

# CHECKLIST: UPDATING YOUR ABSENCE MANAGEMENT DOCUMENTATION IN LIGHT OF COVID-19

**There are various reasons why you may need to update your existing absence management documents to reflect Covid-19 circumstances, as they may not be fit for purpose in their current form.**

Firstly, it is likely that your business may be experiencing higher levels of employee absence due to the pandemic. Even if an employee is not unwell themselves, in the context of Covid-19 there is significantly more scope for them to have a legitimate reason for absence (such as if they are self-isolating in accordance with Government guidance). Given this, it is likely that the trigger levels in your normal absence management policies may no longer be appropriate. Adjustments are likely to be needed, if only temporarily, to reflect the fact employees may be away more frequently and for longer periods than normal due to Covid-19.

The fact that statutory sick pay (SSP) is now payable in a variety of circumstances beyond simple sickness absence, plus other increased business costs, also means many employers are having to review their usual practices – in particular with regard to determining eligibility for and the applicable rate of any company sick pay.

In addition, your existing documents are unlikely to mention the existence of furlough leave, as this new type of leave has only been introduced in the UK to manage the economic impact of Covid-19. This means that if you're making use of the Coronavirus Job Retention Scheme (the "Scheme") by

furloughing employees, you may need to update your policies to address how furlough leave interacts with other types of absence (such as sickness and holiday).

Finally, in these unusual times it may be harder to spot sickness that isn't genuine and you'll probably need to make adjustments to your absence policies to address some practical issues. For example, whereas normally a GP sick note would be required from an employee for absence over a certain period, in the context of Covid-19 employers must accept NHS self-isolation notes as evidence of absence for SSP purposes. Equally, you might normally require other medical evidence for an employee to receive company sick pay – but employees may be unable to get a GP appointment. Even if they can get an appointment, it will likely only be by video/phone appointment. Your documents should reflect these new practicalities.

**The checklist below outlines possible adjustments you could make to your absence documentation in the context of Covid-19 to better inform your employees and protect your business. The suggestions in the checklist will help you to identify possible adjustments, but any changes should be tailored to your particular circumstances.**

<b>Self-isolation and absence reporting</b>	<p>Require employees to follow current Government guidance on self-isolation. Currently this requires them not to come to work if they have symptoms, or someone in their household or support bubble has symptoms or if they are contacted by NHS Test and Trace service and told to self-isolate. Make clear that failure to comply with self-isolation requirements will be treated as misconduct and dealt with in accordance with your disciplinary process.</p> <p>Amend absence reporting requirements so that an employee must tell you when they first report their absence if that absence is because they have suspected Covid-19 symptoms, or are self-isolating (whether because they or someone in their household or support bubble has symptoms or because they have been asked to do so by the NHS Test and Trace service).</p> <p>Provide that employees who are self-isolating whose roles are suitable for home-working and who are well enough to work from home will be expected to do so, receiving their usual pay. Provide that you may adjust their role for the duration of self-isolation to facilitate home-working.</p> <p>Consider whether you need to alter any requirements or expectations about keeping in touch during sickness absence where an employee is self-isolating.</p> <p>Provide that you will require an NHS self-isolation note where an employee is self-isolating because they or someone in the household or support bubble has symptoms, or because they have been asked by the NHS Test and Trace service to self-isolate in place of a self-certificate or a GP fit note.</p> <p>Provide that employees who are on furlough will remain on furlough if they need to self-isolate for any reason during their furlough period. Require employees to notify you if they need to self-isolate during their furlough period, whether they are on full or flexible furlough.</p>
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<p><b>Reporting a positive covid-19 test</b></p>	<p>Provide that an employee must inform you as soon as possible if they have tested positive for Covid-19, but reassure them that you will not share more personal data than is necessary.</p> <p>Let employees know that you will be obliged to inform relevant staff members about any confirmed cases of Covid-19. (NB. You have an obligation to ensure the health and safety of your employees, and a duty of care towards them. So you should keep your workforce informed about cases of Covid-19. But note that the Information Commissioner's Office states that employers probably don't need to name individuals and shouldn't provide more information than necessary. So you can say that there are "cases of Covid-19 within the workplace", but be cautious about giving further details).</p> <p>Flag with employees that if someone who has been at work and has spent time in close proximity with colleagues subsequently tests positive for Covid-19, those colleagues may be contacted and advised to self-isolate under the NHS Test and Trace programme.</p> <p>Notify employees that the guidance for employers on the NHS Test and Trace programme specifies that if there is more than one case of Covid-19 associated with a workplace, the local health protection team will need to be contacted to report the suspected outbreak.</p>
<p><b>SSP and Company sick pay</b></p>	<p>Consider whether you wish to detail when an employee is entitled to SSP, for example when self-isolating with symptoms in accordance with Government guidance, and when it is not payable, for example when quarantining after return from a personal overseas trip to a country that is not on the Government list of 'travel corridor' countries (as updated from time to time).</p> <p>Consider whether you want to remind employees that when on furlough, company sick pay and SSP are not payable.</p> <p>If less than full company sick pay is available for self-isolation, consider whether you will offer employees the option of taking paid holiday instead of going onto sick leave.</p> <p>Be clear about the medical evidence you will require in the context of Covid-19.</p> <p>Be explicit about your position on the new circumstances in which you will pay company sick pay. For example whether you will pay it when an employee is self-isolating with symptoms, and whether you will pay when an employee is self-isolating without symptoms.</p> <p>If you are concerned about the affordability of your company sick pay scheme in the context of Covid-19, you might want to consider limiting sick pay to a specified number of self-isolation periods in a particular timeframe, or suspending company sick pay altogether (if so, you will need to think about how you will treat periods of illness that are not related to Covid-19). Please note that there are legal and practical risks associated with each of these possible approaches, so you will need to take advice if you are considering changing your policy on company sick pay.</p> <p>Consider whether any specific changes are needed only in relation to shielders moving forward (for example if you have been paying shielders company sick pay, in light of changes to SSP entitlement).</p>
<p><b>Trigger levels</b></p>	<p>Consider adjusting trigger levels to take into account likely increased frequency and duration of absence due to self-isolation and symptomatic employees. Options include:</p> <ul style="list-style-type: none"> <li>• Disregarding any period of absence caused by Covid-19 (whether because of infection or due to self-isolation in accordance with government guidance).</li> <li>• Disregarding some but not all Covid-19 absence, e.g. the first one or two self-isolation periods.</li> <li>• Adjusting trigger levels or disregarding Covid-19 absence for employees with certain disabilities (such as auto-immune conditions, respiratory conditions or diabetes), unless your attendance management policy manages absences in respect of such employees outside of the triggers.</li> </ul>
<p><b>Interaction with other policies</b></p>	<p>Consider whether changes are needed to any of your other policies to reflect the interaction with furlough leave (for example, holiday).</p>

<b>Furlough</b>	If you have been recording/managing non-Covid sickness absence where employees are on furlough, consider how this will impact on your procedure.
<b>Managing flexible furlough</b>	Managing sickness absence during a period of flexible furlough is complicated and there is limited Government guidance. While the Government guidance acknowledges that the Scheme should not be used to fund short-term absence, you are not prevented from putting a sick employee onto full furlough from flexible furlough. Your approach may vary depending on whether a furloughed employee becomes sick due to a Covid-19 reason, or otherwise. There also may be other practical issues to take into account, for example your furlough claim periods and the administrative burden of further furlough agreements.
<b>Return-to-work interviews</b>	Specify that return-to-work interviews after a period of self-isolation or absence due to suspected or confirmed Covid-19 will be conducted remotely before the employee returns to work and that the employee will be expected to be available for a telephone call at a pre-arranged time in the working day before they are due to return.
<b>Manager training</b>	<p>Train managers on conducting return-to-work interviews via telephone and any new questions that might be required.</p> <p>Consider offering specific training for line managers on how to implement any contractual policy changes (for example to company sick pay entitlement) so they are well-prepared to oversee this process.</p> <p>Consider training managers on general well-being awareness and resolving any related issues that may arise.</p>

## ADDITIONAL POINTS TO NOTE:

### Temporary or permanent changes?

It is difficult to predict how long the effects of Covid-19 are likely to last, but it is hoped and envisaged that the current pandemic will at some point come to an end. So consider whether any changes you are proposing should be made on a permanent or temporary basis. You could opt to implement any policy changes via an addendum to your attendance management policy, making clear to employees that they are anticipated to last until a specified date and will be subject to review at that stage. Making changes via an addendum would also enable you to include reference to matters that you might not normally put in the policy itself.

### Are you proposing contractual changes?

Remember that the normal rules about changing employee terms and conditions still apply in the context of Covid-19. So consider at the outset whether the changes you're proposing are contractual or non-contractual. If the changes you're proposing are contractual, you'll need to seek employees' consent (as pushing through changes unilaterally would be a breach of contract).

Obviously each situation will depend on the facts. But remember that if you would dismiss any employees who refused to agree to your proposed changes and offer them re-employment on the new terms, you may be caught by the collective consultation obligations under section 188 of the Trade Union and Labour Relations (Consolidation) Act 1992 if there are more than 20 employees involved. When you start a process of changing contractual terms, you don't generally know for certain whether the employees will agree to the proposed new terms. So given the penalties for failure to collectively consult, if you think employees are unlikely to agree to any of your proposed changes, and that you may need to dismiss at least 20 employees, you may decide that it is safest to start collective consultation (and notify the Secretary of State) at the outset.

### How can we help?

We appreciate that there are many considerations and that your internal resources, time and/or specialist expertise may be stretched in these difficult times. We have an experienced and dedicated team of Make UK HR & legal consultants available to help you work through any queries or concerns. If you would like to find out how we can provide practical guidance in HR or legal support, please contact your Account Manager, Legal Adviser or Nicola Kibble/Laura Heggs from our HR & Legal Commercial Services Team, who will be able to discuss your particular requirements.

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Disclaimer: This checklist is intended to provide information and guidance on the HR and employment law factors that employers should consider when updating their absence management documentation in the context of Covid-19. It does not constitute legal advice and should not be relied upon as such. Make UK members should speak to their adviser for guidance on their particular circumstances before implementing policy or contractual changes.