

Employment

Coronavirus pandemic: the government relaxes some employment rules

As well as rolling back an era of fiscal restraint, the budget on 11 March was also designed to soften the anticipated blow to workers and firms from the effects of the coronavirus pandemic in the weeks and months ahead. Here we look at the main changes in sickness rules which will affect nearly all employers in the UK.

Sick pay rules

Many employers pay contractual sick pay at a full rate of salary, sometimes declining at a lower rate after a time and sometimes limited to a stated period of time. But all employers must pay statutory sick pay (SSP), currently at a rate of £94.25 per week. That is the minimum that must be paid to every employee when they are off work sick provided that they earn at least £118 a week. It may be paid for up to 28 weeks but, crucially, it is not payable in respect of the first three days of sick leave.

The three-day zero-pay rule creates incentives contrary to public policy aimed at preventing the spread of the coronavirus, encouraging those who are sick or need to self-isolate into work when they should stay at home..

So before the budget the government announced that SSP would be payable from day one of sick leave (not day four). And now, in his budget, the Chancellor said that SSP would also cover all those told to self-isolate as a precaution even when they are not sick. This includes those caring for family members who have tested positive for the virus. And today, 13 March, the Statutory Sick Pay (General) (Coronavirus Amendment) Regulations 2020 came into force. They provide that SSP will be payable to anyone isolating themselves from other people in order to prevent infection with coronavirus, in accordance with guidance published by Public Health England, NHS Scotland or Public Health Wales.



Another critical factor is that employers have been obliged to pay SSP without any reimbursement from the State. This means that firms may be badly hit by paying out large sums for SSP just at a time when they have to scale back production. The government has been minded to introduce a rebate scheme for small and medium enterprises but the coronavirus pandemic has brought this issue dramatically to the fore.

So the other crucial measure is that businesses with less than 250 employees have been promised that the Treasury would foot the SSP bill for each employee off sick up for to two weeks. No fit notes (see below) will be required to trigger this. This will probably revive the regime as it used to apply when SSP was introduced in the 1980s, where employers recouped all or most of the amounts they paid as SSP from their National Insurance contributions, in much the same way as maternity pay is now recouped.

Note that, if there is a dispute over the amount of an employee's entitlement or the employer fails to make a decision in relation to SSP, then it is for HM Revenue and Customs to determine the matter: an employee cannot sue for the disputed amount as an unauthorised deduction in the employment tribunal:

Fit notes

A central part of the administration of any workplace sick pay scheme is the requirement for the worker to produce a fit note from their GP (which used to be called a 'sick note') as evidence that they are sick. This may be to prove eligibility for SSP or contractual sick pay after a given period (say, five working days). The coronavirus pandemic would have meant GP surgeries being inundated for requests for notes so now, in the budget, the Chancellor has said that the government is setting up a temporary system to replace it. And anyone advised by the NHS 111 Helpline to self-isolate will get an automatic notification. The details of this new temporary scheme have yet to be worked out and it is likely not to be introduced for some weeks.

This should make administering an employer's sick pay scheme easier. Of course, employers do not have to insist upon fit notes as evidence of illness: in these unusual circumstances, they may take the view that it would be easier to trust their staff and waive the requirements completely.

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