

REVISED 16/9/2020

LMC Law
LMC HR FAQs – HR issues and Covid-19

These FAQs should be taken as general advice and individual circumstances should be considered before implementation. Please do refer to the latest Government guidance (which could be subject to change from time to time). Please note that these FAQs are based on guidance issued at the current time. Please do take further legal advice where required or where you feel there are circumstances which may not necessarily fit into the examples given.

Q1. What is the procedure for staff to self-isolate?

Staff need to contact their manager in the normal way to report this, as per their sickness absence procedures. Staff who need to self-isolate should follow the latest advice from <https://www.nhs.uk/conditions/coronavirus-covid-19/self-isolation-advice/>

Q2. What do I do if an employee self-isolates and feels unwell?

Employees should be paid their contractual sick pay (inclusive of Statutory Sick Pay, and any enhanced provision that you offer) as per your sickness absence procedures and policy and the employee's contract of employment.

Q3. Employees who self-isolate are eligible to receive SSP from day 1 of their sickness absence period. But what do I do if an employee self-isolates because a member of their household is presenting symptoms of Covid-19, and:

a. The employee feels able to work but is NOT unwell?

Employees should where possible work from home and receive normal pay in line with their contract of employment.

b. The employee refuses to work from home but is NOT unwell?

Employees should be paid SSP from day 1 of their self-isolation but the payment of any enhanced pay would be discretionary.

c. The employer cannot provide them with the facility to work from home when they are NOT unwell?

Employers should facilitate home working wherever reasonably practicable, in accordance with the usual parameters around home working (considering GDPR, safeguards, etc). If the Practice is unable to facilitate homeworking, then the employee should receive SSP plus any occupational sick pay in line with their contract of employment.

d. The employee refuses to work when they are NOT unwell?

If a member of staff does not want to attend the workplace, absence needs to be recorded in one of the following ways – either annual leave, or unauthorised absence. Unauthorised absence is unpaid, and matters would be dealt with in the normal way in line with their contract of employment and terms of service.

Q4. What do I do if I have vulnerable employees (including those with asthma) who are social distancing?

Advice in respect of social distancing should be respected and adhered to by both employees and employers both inside and outside the workplace. Wherever possible they should be enabled to work from home.

Q5. What happens if it comes to my knowledge that a staff member has come into contact with an individual with Covid-19 symptoms within their household?

As an employer, you have a duty of care to all staff, and as such you would need to send the member of staff home with immediate effect and follow the advice above as appropriate.

Q6. What do I do if an employee has an underlying health condition?

Employees need to follow the most up-to-date advice and guidance as circulated by the Government. If the employee needs to self-isolate, the advice above applies. If the employee continues to attend the workplace, the employer should consider reasonable alternatives during these times as part of their duty of care to all staff. Examples might include less patient focussed activities, or looking into other possible measures which may help provide protection

Q7. Can a staff member self-isolate for 14 days on more than one occasion and if so, how should this be managed?

Yes they can self-isolate on more than one occasion. There is no mention of numbers of occasions that an individual might self-isolate. It is a matter of ensuring that individuals meet the criteria for self-isolation on each occasion.

Q8. Can I require staff to take unpaid leave or accept a temporary pay cut?

HR advice should be taken before cutting any employee pay. Please note that practices receive and will continue to receive funding (except in limited circumstances), so the expectation may be that employees should be paid. You need to treat this on a case by case basis.

Q9. How can I ensure that I am following a best practice approach as a reasonable employer during these difficult times?

Treat everyone fairly and consistently, consider each case on its merit, and be mindful of any underlying issues or precedent.

Q10. What are the rights of locum GPs if they are self-isolating?

The vast majority of locum GPs are self-employed and so would not enjoy normal employment rights. Any benefits due to them would be in line with the government guidance for self-employed workers. However, if a locum GP is operating through an agency, the agency would in these circumstances be the employer, and any benefits would be in line with the contract in place between the locum GP and the agency.

Q11. What can I do if locums refuse to come to work, or refuse face-to-face appointments?

If there are grounds for self-isolation, please see above. If locums are providing clinical care, it is perfectly reasonable to request and expect the locum to attend work and carry out either appointments or where possible remotely by agreement. However, the role of a GP locum may not always be fulfilled by simply working remotely. If the locum refuses, you can retract the agreement for using their services, as per the normal processes.

Q12. What are the considerations for indemnity if staff are working from different sites?

Employees are covered if they are part of the NHS indemnity scheme, to work across different sites. However, GPs and nurses would require cover for any work not covered by the NHS indemnity scheme.

Q13. What happens in respect of parental leave?

All usual leave arrangements apply as per your staff handbook and contract of employment.

Q14. What do I do when employees want/need to defer their holidays?

The government has confirmed that statutory holiday (28 days including bank holiday entitlement) can be rolled over of up to 4 weeks of unused leave across the next 2 leave years, where employees should be encouraged to take this leave where possible, and not receive a payment in lieu of this leave. Employees can also be paid in lieu of taking holidays or you can agree an alternative arrangement at the discretion of the Practice, where members of staff might have holiday over and above the statutory minimum.

Q15. What happens if I have a pregnant employee?

The RCOG has stated that pregnant women are a vulnerable group, and those who can work from home should do so and be actively supported in this. Employees should be offered the choice of working in direct patient-facing roles or not doing so during the coronavirus pandemic, and employers should respect and support the employee's decision.

Q16. What are the recommended contact frequency/approaches whilst employees are off sick?

Normal sickness absence procedures apply, as per sickness absence policy and contract of employment.

Q17. What happens if an employee member triggers/exceeds the Practice sick policy levels?

Normal sickness absence procedures would apply, as per sickness absence policy and contract of employment.

Q18. Do employees need to provide a fit note if they are off sick for more than 7 days?

Normal arrangements will apply for most illnesses. If the employee has Covid19 or is self-isolating they can apply for an Isolation note via the 111 website. This replaces the need for a fit note for people with Covid19.

Q19. What about staff on maternity due to return mid Covid crisis?

Employees and employers need to follow the government guidance in place at the time and act accordingly, and their normal terms of service and contract of employment applies. LMC HR can help with any specific HR queries, and advice on a case by case basis.

Q 20. What measures should be in place regarding BAME and risk assessments

Emerging evidence and early analysis indicate that people from Black, Asian and Minority Ethnic (BAME) groups are disproportionately affected by Covid-19. Although it is essential that risk assessments are conducted with staff from BAME backgrounds (or who have households / family members from BAME backgrounds), risk assessments should be undertaken with all staff, whether or not they have an underlying health condition. It doesn't matter which risk assessment is used as long as the risk assessment conducted is robust enough and would satisfy any court that it was conducted correctly with specific circumstances in mind and always to benefit and protect the individual.

Q 21. If a BAME employee is deemed to be high risk and still wants to go back to work what should the employer do?

The employer has a duty of care to all their employees and ensure that they are safe whilst performing their jobs. The employer should encourage the employee to work from home if at all possible, but if this is not possible and/or they still want to return to work, the employer should take advice on a case by case basis. Please note that employers are encouraged to check their insurance policies to ensure they are covered before making decisions about any BAME employee who may be in a high risk category.

Q22. Are back-office staff classed as key workers?

Current guidance suggests that, yes, this is the case.

Q23. What types of measures should employers be thinking about to protect employees?

It is important to assess the needs of the individual, assess other measures or arrangements that you can put in place to provide further protection to employees. You also need to be aware of any needs and issues of individuals and act appropriately on a case by case basis.

Q24. Foreign travel during a pandemic crisis

The Foreign and Commonwealth Office (FCO) of Her Majesty's Government will, from time to time, provide guidance about foreign travel.

During this Covid-19 pandemic the FCO is recommending that United Kingdom (UK) nationals should avoid travelling abroad EXCEPT for essential foreign travel.

As Covid-19 infection rates across the world are controlled and deemed to be of no significant additional risk to that in the UK, the FCO is producing a list of countries that are deemed to not pose an unacceptably high risk for British travellers. This list is called the "exempt" list and travel to these countries is allowed. This situation is monitored closely and the list may change with little or no notice.

Anyone returning to the UK from a country that is NOT in the exempt list will have to quarantine (self-isolate) for a further 14 days.

It is important that staff members make sure that they are aware of the current advice about travelling abroad during this time and any potential implications that might occur as a result of any travel.

If there is a need to self-isolate or quarantine following returning to the UK, this time will need to be either taken as additional annual leave or in the event that you do not have sufficient annual leave left to cover this absence, it will be regarded as unpaid leave. We would also ask you to consider the impact that this will have on your colleagues who will have to cover your extended period of absence and possibly affect their ability to take any leave themselves.

Q25. How can I access additional HR advice?

LMC HR support can be accessed by purchasing our HR support package which is priced at an extremely favourable rate. Please contact clairepye@lmclaw.co.uk for further details. Support will be tailored to your needs and covers all HR issues.