

FAQ: Acas COVID 19 Advisory webinar for employers

1. I'm self-employed, what are my rights?

Self-employment is not covered by employment law, so we are unable to give any advice, however we understand the Government have announced proposals for financial support for self-employed people. This can be found here:

www.gov.uk/guidance/claim-a-grant-through-the-coronavirus-covid-19-self-employment-income-support-scheme

2. Who is classed as a key worker?

The current Government advice on key workers can be found here:

www.gov.uk/government/publications/coronavirus-covid-19-maintaining-educational-provision/guidance-for-schools-colleges-and-local-authorities-on-maintaining-educational-provision

3. Can I change a member of staff's contractual terms of pay / hours of work / location / role to manage changes we're making to cope with Covid-19?

All of these changes would constitute a variation of contract. The best way to make a change is to agree it with staff. If you impose a change without agreement this could constitute a breach of contract or wages claim that could be taken to an Employment Tribunal. For more information see: www.acas.org.uk/changing-an-employment-contract.

4. A staff member's dependent becomes ill and they need to take time off work to look after them, are they entitled to pay?

If their dependent becomes ill with suspected coronavirus and they live in the same household then they are required to self-isolate and are entitled to Statutory Sick Pay (SSP) during that time. If the dependent is ill for any other reason, then they are not automatically entitled to SSP. However, if your contract allows for additional payment you should follow that. Additionally there is a right to a reasonable amount of unpaid time off for dependents.

<https://www.acas.org.uk/coronavirus/time-off-work-to-look-after-someone>

It is also worth noting that dependants don't always live in the same household, so someone with a dependant may need to take unpaid time off but not self-isolate and they would have this right under time off for dependants.

Contracts/policies should be checked to see if an employer offers more than the statutory entitlement for example, some may offer paid time off.

5. I would like to keep my business open, we are not key workers and are not obliged to close, what measures should we take?

Employers have a duty of care at all times to take all reasonable steps to protect workers from injury and disease. For further guidance on making sure that the employer's duty of care is met please contact the Health and Safety Executive (HSE).

6. Our business is still open, we have a member of staff who falls into one of the designated vulnerable groups and is reluctant to come to work. What steps should we take?

Employers have a duty of care at all times to take all reasonable steps to protect workers from injury and disease. Those who are classed as vulnerable workers should not be made to attend work if it is unsafe for them to do so. Government advice is that work should be undertaken at home where possible.

If working from home is not possible, then it may be appropriate to furlough them, even while the business otherwise remains open. This would need to be agreed with a worker and an agreement drawn up in writing.

If they are not in a vulnerable group and refuse to attend work where it is necessary, then normal disciplinary procedures apply.

7. Should we continue with disciplinaries and grievances as far as possible using technology to communicate?

Yes, as long as everyone is in agreement and has the facilities to attend a virtual hearing (including employee representative), and if it can be conducted in a fair and reasonable manner. If not, it would be appropriate to suspend the process until the you can conduct the meetings face to face, but in the meantime let people know in writing that that is the plan.

8. If we have to furlough all teams, can we suspend any disciplinary process and resume once normal operations commence?

See question 7.

9. Can you give me more detail about the Coronavirus Job Retention Scheme, including when it will be up and running and how I furlough my staff?

HMRC have now provided more detailed guidance on their website. Please see: www.gov.uk/guidance/claim-for-wage-costs-through-the-coronavirus-job-retention-scheme

10. If I am only having to furlough some of my staff, can I furlough somebody for a short period of time, e.g. a week or a couple of days, and then bring them back so that we can swap around who is furloughed and who is working?

A worker must be furloughed for a minimum of three weeks for their employer to be eligible to claim under the scheme.

11. All of our staff are now home-working on Government advice – what do I need to take into account and can I expect that people will continue to work as normal?

Employers and staffs should be practical, flexible and sensitive to each other's situation when working from home because of the coronavirus (COVID-19) pandemic. This might involve doing things differently. It is helpful to analyse your staff's circumstances and ability to perform their role at home to determine whether a role is suitable for home-working and/or what adaptations may need to be made, using an approach such as this questionnaire from CIPD:

www.cipd.co.uk/knowledge/fundamentals/relations/flexible-working/homeworking-questionnaire.

It would be good practice to talk to staff about how this will work and to keep in touch with them while they are working from home and to take active steps to maintain team contact and rapport. Further guidance on setting up home working and making sure that the employer's duty of care is met is available at

www.acas.org.uk/working-from-home and www.hse.gov.uk/toolbox/workers/home.htm

12. If a member of staff self-isolates because of a self-diagnosed condition and refuses to see a GP/medical professional, are they entitled to SSP if they qualify?

People are entitled to self-certify for the first seven days of sickness, whether they think it is related to coronavirus or not. From day eight they need to provide an isolation note or a fit note. For coronavirus related absences SSP is due from day one, but for other absences SSP is due from day four. For further information please see www.acas.org.uk/coronavirus/self-isolation-and-sick-pay

13. I have a staff member who is pregnant and is self-isolating. I have instructed our payroll to pay SSP, but the staff member wants to be furloughed. What should I be paying her?

If a vulnerable member of staff, including one who is pregnant, has been instructed to self-isolate by a medical professional or NHS 111 then SSP is appropriate. If this is not the case and you feel that there is a risk that you cannot mitigate with her at

work, then it would be appropriate to furlough her. Any appropriate action should be agreed with the worker and that agreement documents.

14. If a member of staff has been advised to self-isolate by NHS 111 (regardless of whether they have symptoms or not) and their contractual sick pay is discretionary - does the company have to pay full sick pay or SSP from day one?

If your contractual sick pay is discretionary then it is up to the business to decide, but make sure that the decision is not in any way discriminatory and that it is applied consistently. If you decide not to pay contractual sick pay in this instance then SSP is due from day one.

15. If a member of staff self-isolates, comes back to work and then a member of their family shows symptoms after they have self-isolated also, does the member of staff self-isolate again?

The member of staff should follow the advice of NHS 111 or their doctor.

16. Are new starters that need to self-isolate entitled to SSP?

Statutory sick pay (SSP) is a day one right, so new starters who have symptoms of coronavirus or have been instructed to self-isolate are entitled to receive SSP from day one.

17. Can we ask our staff to use some of their accrued holiday entitlement whilst they are working from home to help manage the potential influx of holiday requests once work resumes?

Yes. An employer can ask you to take holiday at points throughout the year to suit business needs. If an employer needs a member of staff to take holiday on certain dates, they should tell the staff member at least twice as many days before as the number of days they need them to take. For example, an employer requires a staff member to take 5 days of holiday, they should tell them this at least 10 days before the holiday starts. For further information see: www.acas.org.uk/checking-holiday-entitlement/asking-for-and-taking-holiday

New updates from government allow up to four weeks of unused statutory leave will be allowed to be carried into the next two leave years, easing the requirements on business to ensure that workers take statutory amount of annual leave in any one year. Further information is available at: www.gov.uk/government/news/rules-on-carrying-over-annual-leave-to-be-relaxed-to-support-key-industries-during-covid-19

18. Do staff continue to accrue holiday while they are furloughed?

Under current legislation, yes.

19. Will accrued leave carry over?

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20. Am I able to cancel staff's booked holidays due to not having enough staff available to meet essential business needs?

Yes, however they must let staff know beforehand by at least the same amount of time as the amount they intend to cancel. For further information see: www.acas.org.uk/checking-holiday-entitlement/asking-for-and-taking-holiday

21. I have made an offer to someone starting in May, but now we won't be able to afford to employ them. They have given notice to their current employer too. Can I withdraw the offer?

A contract of employment is formed and 'starts' as soon as an offer of employment is accepted, in return for consideration, such as pay/benefits. If a conditional offer is made, the employer will be entitled to withdraw the offer if the conditions are not met, without being in breach of contract. However, a contract is already formed when an unconditional offer is made and accepted or a conditional offer where all conditions have been met. To end the contract, notice will need to be given if contractual notice is due, but if statutory notice is all that you offer then no notice is due. The situation may be slightly different for some employers, e.g. schools.

22. What is the difference between lay-offs and putting staff on to furlough?

'Lay-off' usually refers to an indefinite break in the employment relationship, which often becomes permanent (through redundancy) where it persists for 4 or more weeks in a row or a total of 6 weeks in any 13-week period. 'Furlough' is the term for staff who are covered by the Coronavirus Job Retention Scheme, which is designed to support employers whose operations have been severely affected by coronavirus (COVID-19). This scheme allows employers to offer a temporary break in attending work where 80% of wages will be reimbursed by the government. A furloughed member of staff will continue to be employed during this period and can take part in volunteer work or training, as long as it does not provide services to or generate revenue for, or on behalf of your organisation.

23. What if a member of staff doesn't agree to be furloughed? Can I make them redundant?

If a member of staff refuses to be furloughed, they may be at risk of redundancy or termination of employment, depending on the circumstances of the employer. However, this must be in line with normal redundancy rules and protections.

24. In light of the Coronavirus Job Retention Scheme, where do companies stand for staff they've already been confirmed as redundant? Can the redundancy be retracted?

Employers can rehire staff who were made redundant since 28 February 2020 and designate them as furloughed workers.

25. What happens if we've furloughed a member of staff, and when we are ready to open again I can no longer afford that person? Do we have to go through a redundancy process?

Yes. All redundancies, whether related to coronavirus or not, must be carried out in line with normal redundancy rules and protections.

26. If a member of staff is paid minimum wage & they are furloughed are they also paid at 80%

Individuals are only entitled to the National Living Wage (NLW)/National Minimum Wage (NMW) for the hours they are working. Therefore, furloughed workers, who are not working, must be paid the lower of 80% of their salary, or £2,500 even if, based on their usual working hours, this would be below NLW/NMW. However, if workers are required to for example, complete online training courses whilst they are furloughed, then they must be paid at least the NLW/NMW for the time spent training, even if this is more than the 80% of their wage that will be subsidised.

Individuals whose wages are reduced may also be entitled to claim benefits, depending on their circumstances.

27. Can you request evidence from a member of staff for any underlying health condition that has not been previously disclosed?

We would normally suggest taking these things on trust, but it may be reasonable to ask for contact with their GP/medical specialist as this is likely to help determine whether there is a need for reasonable adjustments going forward.

28. Can zero hours staff be furloughed?

Furloughed staff must have been on your PAYE payroll on 28 February 2020, and can be on any type of contract, including:

- full-time staff;
- part-time staff;
- staff on agency contracts;
- staff on flexible or zero-hour contracts.

For further details, refer to the scheme www.gov.uk/guidance/claim-for-wage-costs-through-the-coronavirus-job-retention-scheme or contact HMRC.

Further information

HSE home working: www.hse.gov.uk/toolbox/workers/home.htm

HSE Front page for CV 19: www.hse.gov.uk/news/coronavirus.htm

www.gov.uk/guidance/claim-a-grant-through-the-coronavirus-covid-19-self-employment-income-support-scheme

www.acas.org.uk/lay-offs-and-short-time-working