Over the last few days, we have received an increasing number of enquiries from employers about the coronavirus and what they should be doing from an employment law/ HR perspective.

We set out below our outline answers to some of the questions we have been asked, together with some practical tips on how to deal with this issue.

We will keep this note under review, as we appreciate that the situation is evolving and the government's guidance to employers may change.

What are our obligations from a health and safety perspective in relation to our staff?

Employers have a duty to ensure the health and safety of their employees and non-employees (contractors, members of the public, etc.) so far as is reasonably practicable. This would include taking reasonable steps to control the spread of the coronavirus at sites under the control of the employer. Employers should carry out a risk assessment and then implement reasonably practicable control measures to either eliminate or mitigate the coronavirus hazard. From a practical perspective, we would recommend that employers:

1. Ensure staff are aware of the symptoms and the latest advice on how to minimise the risk of infection.

2. Implement a reporting procedure for anyone with symptoms.

3. Implement a reporting procedure for individuals who have recently visited "high-risk" areas, such as China, Northern Italy, etc. This may mean that staff have to "self-isolate" if they have returned from a high-risk area (see below for further guidance).

4. Make individuals aware of the latest government guidance.

5. Ensure any control measures identified by the risk assessment are aligned with the government's advice.

Employees are under a legal obligation to cooperate with their employer and other duty holders to enable them to comply with health and safety legislation.

Should we place restrictions on our staff in terms of work-related international travel?

As at 3 March 2020, the advice from the Foreign and Commonwealth Office (FCO) is that UK nationals should leave China, where possible. The UK government is concerned about the pressure that is being placed on the Chinese health system and that it may become harder for people to travel in and out of China. In light of this, employers should clearly avoid sending staff to China for the foreseeable future for work-related purposes, where possible. It is time to make use of those videoconferencing/Skype facilities, etc.

Employers should consider placing similar restrictions in relation to non-essential travel to other high-risk areas, e.g. Northern Italy and South Korea.

In what circumstances are our staff required to stay away from work?

Again, the position is changing quite quickly, but the latest advice from the FCO is that anyone who has returned to the UK from the following areas in the last 14 days should "self-quarantine" and stay away from work, even if they are not displaying any symptoms: Iran, specific lockdown areas in Northern Italy, "special care zones" in South Korea and Hubei province. This information is being updated on an ongoing basis, so employers should ensure they monitor the situation.

Other employees should only stay at home if they have travelled to certain countries (see the latest advice from the FCO as this list is changing) and **then** develop symptoms of a cough, fever or shortness of breath, however mild. As a general rule, therefore, employers should not require staff to stay away from work simply because they have travelled to these countries. Taking any steps to force them to do so (even if under pressure from other members of staff) may amount to a breach of the implied term of trust and confidence. Employees may be willing to work from home for a period of time (the incubation period for the virus is estimated to be between two and 14 days), but employers should be very careful about how they approach such conversations so as not to put themselves at risk of a claim.

Do we have to pay an employee if they self-isolate?

Clearly, if a member of staff is actually unwell with the coronavirus, you should pay them in accordance with your usual sick pay/leave arrangements.

The position becomes less clear if they are self-isolating in line with the latest government guidance, but are not (outwardly, at any rate) actually unwell.

We understand that the Health Secretary, Matt Hancock, told MPs: "self-isolation on medical advice is considered sickness for employment purposes. That is a very important message for employers and those who can go home and self-isolate as if they were sick, because it is for medical reasons". However, it is not clear on what basis he has reached this conclusion. It may be a loose reference to the fact there are provisions buried in the legislation under which individuals can be deemed to be sick for SSP purposes in certain circumstances. Further clarity from the government would be welcome.

Employers should obviously check their own policies/contracts concerning pay, but it would be unusual for employees to have a contractual right to pay/sick pay in these circumstances. Some employers may choose to treat such periods of absence as sickness for their own company sick pay purposes.

Acas has recommended in its guidance on the coronavirus that employers treat such leave as sick leave and follow their usual sick pay policy or agree for the time to be taken as holiday.

It would clearly be best practice to pay employees their normal pay in these circumstances and we note that some large employers have already adopted this approach, not least because otherwise employees may try to come into work, putting others at risk. We would, however, recommend that employers take specific advice on this issue before agreeing to anything, as there may be circumstances where it is not appropriate to adopt/continue with this approach. It may also lead to 'copycat' absences once employees are aware that company policy is that they will be paid as normal when absent due to self-isolation.

If an employee is able to work from home, this makes things simpler, as the employer should allow this and continue to pay the employee as normal. We recognise that this will not be practicable for all employees.

How should we deal with a member of staff who refuses to come to work because they are concerned about the risk of infection?

In light of the current threat level in the UK, it is unlikely to be reasonable for an employee to refuse to come to work on this basis, especially if there have been no cases in their specific workplace. Clearly, however, an employer should take steps to understand an employee's concerns before taking any action, especially if they may be at greater risk from developing the coronavirus. In light of the current media coverage of the coronavirus and stories about whole offices being sent home, it is not surprising that some individuals are worried about contracting the virus and are keen to take steps to minimise the risk of infection.

If you are communicating with your staff about the virus and what steps the company is taking to protect the health and safety of its staff, the risk of employees refusing to come to work is likely to be reduced. If there is some basis for their concerns, you may want to think about allowing them to work from home for a period of time, taking some annual/unpaid leave, etc. It might also be useful to remind them of other support services you have in place, such as employee assistance programmes and wellbeing programmes.

What should we do if a member of staff is confirmed as having the virus and has recently been in the workplace?

The current advice from the government is that, in such circumstances, the employer should contact the Public Health England local health protection team to discuss the situation, identify people who have been in contact with the individual and discuss any actions or precautions that should be taken. A risk assessment will be undertaken by the health protection team and advice to the company will be based on this assessment. The government says that closure of the workplace is not recommended. A knee-jerk response risks demonising the sick employee in circumstances where it may not be down to them at all.

If our staff say they want to wear facemasks at work, are we entitled to say no?

In the majority of circumstances, yes. The current advice from the government is that employees are **not** recommended to wear facemasks to protect against the virus. It recommends that facemasks are only required to be worn by "symptomatic" individuals (as advised by a healthcare worker) to reduce the risk of transmitting the infection to other people. Similarly, the latest advice from the World Health Organization is that people only need to wear facemasks if they are treating someone who is infected with the coronavirus.

If staff are concerned about contracting the virus, they should follow normal best practice about reducing the risk of infection, e.g. washing hands frequently, disposing of tissues, etc.

If the situation worsens and we are considering closing one of our sites, do we have a right to lay off staff in these circumstances? Are we obliged to continue to pay them?

In certain sectors, employees' contracts of employment or collective agreements may contain "layoff" provisions, which give employers a contractual right not to provide employees with work for a short period of time, usually as a way of avoiding redundancies. Employees can be laid off without pay where there is a contractual term to this effect, but they may be entitled to a statutory guarantee payment from the employer.

Employers may be able to rely on these provisions in certain circumstances, but as employees may bring claims if layoffs are not handled correctly, we would recommend that employers take specific advice on this issue before requiring staff to stay away from work, especially if they wish to be able to do so without paying them.

Acas has produced guidance for employers on layoffs and short-time working.

Can we prevent staff from going on holiday to high-risk areas?

It may be possible to turn down a holiday request by issuing a counter-notice in accordance with the provisions of the Working Time Regulations 1998, but a better (and less antagonistic) approach at this stage may be to remind staff about the latest government guidance on high-risk areas and the circumstances in which they would be required to self-isolate on return to the UK, possibly without pay. Employers should ensure they do not do anything that could give employees the right to bring a constructive dismissal/discrimination claim, etc., but they can certainly encourage staff to insure against holiday cancellation on these grounds.

Practical Tips for Employers

1. **Stay up to date with the latest guidance** – The situation is obviously changing quite quickly, so employers should ensure they stay up to date with the latest government guidance and advice from public health agencies. Links to key websites are provided below:

   • The government's guidance for employers and businesses. This contains useful advice for employers in providing advice to staff on the virus, what to do if someone with the virus has been in a workplace setting, etc.

   • Acas has published some guidance for employers on what they should do to protect the health and safety of their staff.

   • The latest travel advice from the FCO.

   • The latest advice from the NHS.

   • Employers should review their approach in light of the latest guidance.

2. **Avoid knee-jerk reactions** – Employers should ensure they adopt a proportionate response to the coronavirus outbreak, based on the current level of risk in the UK, the nature of their business, available medical opinion, etc. Knee-jerk reactions could result in grievances and, at worst, claims.

3. **Communicate with your staff** – While the risk to health in the UK is currently still low to moderate, the extensive media coverage of the coronavirus is making many people concerned about the risks, especially if they are more vulnerable to infection, e.g. the elderly and those with certain health conditions. Employers should, therefore, ensure they are communicating with their staff about the virus, letting them know what they can do to protect themselves against the risk of infection, together with the steps the company is taking to deal with the risk, e.g. suspending business travel to China, etc. Employers should clearly be careful about the tone of their communications to avoid any unnecessary panic.

   The BBC recently reported that some British Chinese people have been the target of racist abuse linked to the outbreak. If employees make racist comments of that nature, this is clearly a disciplinary matter, but employers should think about what steps they can take to prevent these sort of comments being made in the first place. An education/communication piece should help minimise the scope for your staff making inappropriate/discriminatory comments.

4. **Have contingency plans in place** – It would be sensible to review your business continuity plan to ensure you know what to do if the threat level increases. In addition, ensure that you have up-to-date contact details for your staff, emergency contact details, etc. Consider what you can do in advance to facilitate home working and to maintain key trading functions.

If you have any questions about the coronavirus, please speak to your usual contact in the Labour & Employment team.