

# SWA BULLETIN



**80**  
Years  
Anniversary  
1940 - 2020

MARCH 2020

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## FREE SWA EMPLOYERS HR SUPPORT HELPLINE

**SWA MEMBERS** are urged to use our HR partner, **121 HR Solutions** who provide **FREE** advice to all SWA members.

# CALL 0800 999 5121

Employers looking to reduce staff hours must check if this is included in their employee's contracts. If it is not stipulated within the employees contract employers must go through a consultation period prior to reducing staff hours. Employers must discuss with each employee their plans to reduce working hours. Reducing hours without a consultation would be classed as unlawful deduction in wages.

Meanwhile our affiliated member, **TLT Solicitors** have put together some information to help guide you through this difficult time.



## HOME DELIVERIES OF FOOD AND ALCOHOL

**WITH** the Government's recent advice around avoiding pubs, restaurants and other licensed premises many existing businesses are investigating the possibility of launching a home delivery service. As always there are licensing considerations that businesses will need to have regard to prior to starting home deliveries. You will not be surprised to hear that the law was not drafted considering persons self-isolating due to an infectious disease.

The fundamental requirements are discussed below but in this evolving situation feel free to contact us for bespoke advice. As we are helping clients all over the UK, this article will identify whether the advice refers to England & Wales, Scotland, or all.

[CLICK HERE TO READ THE HOME DELIVERIES Q & A](#)

## COVID-19 ECONOMIC IMPACT: USING STATE AID TO HELP WITH A LIQUIDITY CRISIS

**THE SPREAD** of the COVID-19 pandemic globally will have a significant economic impact on all nations. Several European countries are considering or have already announced support measures for citizens or companies to help with liquidity problems.

Any businesses that are worried about liquidity, or believe that they will need financial support during the pandemic, should contact their local government to establish what help is available.

[TO READ MORE CLICK HERE](#)



# CORONAVIRUS: OPTIONS FOR HR

## PAY AND SELF-ISOLATION

**THE POSITION** in relation to pay depends on the circumstances. If employees are unwell due to the 2019 novel coronavirus disease (COVID-19), then normal sick pay policies and procedures will apply.

If you require employees to stay away from work as a precaution, it is likely that this should be on full pay, as a form of health and safety suspension.

The government has brought into force new legislation which allows all employees who are self-isolating, in order to prevent the infection or spread of COVID-19, to receive statutory sick pay (SSP).

The government has announced that the SSP rules will be amended, so that SSP will be available from day one of absence (rather than day four). At the time of writing, this legislation had not yet been published.

Employers should follow the latest government guidance for employers on COVID-19 and be flexible about evidential requirements for SSP.

## ALTERNATIVE METHODS OF WORKING

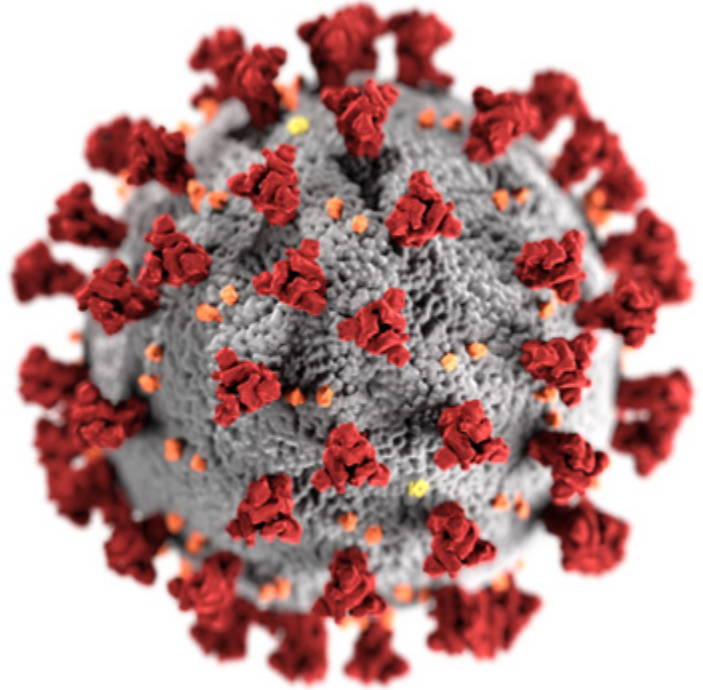
**EMPLOYERS** should consider utilising alternative working methods, such as flexible working and working from home. Where this is possible from a practical point of view, it will allow a 'business as usual' approach, whilst reducing the risk to the workforce and ensuring compliance with health and safety obligations.

Consider whether you need to draft a home working policy now, if you do not have one already. You may wish to review any mobility clauses in your contracts to check whether they are drafted widely enough to cover compulsory homeworking. If not, then you will most likely have to rely on employee agreement.

It will be difficult to impose home working unilaterally, unless there is a very specific risk to employees associated with being physically present at work – for example, if a COVID-19 case has been identified, or if an underlying medical condition would make it unsafe for an employee to be at work.

Remember that your obligation to provide employees with safe equipment and a safe system of work applies equally to employees working from home. You will, therefore, need to ensure that employees are able to work from home safely, as well as effectively.

You may wish to conduct an audit of home working capability amongst your workforce now, so that you understand how easily and quickly large-scale home working can mobilised if necessary. However, home working will not be an option for many employees.



## LAY-OFF AND SHORT-TIME WORKING

**COVID-19** is affecting the global economy, evoking memories of the 2008 crash. The repercussions for employers could include a diminution in work and the possibility of forced closures of public-facing businesses, such as restaurants, pubs and non-essential retail outlets.

Providing there is suitable contractual provision, an employer can 'lay off' an employee, without pay, where there is temporarily no work available. Note, however, that an employee who is away from work because of sickness absence will not be 'laid off' because the reason for absence is sickness, not lack of work.

Employees who are laid-off may be entitled to a statutory guarantee payment of up to 5 'workless days' in a three month period. However, an employer may have their own policy in respect of a guarantee payment, which may offer an enhanced rate of payment. However, this is purely discretionary.

The maximum statutory guarantee payment is currently £145, made up of £29 per day for 5 days in any 3-month period, unless an employee earns less than this (in which case it will be at their normal daily rate) or works part-time (the payment being calculated proportionally).

Short-time working allows an employer to reduce the hours worked or the level of pay either temporarily or indefinitely.

If you do not have short-time working or lay-off clauses in your contracts, it may be possible to obtain employee agreement to incorporating these into contracts, as a more palatable alternative to redundancy. Furthermore, a temporary reduction in work under short-time working will not break an employee's continuity of service, which could make an employee feel more comfortable accepting this option.

[CLICK HERE FOR FURTHER INFORMATION, INCLUDING AVOIDING REDUNDANCIES AND ANNUAL LEAVE](#)

# CORONAVIRUS AND LICENSING FAQs

**TLT's licensing teams both in England and Wales and Scotland have answered some key questions on the uncertainty and disruption brought by COVID-19 and the potential impact on your licence.**

## DO I HAVE TO PAY EMPLOYEES FOR ABSENCES LINKED TO THE VIRUS?

**THIS DEPENDS** on why the employees are absent. If they are unwell with coronavirus, then your normal sick pay policies and procedures will apply.

If you inform employees that they must stay away from work as a general 'precaution' then those employees should be paid their normal salary. Although the government is currently encouraging businesses and schools to remain open and operational. Read the most recent government guidance on coronavirus for schools and employers.

If employees ask to stay away from work because they are generally concerned about coronavirus, then they could be offered; home working; holiday; or unpaid leave.

## BUT WHAT HAPPENS IF EMPLOYEES ARE REQUIRED TO SELF-QUARANTINE?

**EMPLOYEES** who have visited the 'high risk areas' identified in government advice must stay at home and self-quarantine for 14 days. Updated Acas guidance on coronavirus suggests that employees who have been advised to self-isolate should be paid sick pay. The government has stated that it expects employees who are required to self-quarantine to be paid sick pay. As a special measure, the government has announced that it will bring in emergency legislation allowing employees to receive statutory sick pay from day one of their absence; rather than on the fourth day of absence, under usual statutory sick pay rules. At the time of writing, this legislation is not yet in force.

Note, however, that treating self-isolation absence as sickness may trigger allegations of unfairness, given that employees would be using up their sick pay entitlement when they are not unwell. Employers should therefore exercise caution before using coronavirus related absence to trigger warnings under absence management policies.

Unpaid leave is not recommended because it may deter employees from staying in quarantine and put the rest of your workforce at risk, (see below for more on your health and safety obligations). The wording of contractual sick pay entitlement may not cover a situation where an employee is off work but still well. Therefore, best practice suggests that self-quarantine be treated as a form of paid suspension. If this approach is adopted, then it would be prudent to clearly communicate that the situation will be kept under review. This is a rapidly changing situation and you may wish to protect your position if matters escalate significantly.

## HOW DO YOU PREVENT POTENTIAL ABUSE OF THIS SITUATION?

**THERE ARE** no hard and fast rules. However, it should be clearly communicated to employees that they are expected to avoid high risk areas.

Employers might consider temporarily changing holiday request and approval procedures. You may wish to require employees to disclose whether they will visit a high risk area. If that is their intention, you may wish to reserve the right to refuse the holiday request.

Employees may also be informed that deliberately visiting a high risk area, in order to take advantage of additional paid leave, will mean: they will not be paid for any resulting absence; and may amount to misconduct, dealt with under normal disciplinary procedures.

## WHAT ARE MY HEALTH AND SAFETY OBLIGATIONS TOWARDS EMPLOYEES WHO ARE UNAFFECTED BY CORONAVIRUS?

**YOUR** normal duty of care and duty to protect the health and safety of employees will apply. As such, you should follow WHO guidance, the Acas guidance (above) on infection control and government guidance for employers.

You will need to decide on, and communicate, a policy for ensuring that people who have visited high risk areas are kept off site. This not only applies to employees, but also to other people with whom your staff might come into contact, such as suppliers, contractors and customers.

The situation is evolving day-by-day, so keep a close eye on developments and ensure that you are responding accordingly.

## WHAT IF EMPLOYEES REFUSE TO UNDERTAKE TRAVEL FOR WORK BECAUSE THEY ARE WORRIED ABOUT CONTRACTING CORONAVIRUS?

**FOR TRAVEL** to high risk areas this is straightforward. Your approach should follow government advice. Employees should not be required to travel on business if this would conflict with government advice.

However, a grey area arises if an employee is concerned about travel more generally – for example, to any large city, or visiting a country which neighbours a country which is identified as high risk but which is not high risk itself.

In these circumstances, you should take a case by case approach. Any unreasonable refusal to travel for work should be treated in the same way as a refusal to comply with any other reasonable management instruction. But before doing so, consider alternative options, such as postponing the trip or arranging remote working.