

Covid-19 and your disabled employees – frequently asked questions

Q: The Government had said before that people could only leave their homes for one of four reasons:

- Shopping for basic necessities, for example food and medicine, which must be as infrequent as possible
- One form of exercise a day, for example a run, walk, or cycle - alone or with members of your household
- Any medical need, or to provide care or to help a vulnerable person
- Travelling to and from work, but only where this absolutely cannot be done from home.

The Prime Minister said on 10 May that the “stay at home” message was being changed to “stay alert”. Does this mean that we can ask employees, including disabled employees who cannot work from home to travel into work?

A: The official guidance for England has changed recently, but it is now different to the guidance issued by the Scottish, Welsh and Northern Ireland Governments. In England, the Government has said now that people and employers should stay safe in public spaces and workplaces by following “COVID-19 secure” guidelines.

The aim of this change is to enable more people to go back to work, where they cannot work from home, and encourage more vulnerable children and the children of critical workers to go to school or childcare as already permitted.

The official advice in England is now that you should:

- stay alert when you leave home
- wash your hands regularly
- maintain social distancing, and
- ensure that you do not gather in groups of more than two, except with members of your household or for other specific exceptions set out in law.

You must continue to stay home except for a limited set of reasons but – in line with scientific advice – you can take part in more outdoor activities

This does seem to mean that people who are not key workers can leave their homes to go to work if they cannot do their job from home. This includes disabled workers. However, consider carefully if your employees really need to travel into work and wherever possible allow them to stay at home, particularly as travel on public transport is still to be avoided whenever possible.

Note too that this updated guidance is for the general public who are fit and well. There is separate, specific guidance on isolation for households with a possible coronavirus infection.

Some people, including those aged 70 and over, those with specific chronic pre-existing conditions and pregnant women, are clinically vulnerable, meaning they are at higher risk of severe illness from coronavirus'. As we begin to ease restrictions, this group who are clinically vulnerable should continue to take particular care to minimise contact with others outside their household.

There is a further group of people who are defined, also on medical grounds, as clinically extremely vulnerable to coronavirus – that is, people with specific serious health conditions. They are advised to continue shielding measures to keep themselves safe by staying at home and avoiding all contact with others, except for essential medical treatment or support.

Q: We operate across the UK. Does this mean that our employees in Scotland, Wales and Northern Ireland cannot be asked to return to work?

A: That might be the case. The guidance from Scotland, Wales and Northern Ireland is changing very quickly so you do need to keep abreast of what is happening in different parts of the country.

Q: Can we “furlough” disabled employees who cannot work from home?

A: This is a possibility but think this through carefully to avoid discrimination claims from disabled employees.

Employers can only put employees on furlough leave if they would otherwise have to lay them off i.e. make them redundant because it is no longer possible to pay the employees. If you intend to access the Coronavirus Job Retention Scheme you will need to discuss this with your employee and inform them that you will keep them on your payroll rather than making them redundant. Employees on furlough leave cannot undertake any work for you and you can claim a grant of up to 80% of their wage for all employment costs, up to a cap of £2,500 per month. You will need to submit information to HMRC about the employees that have been furloughed and their earnings through a new online portal (HMRC will set out further details on the information required). HMRC will reimburse 80% of furloughed workers wage costs, up to a cap of £2,500 per month.

Employers are at liberty to make the difference between this cap and the employee's salary but do not have to do so. If the employee's salary is reduced, they should be advised that they might be eligible for support through the welfare system including Universal Credit.

The Coronavirus Job Retention Scheme will continue until end of October, until which time furloughed workers across UK will continue to receive 80% of their current salary, up to £2,500.

New flexibility will be introduced from August to get employees back to work and boost economy.

If you intend to furlough only disabled employees or employees who need to work from home with adjustments, you may be open to claims for disability discrimination. Consider this example. You have two employees who do very similar work for the same salary. One can work from home with no adjustments. The other is disabled and needs adjustments such as assistive technology to work from home. If you choose to furlough the disabled employee rather than make the adjustments they need to work from home then it is open to that employee to claim that they have been treated unfavourably i.e. paid only 80% of their salary – or, if you choose to make the difference, not being allowed to continue to work and occupy themselves because of their disability.

Q: If our workers in England are disabled, do we have to insist that they stay at home?

A: No because not all disabled people will fall into the category defined as [vulnerable groups](#). Workers who do fall into that category whether or not they identify as disabled should be strongly advised and supported to stay at home and work from there if possible. Any worker who shows symptoms of the coronavirus should be sent home immediately. Provide reassurance if they are resistant to the idea because they think they are “letting the side down”.

What is meant by “vulnerable groups”?

Not all disabled people will fall into the category of “vulnerable groups” and not everyone in this category will self-identify as disabled. “Vulnerable groups” means people who are more susceptible to the coronavirus. This group includes those who are:

- aged 70 or older (regardless of medical conditions)
- under 70 with an underlying health condition listed below (i.e. anyone instructed to get a flu jab as an adult each year on medical grounds):
 - chronic (long-term) respiratory diseases, such as asthma, chronic obstructive pulmonary disease (COPD), emphysema or bronchitis
 - chronic heart disease, such as heart failure
 - chronic kidney disease
 - chronic liver disease, such as hepatitis
 - chronic neurological conditions, such as Parkinson’s disease, motor neurone disease, multiple sclerosis (MS), a learning disability or cerebral palsy
 - diabetes
 - problems with your spleen – for example, sickle cell disease or if you have had your spleen removed
 - a weakened immune system as the result of conditions such as HIV and AIDS, or medicines such as steroid tablets or chemotherapy
 - being seriously overweight (a body mass index (BMI) of 40 or above)
- those who are pregnant.

Note: there are some clinical conditions that put people at even higher risk of severe illness from COVID-19. If you are in this category, the NHS in England will directly contact you with advice the more stringent measures you should take in order to keep yourself and others safe. For now, you should rigorously follow the social distancing advice in full, outlined below.

People falling into this group are those who may be at particular risk due to complex health problems such as:

- people who have received an organ transplant and remain on ongoing immunosuppression medication
- people with cancer who are undergoing active chemotherapy or radiotherapy
- people with cancers of the blood or bone marrow such as leukaemia who are at any stage of treatment
- people with severe chest conditions such as cystic fibrosis or severe asthma (requiring hospital admissions or courses of steroid tablets)
- people with severe diseases of body systems, such as severe kidney disease (dialysis)

Q: A disabled employee who cannot work from home is worried that the time off she takes will trigger a sickness absence review and wants to know if this absence can be disregarded

A: Given the current situation it would be good practice to amend sickness absence and disciplinary procedures and disregard COVID19-related absences. Otherwise an employee who is unwell or at risk of spreading the infection might return to the workplace as soon as they are allowed if they cannot work from home and so possibly infect other workers as well as themselves. If they have symptoms and are unwell, they are unlikely to perform well or be productive at work in any event.

A disabled employee who is already at risk of sickness absence review proceedings because of their existing disability related absences is going to be substantially disadvantaged by the requirement to self-isolate (a provision, criterion or practice) if this means that disciplinary/sickness review procedures are triggered and so as an employer you might be under a duty to disregard the COVID19 related absence as a reasonable adjustment.

Q: If employees are sick or need to self-isolate because they have symptoms of Covid-19 do normal sick pay provisions apply?

A: Yes, but whether or not an employee is eligible for contractual sick pay will depend on the terms of their contract with you and your sick pay policies.

They should, however, be entitled to Statutory Sick Pay (SSP). The Prime Minister announced that SSP would be available from day 1 of someone being unwell rather than from day 4, as it was previously. The Chancellor reiterated this point in his Budget Statement and added that it would also be extended to people who are told to self-isolate, whether or not that person is showing any symptoms of being unwell. He announced that employees will be able to obtain sick notes via 111 including online. This is intended to speed-up the process and to prevent any unnecessary GP appointments, which could further spread the virus.

Additionally, in the March 2020 budget statement SMEs were given the extra support of being able to reclaim SSP for up to two weeks for any employee who is off as a result of COVID-19. Employers should maintain records of staff absences and the reasons. For more information, please see: www.gov.uk/government/publications/support-for-those-affected-by-covid-19/support-for-those-affected-by-covid-19#to-support-businesses-experiencing-increases-in-costs-or-financial-disruptions.



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Registered charity number: 1018463.

Registered Office: Nutmeg House, 60 Gainsford Street, London SE1 2NY.

Registered in England under Company Number: 2603700