

20 March 2020

# COVID-19: Navigating the new world of working from home, self-isolation and sick pay



As the COVID-19 pandemic continues, businesses are having to grapple with increasingly tricky issues around working remotely (“**WR**”), self-isolation and sick pay.

Whilst many employers have now enforced WR (particularly in the services sector) there are industries where employees are still at work and there are still tricky issues to deal with.

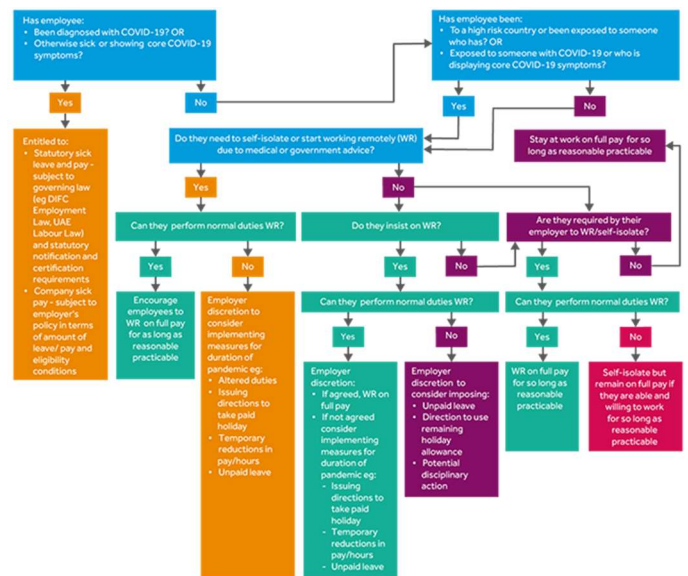
For example, what happens where an employee:

- is either diagnosed with COVID-19 or is otherwise sick / showing the main COVID-19 symptoms;
- has been to a high risk country (“**HRC**”), or been exposed to someone who has; or
- has been exposed to someone with COVID-19/who is displaying the core symptoms of COVID-19 – eg a family member in their household?

Don’t worry! The Stephenson Harwood Middle East Employment, Pensions and Incentives team is here to help and has created this helpful flowchart which identifies some of the main options and best practice guidance.

Given the speed with which the COVID-19 situation is evolving, in all scenarios in the flowchart, any measures considered or implemented must kept under regular review. Cases will also be fact-specific and must be treated accordingly.

This flowchart was published on 20 March 2020.



The flowchart does not deal with situations where a business is directed by a government or regulatory body to close temporarily or encourage/enforce WR, or is forced to close or dramatically scale-back their operations for other reasons (for example, mall closures forcing retail concessions to also close). For advice on such matters, please speak to your usual contact in the team.

Inevitably, the ability of businesses to react to the rapidly-evolving COVID-19 pandemic will vary greatly. However, all employers will be concerned with taking appropriate measures to ensure business continuity and the well-being of their clients/business contacts and staff alike. We have set out below some of the key considerations for any business trying to deal with the COVID-19 crisis as it unfolds:

## Business continuity - General

**Business continuity plan** – Is it fit for purpose? Do you have processes/people in place to cascade information and support to employees in the event of illness (whether theirs or others for whom they have care responsibilities) or an emergency lock down?

**Monitoring** – Have you put in place a team of people who will monitor the changing guidance and provide regular updates to management to cascade across your workforce?

**Working remotely** – Have you tested whether your IT system can cope with (potentially all) your employees WR? Can video-conferencing be implemented/increased? Do employees have sufficient equipment to enable WR?

**Split-team working** – Can and should your workforce be separated into two teams so as to avoid contact and reduce the risk of contagion – i.e. different offices, different shifts, take turns working from home?

**Alternative working** – Consider what employees can be usefully doing that is not necessarily the norm and doesn't require being in the office/on business premises e.g. altered duties, training, professional development and research tasks.

**Confidentiality** – Consider whether additional measures are required to ensure the protection of confidential information.

**Insurance** – Review existing cover, comply with obligations to notify insurers and check whether you need consent for any decisions.

## Business continuity – Enforced shut-down and slow down

**Annual leave** – Will you need to require employees to take annual leave while business is slow or if you are forced to close operations? Have you considered notice requirements or carried out an audit of employees to see who has leave remaining?

**Reducing/varying duties/hours** – Will you need to temporarily require employees to work different/reduced duties or hours and how will this impact their pay? Do you have the right (contractual or

otherwise) to impose this? Can this be implemented in phases before it becomes urgent?

**Unpaid leave** – Is this permitted under statute or contract? Can you enforce it?

**Voluntary leave** – Are there any incentives you can offer for employees to take a period of unpaid leave, a sabbatical or annual leave before enforcing this becomes necessary?

## Employee welfare

**Vulnerable employees** – Identify employees who may be high risk as a result of underlying health conditions, compromised immune systems, or pregnancy – offer additional support and consider reasonable adjustments.

**Internal reporting** – Consider reporting requirements on arrival to work re symptoms/contact with others and supplying thermometers in the workplace.

**External reporting** – Consider whether you have obligations to report COVID-19 cases/suspected cases to the appropriate authorities.

**Discrimination/victimisation** – Be vigilant about possible discrimination, victimisation and harassment in the workplace arising from COVID-19 and ensure the measures you put in place are not discriminatory.

**Mental health** – Employees' mental health is likely to be impacted from isolation and WR – consider how to encourage team cohesion and issue guidelines on positive mental health.

**Health checks** – Will employees be asked to submit to health checks (eg temperature checks)? Consider any data protection obligations in this respect regarding the processing of such data.

## Communication and information

**Encourage employee communication on all fronts** – from reporting movements and symptoms to keeping teams connected during periods of isolation and WR.

**Diagnosis** – If an employee is diagnosed consider how this will be dealt with, including any communications to staff – keeping in mind any data protection obligations.

**Statement** – Do you need to send a statement to customers and clients that your contingency planning

means you have the capability to continue business as usual?

**Sources of information** – An abundance of information can be confusing and upsetting for employees – consider directing them to certain approved sources of information, for example, global health organisations or government departments.

## Employee movement

**Travel plans/attendance at large scale events** – What are your rules and do you have a system in place? How will you deal with employees who misreport, fail to report, or insist on travelling/attending events for personal reasons even if that means voluntarily risking exposure to COVID-19?

**Travel restrictions** – Have you got plans in place for dealing with the rapidly-changing position on visa and travel restrictions? How will you assist employees stranded abroad or who are prevented from travelling to be with (sick) family members? How will this impact your recruitment plans in the coming weeks and months?

## Policies

**Dependants/parental leave** – If employees need to take care of their children and/or elderly relatives - how will you deal with this? Do you have policies dealing with emergency time off for dependents and parental leave?

**Disciplinary and dismissal** – Consider how you will deal with employees who refuse to follow reasonable and lawful instructions designed to ensure business continuity and client/contact/staff well-being or refuse to accept measures such as reduced hours/pay. Will these be disciplinary matters? Remember that each case will be fact-specific and that you must ensure consistency of approach.

As the pandemic could disrupt normal working practices for some time, consider whether practices you implement now are sustainable long-term (e.g. if you are being particularly generous in allowing paid time off or offering maximum flexibility – can this continue for many months?). State clearly that any measures or practices are subject to continual review and amendment throughout the course of the pandemic and until the full impact is known or better understood.

We have a dedicated COVID-19 team of employment lawyers keeping up to date on the latest developments and available to answer any questions you may have. Please do get in touch with **Kiersten Lucas, Emily Aryeetey, Ammar El Banna, Laura Anderson**, or your usual Stephenson Harwood contact.

This note (including the flowchart) is for guidance only and does not constitute legal advice. Please note this information based on the situation as of 20 March 2020. As the COVID-19 pandemic continues to develop and government guidance and public health advice is subject to change, please do get in touch for the most up to date advice.

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## Get in touch



### Kiersten Lucas

Partner

T: +971 4 407 3993

M: +971 52 577 7731

E: Kiersten.Lucas@shlegal.com



### Emily Aryeetey

Senior associate

T: +971 4 407 3942

M: + 971 52 120 3148

E: Emily.Aryeetey@shlegal.com



### Ammar El Banna

Senior associate

T: +971 4407 3928

M: +971 557 740 979

E: Ammar.ElBanna@shlegal.com



### Laura Anderson

Associate

T: +971 4 407 3961

M: +971 56 276 2246

E: Laura.Anderson@shlegal.com

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