

Covid-19 employment health and care - 9 April 2020

Following our last update here is a summary of this week's key developments taking a look at personal protective equipment, regulatory guidance, visa applicants, internal redeployments, workforce sharing agreements, employment tribunal hearings, DBS checks and right to work, furloughed employees and the job retention scheme.

15 April 2020

Please note: the information contained in this legal update is correct as of the original date of publication

Following [our last update](#) here is a summary of this week's key developments.

Personal Protective Equipment

NHS Leaders and the UK Government have published new guidance regarding the PPE for NHS staff who are likely to encounter patients with Coronavirus. The updated guidance reflects the fact that clinicians are more likely to see patients who display minimal or no symptoms, who have the virus.

The guidance suggests the recommended PPE to protect healthcare workers in a variety of healthcare settings. This includes the required PPE for hospitals, community care, first responders and when to use PPE for all patient encounters (not just patients with suspected or confirmed Coronavirus). Patient contact has now been re-defined to being within 2 metres (rather than 1 metre) which is consistent with distancing recommendations elsewhere. The guidance further suggests that the same PPE can be worn for an entire session and doesn't need to be changed between patients, where safe to do so. A link to the updated guidance can be [found here](#).

The supply of PPE remains a key issue and following an urgent national audit of PPE, adult social care services are due to receive a large amount of PPE. The government is to distribute more than 30 million PPE items to social care and other front-line services in the next few days. Following an initial focus on acute trusts, the new PPE supply channel is expected to deliver PPE to community organisations, according to a letter from Matt Hancock and Robert Jenrick.

Regulatory Guidance

The GMC and NMC have issued guidance on 6 April 2020 to provide further information to overseas applicants or those who have been unable to register temporarily. The GMC has addressed the issue of how unregistered refugee Doctors can support frontline colleagues and how they can provide assistance through a range of roles which don't require registration.

The NMC has opened up temporary registration to overseas applicants, including both nurses and midwives, who have completed all parts of their NMC registration process except their OSCE. The guidance suggests that towards the end of this week, temporary registration will be open to nurses and midwives who left the register within the last 4 and 5 years.

Please find a link to the most recent guidance [here](#) and [here](#).

Visa Applicants

The government has issued guidance for UK Visa Applicants, which includes further information for healthcare professionals working for the NHS. Any Doctor, Nurse or Paramedic working for the NHS (including family members) will have their visa automatically extended for

free, by 1 year if it is due to expire before 1 October 2020. There are no longer restrictions on the number of hours that can be worked due to specific visa requirements, which will help allow more flexibility with working hours during the Covid-19 pandemic.

Internal redeployments

We appreciate there is a very pressing need to redeploy some groups of staff to duties which are outside of their contractual roles. Employees are showing immense bravery and dedication to their role in the NHS at this time and many are willing to take on different, often frontline roles to help the NHS response. However, employers will also recognise that this is likely to put employees in harm's way and therefore expect some reluctance when seeking to redeploy. While most employment contracts will have flexibility and mobility clauses requiring staff to take on additional/alternative duties in some circumstances, such clauses need to be exercised with caution. A blanket reliance on flexibility clauses is not advised and each situation should be considered on its merits, seeking legal advice before taking any robust action against an employee.

Workforce Sharing Agreements

We are receiving lots of enquiries about sharing of staff across the health and care sector. There are many models to facilitate this, including MOUs, secondment agreements and workforce sharing agreements. We have developed a number of template documents which we are happy to share with our clients to make the process of providing and receiving additional staff as straightforward as possible. If you would like further information on this or would benefit from a discussion, please do not hesitate to contact us.

Employment Tribunal Hearings

In our last update, we reported that London Central ET was closing due to operational reasons. Since then, London Central ET have confirmed that they will be re-opening for remote hearings on 14 April 2020. Judges will conduct telephone and video case management preliminary hearings and mediations on listed cases. Due to limited resource, London Central ET have asked parties to wait to be contacted with instructions rather than contacting them by telephone.

On 3 April 2020, the Presidents of the Employment Tribunals issued a joint FAQ document for users of Employment Tribunals in England, Wales and Scotland. This confirms that hearings due to start after 26 June 2020 will still proceed as planned, although this will be reviewed in the coming weeks. The FAQ's further confirm that if a hearing was to take place between 23 March 2020 and 26 June 2020, any directions and orders made prior to 23 March have been suspended. However, if a hearing is due to start after 26 June 2020 this does not apply, and the directions and orders still stand.

In terms of prioritising claims, the FAQ's clarify that claims such as dismissals where an individual has lost accommodation tied to their employment and applications for interim relief (where an individual is dismissed for whistleblowing/trade union reasons) should gain priority. For further information please find a [link to the FAQ's here](#).

Wider Sector knowledge useful to your workforce

DBS Checks and right to work

Applications for enhanced DBS checks for certain roles such as nurses, midwives and social workers will now be given priority. DBS are offering a temporary service to conduct a check of both barred lists within 24 hours and if there is no match against the barred lists, the applicant can be recruited in advance of receiving a full DBS certificate.

To support this process, DBS ID checking guidance has changed for a temporary period. The changes enable ID documents to be viewed over video link and scanned images to be used in advance of a DBS check. Similar changes have been implemented for an applicant's "right to work" checks which include:

- Checks to be carried out over video call;
- Scanned documents or a photo of documents can be accepted rather than originals;
- The online right to work service, when permissible to use it, remains a useful tool for certain employees.

Furloughed Employees and the Job Retention Scheme

Whilst this has been less of an issue for health and care staff, the changes that were published on 4 April 2020 have brought this to the forefront in the NHS. It has been clarified that an employee can start a new job on furlough, employees can be furloughed multiple times

(i.e. they can be furloughed then brought back to work) and employers must notify employees of their furlough status in writing. The guidance also confirms that employees who are unable to work because of caring responsibilities (i.e. looking after children) resulting from coronavirus can be furloughed.

We are conscious that, where a combination of annual leave and unpaid leave had been used to allow employees with caring responsibilities to stay at home, NHS employers will now be receiving requests from employees (and bank and agency workers) to be furloughed to guarantee an income of at least 80% of their salary. This raises numerous questions about whether annual leave accrues during furlough leave, whether employees can be required to take annual leave during periods of furlough leave and what level of pay they are entitled to during such periods. This is a complex area and we have therefore created an FAQ document which we will be happy to share with you. If this would be of interest, please do get in touch.

Apprenticeships

Further guidance has been published for employers and apprentices, as well as training providers and assessment organisations. It has been confirmed that apprentices on furlough can continue their training, as long as it does not provide services or revenue to the employer. Training and assessments have been encouraged to take place remotely and extensions should be granted, where appropriate, for assessments. HM Treasury have further confirmed that they will not be pausing apprenticeship levy payments for employers.

We wish you all the very best at the end of another challenging week and hope that this update has been useful.

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