question, carry out a risk assessment and outline any precautions which should be taken.

The position on sick pay

If an employee is off sick with the virus then the legal situation regarding sick pay is the same as it is with any other illness however the employee is now entitled to statutory sick pay from the first day of work, not the fourth.

The government has stated that if NHS 111 or a doctor advises an employee or worker to self-isolate then they should receive any statutory sick pay due to them or contractual sick pay if this is offered by the employer.

In some cases, employees may be able to work from home while in self-isolation. However, in many cases, if an employee cannot attend their place of work, they will be unable to work.

Currently, there is no bespoke advice for specific industries, but as the impact of Coronavirus spreads, we may see more advice and contingency plans develop to ensure essential and core services continue to operate.

In some cases, an employer might prefer an employee not to come into work, if they have returned from a high-risk area for example and in these circumstances the employee should receive their usual pay.

Employees may be reluctant to come into work due to general concerns about the virus, particularly if they belong to a group at higher risk of complications, like those with existing medical conditions or the elderly.

In such cases you should offer flexible solutions such as working from home if possible. Alternatively, although there is no legal obligation to do so, you could offer the time away from work as a holiday or unpaid leave.

Ultimately, there is no obligation on an employer to allow an employee to stay away from work and, if the non-attendance causes issues or extends beyond an emergency precaution, then an employer is entitled to take disciplinary action.



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As things stand at present it is still unlikely that any workplaces will have to close as a result of the virus, but it's a potential risk and organizations should have contingency plans in place.

No time to be divisive

Employers must also take steps to ensure that no members of staff, customers or suppliers are treated differently because of their race or ethnicity.

It may be appropriate to remind staff that jokes and banter, even if light-hearted, may easily slip over the line to become unlawful harassment and/or discrimination, for which an employer may be liable.

Employers can avoid liability if they can show they took 'all reasonable steps' to prevent employees behaving in such a manner.

Taking reasonable steps can include having well publicized diversity and harassment policies and training all staff on the issue. Managers must also be trained about their responsibility to identify and prevent discriminatory behaviour.