

Clearly they are working some nights at the Department for Health and Social Care even longer than their days, judging by the government's new Coronavirus Bill issued today.

This is 329 pages of close-packed detail on emergency measures on everything from protection of the food supply chain to school closures, and from NHS pensions to video links at criminal hearings. It also contains a number of employment-related provisions of immediate application to employers:

Statutory sick pay

The Bill and Regulations to be made under it will formally enact provisions which, are scarcely a week from their conception but already such is the pace of development in this area, feel a bit like old news:

1. Anyone self-isolating on medical advice will be deemed incapacitated for work within the SSP regulations, and so be entitled to SSP even if they are not actually infected or unwell;
2. SSP will be payable from Day 1 of that deemed incapacity (or actual incapacity if it is by reason of Coronavirus, defined somewhat superfluously as "Severe Acute Respiratory Syndrome Coronavirus 2").
3. Employers making SSP payments will be entitled to recovery of all or part of those sums backdated to 13 March and prospectively an additional sum, "except in prescribed circumstances", i.e. the default position is that employers will be entitled to benefit from this.
4. The Regulations to be issued subordinate to the Bill will include the mechanics behind that recovery. These may include its being funded in whole or part in advance, and/or (probably more likely) by deduction from sums otherwise due by the employer to HMRC. As a safeguard against unwarranted claims, the Regulations will also include provision for recovery by HMRC of sums overpaid to employers under this scheme.
5. Clause 37 of the Bill lays off to those intended regulations the detail of how an employer makes a claim for reimbursement/funding, how HMRC will rule upon that application, and what records of the payments made the employer will need to keep. These are likely to include detail enough to justify a reasonable belief on its part that the employee is genuinely self-isolating pursuant to official or medical advice, or is actually ill, and adequate to separate Coronavirus-related absence from incapacity on other grounds in respect of which the inability to recoup SSP and the 3 day waiting period will still apply.

6. The government has issued out with the Bill a specific form of "isolation note" available through the NHS Online which will be seen as adequate confirmation by the employee that he/she had been advised to self-isolate. This is designed to circumvent the need to see a doctor to obtain a note where the current crisis makes that impracticable.
7. Though it does not appear in the Bill itself, these concessionary rules are unlikely to apply to employers with 250 or more employed staff (including workers), since they are (maybe boldly in some cases) assumed to be financially robust enough to carry that cost.

Emergency Volunteers

Clauses 7 and 8 and Schedule 6 of the Bill make provision for Emergency Volunteering Leave. Key points are:

1. Subsidiary Regulations will include provision for payment to volunteers in respect of any loss of earnings plus travel and subsistence expenses. However, "loss of earnings" means a loss the person would otherwise not have suffered. Therefore if the employee is already laid off without pay, he/she won't be able to recoup anything bar expenses from the State.
2. By Schedule 6 of the Bill, the volunteer must give the employer at least 3 days' written notice of his/her intention to be off work volunteering in health or social care. This is limited to a period of 2, 3 or 4 consecutive weeks in any 16. That notice will need to be accompanied by a certificate from the relevant authority confirming the dates on which the individual will be volunteering.
3. These provisions do not cover certain categories of employee, including in particular those in businesses with less than 10 staff.
4. Schedule 6 then sets out what you would rather have hoped to be an unnecessary scheme for the protection of volunteers very similar to those taking family-friendly leaves – preservation of terms and conditions, protection against leave-related detriment or dismissal, return to their old job, etc.
5. Last, the new rules do not contain any provision allowing an employer to refuse leave for this purpose even if, say, the request comes from a key employee at a particularly awkward time for the business. While it is no doubt expected that employers would gladly lend their employees to the common cause anyway, the Bill gives them no choice.

The Bill does not contain details of any government proposals to prop up salaries akin to those seen in a number of European countries. If such a scheme is introduced, it will be legislated upon separately.