

As of 1 August the shielding programme has been paused and employers have been given more discretion on how they can ensure employees can work safely. Whereas previously the official guidance was essentially that people should work from home as far as possible, the government is (somewhat tentatively) now encouraging employees to start bringing their employees physically back to the workplace, provided of course that it complies with the COVID-19 secure guidelines ([here](#)).

However, whether employees can be brought back to work and how they should be paid if they refuse will depend upon various factors. To assist employers in navigating these issues, we have put together this quick guide.

Please note that this guide is intended as a high-level overview only and should not be regarded as a substitute for legal advice.

Click on the categories of employees (below) to see whether they can be brought back to work and/or what the other options are:

-  **Unwell due to COVID-19**
-  **Self-isolating**
Lives with someone with COVID-19 symptoms or in a linked or extended household with symptoms
-  **Self-isolating**
In accordance with a notification from NHS Test and Trace
-  **Self-isolating**
Compulsory 14 day isolation after returning to the UK from abroad
-  **Shielding**
-  **Vulnerable**
-  **Childcare Responsibilities**
-  **“Scared of Returning to Work”**

Category of Individual	Duration of absence	Can/should they be required to return physically to the workplace?	Pay if the individual can work from home?	Pay if they don't come to work and can't work from home?	Can furlough them?	Suggest they use accrued holiday?	Suggest they take unpaid leave?
Unwell due to COVID-19 Has COVID-19 symptoms and/or positive test result	10 days' self-isolation (or until negative test result obtained)	X Not until end of the self-isolation period or until a negative test result is obtained (provided that the individual is then without symptoms).	✓ The individual should not work from home whilst unwell. Normal sick pay rules apply. If the individual is feeling better but still required to isolate and can and does work from home, they will be entitled to their usual pay.	✓ Usual contractual and statutory sick pay entitlements apply. The waiting period for SSP has been removed for COVID-19 absences, so SSP applies from first day of absence until end of self-isolation period or negative COVID-19 test.	✓ Short-term illness/self-isolation should not be a consideration in deciding whether to furlough an employee. If employers want to furlough employees for business reasons and they are currently off sick, they may be eligible to do so. In these cases, the employee should no longer receive sick pay and would be classified as a furloughed employee instead. However, the employee will only be eligible if the employer has previously submitted a claim for them in relation to a furlough period of at least 3 consecutive weeks between 1 March and 30 June.	X Individuals cannot be required to take holiday during sick leave (although they can choose to). If employees have pre-booked holidays falling during the period of sickness, they must be allowed to re-arrange these if they ask to do so.	X

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<p>Self-isolating</p> <p>Lives with someone with COVID-19 symptoms or in a linked or extended household with symptoms</p>	14 days	<p>✗</p> <p>Not until end of self-isolation period.</p>	<p>✓</p> <p>If the individual is able to work from home, they will be entitled to their usual pay.</p>	<p>✓</p> <p>Usual contractual and statutory sick pay entitlements apply.</p> <p>The waiting period for SSP has been removed for COVID-19 absences, so SSP applies from first day of absence until the end of the self-isolation period.</p>	<p>✓</p> <p>Short term illness/ self-isolation should not be a consideration in deciding whether to furlough an employee.</p> <p>If employers want to furlough employees who are currently off sick, they are eligible to do so. In these cases, the employee should no longer receive sick pay and would be classified as a furloughed employee instead.</p> <p>Such employees can continue to be furloughed from 1 July so long the employer has previously submitted a claim for them in relation to a furlough period of at least 3 consecutive weeks between 1 March and 30 June.</p>	<p>✗</p> <p>Individuals cannot be required to take holiday during sick leave (although they can choose to).</p> <p>If employees have pre-booked holidays falling during the period of sickness, they must be allowed to re-arrange these if they ask to do so.</p>	<p>✗</p>

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<p>Self-isolating</p> <p>In accordance with a notification from NHS Test and Trace</p>	14 days	<p>✗</p> <p>Not until end of self-isolation period.</p>	<p>✓</p> <p>If the individual is able to (and does) work from home, they will be entitled to their usual pay.</p>	<p>✓</p> <p>Usual contractual and statutory sick pay entitlements apply.</p> <p>The waiting period for SSP has been removed for COVID-19 absences, so SSP applies from first day of absence until end of self-isolation period.</p>	<p>✓</p> <p>Short term illness/ self-isolation should not be a consideration in deciding whether to furlough an employee.</p> <p>If employers want to furlough employees who are currently off sick, they are eligible to do so. In these cases, the employee should no longer receive sick pay and would be classified as a furloughed employee instead.</p> <p>Such employees can continue to be furloughed from 1 July so long the employer has previously submitted a claim for them in relation to a furlough period of at least 3 consecutive weeks between 1 March and 30 June.</p>	<p>✗</p> <p>Individuals cannot be required to take holiday during sick leave (although they can choose to).</p> <p>If employees have pre-booked holidays falling during the period of sickness, they must be allowed to re-arrange these if they ask to do so.</p>	<p>✗</p>

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<p>Self-isolating</p> <p>Compulsory 14 day isolation after returning to the UK from abroad</p>	14 days	<p>X</p> <p>Not until the end of the 14 day isolation period.</p>	<p>✓</p> <p>If the individual is able to (and does) work from home, they will be entitled to their usual pay.</p>	<p>Maybe</p> <p>If the individual is sick, they will be entitled to the usual contractual/ statutory sick pay entitlements.</p> <p>If the individual is not sick but cannot work from home, they will not generally be entitled to pay. However, this will depend and there may be circumstances in which employers exercise their discretion to pay in any event, e.g. if the travel was work-related, so as to offset any risk of grievance/ constructive dismissal claim.</p>	<p>✓</p> <p>Short term illness/ self-isolation should not be a consideration in deciding whether to furlough an employee.</p> <p>If employers want to furlough employees who are currently off sick, they are eligible to do so. In these cases, the employee should no longer receive sick pay and would be classified as a furloughed employee instead.</p> <p>Such employees can continue to be furloughed from 1 July so long the employer has previously submitted a claim for them in relation to a furlough period of at least 3 consecutive weeks between 1 March and 30 June.</p>	<p>✓</p> <p>If the employee is not entitled to be paid and there are no circumstances which might persuade the employer to pay anyway, this option should be discussed with the employee. The employer can choose to compel the taking of some holiday by giving advance notice under the Working Time Regulations.</p>	<p>✓</p> <p>If the employee is not entitled to be paid and there are no circumstances which might persuade the employer to pay anyway, this option should be discussed with the employee. It cannot be imposed without constructive dismissal or unlawful deductions risk.</p>

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<p>Shielding</p> <ul style="list-style-type: none"> Got a letter or a text from the government telling them to stay at home – extremely vulnerable, specific listed conditions Particular attention should also be paid to people who live with clinically extremely vulnerable individuals. 	<p>The shielding programme has been paused as of the start of August.</p>	<p>✓</p> <p>From 1 August, clinically extremely vulnerable individuals can return to their workplace providing COVID secure measures are in place, but they should still be allowed work from home wherever possible.</p> <p>If clinically extremely vulnerable individuals cannot work from home, they should be offered the temporary option of the safest available on-site roles where practicable for them to perform this, enabling them to maintain social distancing guidelines (2m, or 1m with risk mitigation where 2m is not viable). The government has called on employers to ease the transition as far as possible.</p>	<p>✓</p> <p>Despite the pause in shielding, the recommendation remains that employers should allow these individuals to work from home wherever possible. If they do, they will be paid normal pay.</p>	<p>✗</p> <p>Generally the employee will not have a right to pay unless they reasonably believe they are in serious or imminent danger (see blog here for more detail).</p> <p>There is provision in the legislation for some individuals to be issued with further shielding notices, in which case SSP may be payable. We recommend you seek further advice from your usual SPB contact if an individual confirms they have been issued with a further shielding notice.</p>	<p>✓</p> <p>Employers can furlough employees who are shielding or on long-term sick leave. It is up to employers to decide whether to furlough these employees. Such an employee can continue to be furloughed from 1 July so long as the employer has previously submitted a claim for them in relation to a furlough period of at least 3 consecutive weeks between 1 March and 30 June.</p>	<p>✓</p> <p>Potentially, if furlough not an option.</p>	<p>✓</p> <p>Potentially, if furlough not an option.</p>

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		<p>It may be appropriate for clinically extremely vulnerable individuals to take up an alternative role or follow adjusted working patterns temporarily.</p> <p>The government advises that employers provide support for such workers in relation to mental health and wellbeing. This could include advice or telephone support.</p>					

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Vulnerable <ul style="list-style-type: none"> • Aged 70 or older (regardless of medical conditions) • Under 70 with an underlying health condition • Pregnant 	Should be extra careful with social distancing.	<p>✓</p> <p>Provided that COVID secure guidelines are in place, but should work from home wherever possible.</p> <p>They should be offered the option of the safest available on-site roles which it is practicable for them to carry out, enabling them to maintain social distancing guidelines (2m, or 1m with risk mitigation where 2m is not viable).</p> <p>It may be appropriate for vulnerable individuals to take up an alternative role or follow adjusted working patterns temporarily.</p> <p>The government advises that employers provide support for such workers in relation to mental health and wellbeing. This could include advice or telephone support.</p>	✓	<p>✗</p> <p>Not entitled to SSP.</p>	<p>✗</p> <p>Not by default by virtue of being vulnerable, only if their role would otherwise be furloughed.</p>	✓	✓

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Childcare responsibilities	Schools are due to return for all year groups from September 2020.	✓ Employers should explore with employees whether it is possible to make alternative arrangements for childcare.	✓ Employers should offer home-working if possible.	✗	✓ Employees who are unable to work due to childcare responsibilities can continue to be furloughed from 1 July so long as the employer has previously submitted a claim for that employee in relation to a furlough period of at least 3 consecutive weeks taking place any time between 1 March and 30 June.	✓	✓

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<p>"Scared of returning to work"</p> <p>For employees not caught by one of the other categories above e.g. not extremely clinically vulnerable or vulnerable</p>	-	<p>✓</p> <p>Provided that the employer has followed the relevant COVID-secure guidelines (here), they can request that employees return physically to the workplace.</p> <p>Note: The government is now advising that people in England may use public transport again, while encouraging them to consider alternative means of transport where possible. That official "blessing" will remove a key ground of employee objection to returning to the physical workplace.</p>	<p>✓</p> <p>Working from home should still be offered where possible. The individual will be entitled to their usual pay.</p>	<p>Maybe</p> <p>Generally the employee will not have a right to pay unless they reasonably believe they are in serious or imminent danger (see blog here for more detail).</p> <p>May be entitled to usual sick pay entitlements if the employee is signed off due to anxiety, i.e. is actually unwell.</p>	<p>✓</p> <p>Provided that the employer has previously submitted a claim for that employee in relation to a furlough period of at least 3 consecutive weeks taking place any time between 1 March and 30 June.</p>	<p>✓</p>	<p>✓</p>

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