

## Employment healthcare update - 26 March 2020

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**Please note: the information contained in our legal updates are correct as of the original date of publication**

It seems a lot longer than 2 weeks since we wrote and sent out our last FAQs on workforce issues arising out of COVID-19. Our employment healthcare team can only imagine the difficulties being faced by our colleagues and friends in the health and care sector currently. You have certainly all been in our thoughts and will remain so as we all face unprecedented personal and professional challenges.

We have been thinking of how we can support you (and not get in the way) in dealing with the emerging workforce issues whilst working under intense pressure supporting the wider workforce and in some cases with reduced teams. If having a chat out of hours would be helpful please contact myself, Helen or Bridget and we would be very happy to provide this support to you. Similarly, if a designated or ad-hoc call to raise any specific queries you may have, or even to alleviate some of the pressures you may be experiencing, would assist, we are happy to help.

As employment healthcare lawyers, never before have we seen so much guidance issued to you at such a pace so we recognise it will be difficult for you to keep up with it all. We have put this note together to support you by providing a round-up of key issues and developments over the last week. We will do further 'quick read' updates so that you have what any further developments to hand as and when we feel it is needed. If you don't need it – feel free to ignore it – but we'd rather do something to support you.

We very much doubt that you will have time for even the briefest of calls but if picking up the phone to us could take some of the burden away then do lean on us. We are keen to be a help and not a hindrance. Please also remember that our healthcare employment team is part of a diverse employment practice spanning education, retail, manufacturing as well as health and there may well be workforce steps taken across different sectors which would be helpful for you to know about.

We have also compiled a list of links to key resources for you to have at your fingertips which we will update at the end of the week and on a regular basis.

For now, here are the key developments over the last week.

### Key worker school support

Although schools closed their door for the majority of students last week, they remain open for key worker children, and this includes those working within health and care. Educational establishments and childcare providers are also being encouraged to continue to support key worker children in the approaching Easter holidays with many schools currently exploring ways of ensuring that this level of cover remains in place.

### Isolation note service

On 20 March the Department for Health and Social Care launched an online Isolation Note Process, commissioned by NHS X and NHS Digital, for providing proof of Coronavirus related absence from work.

An isolation note will provide employees with evidence that they have been advised to self-isolate due to Coronavirus either because they, or someone they live with, have symptoms and so cannot work.

For the first 7 days of work employees can self-certify so they don't need evidence from their employer but after that many employers' policies will require evidence of sickness absence. The new service means employees can obtain an isolation note without needing to leave their homes or contacting a doctor, reducing pressure on GP surgeries and assisting with the isolation process.

The [note can be accessed](#) through the NHS website and NHS 111 and after answering some questions an isolation note will be emailed to the user, a trusted friend or family members or directly to their employer.

## Workforce Sharing Agreements and Licences

We have been working with Trusts to provide agile solutions (Workforce Sharing agreements or Licences) in order to facilitate moving staff around the service as part of the COVID-19 response. NHS X are also working on issuing digital licences to try and speed up and simplify this process.

## Isolation Guidance

The government guidance issued on 17 March and which was updated is a little complex. Although a 14-day isolation period for whole households was initially reported in the press, this is not the full story. The guidance confirms that:

- Individuals who live alone will need to self-isolate for 7 days after developing symptoms (a high temperature or a new and persistent cough), assuming that they feel better and no longer have a high temperature.
- Individuals who live with others and who are the first to develop symptoms will need to self-isolate for 7 days after developing symptoms, assuming that they feel better and no longer have a high temperature.
- Individuals who live with someone else who has developed symptoms will need to self-isolate for 14 days, unless they themselves develop symptoms in these 14 days. In these circumstances, they will need to self-isolate for 7 days after they develop symptoms, assuming that they feel better and no longer have a high temperature. This is the case even if this takes them beyond the original 14 days – but the isolation period for the rest of the household does not need to be extended.

A link to the guidance can be [found here](#).

## Personal Protective Equipment

We have been discussing the employment implications where PPE is not available which include a breach of obligations imposed on employers by the health and safety at work legislation. There is also a risk of constructive dismissal claims (breach of the implied term of trust and confidence) and inevitably the potential for whistleblowing claims given the safety concerns which may arise and be raised with employers.

Matt Hancock has announced on 23 March, the delivery efforts made over the weekend to address the provision of supplies of PPE and the further logistical support which the government will bring in to address this issue on an ongoing basis. Individual employers will need to keep the availability of PPE in their particular workplace under review and escalate this further with the Government if there are continued shortages which are placing their employees at risk or preventing them from carrying out necessary services in response to the challenges presented by COVID-19.

## Private Sector Work

We have previously been asked about whether employers can insist that NHS work takes precedence over private practice work in the light of COVID-19. However, the announcement over the weekend regarding the block booking of almost all private sector bed capacity to fight COVID-19 is likely to resolve these concerns.

## Employment Tribunal Hearings

As from Monday 23 March 2020, all in-person hearings which were due to be conducted on or before 26 June 2020 will be converted to a case management hearing (CMH) by telephone or other electronic means unless the parties are advised otherwise. The CMH will take place on the first day of any allocated multi-day hearing and the remaining days of the hearing are postponed.

The purpose of the telephone case management hearing is to determine how to proceed in light of COVID-19. The President of the ET's guidance ([link below](#)) envisages new ways of working. There is strong encouragement to use video conferencing as much as possible, including for some final hearings which raises a number of practical issues.

All cases remain subject to previous case management orders unless an application for orders to be varied is made. Health and care organisations are in a particularly unique position and are likely to wish to make applications given the unprecedented challenges being faced. We will be contacting clients on a case by case basis to discuss this.

At this stage, hearings listed to commence on or after 29 June 2020 remain as previously listed.

## Updated Guidance on Pregnant Workers

The Royal College of Obstetricians and Gynaecologists urges employers to share its recent guidance regarding pregnant workers and COVID-19 with staff and take the guidance into account when considering where to deploy pregnant staff who need to work remotely or in lower risk areas. The RCOG recommends that guidance should be sought from occupational health regarding the risks to pregnant staff and states that current information indicates greater risks to staff in the last 3-month trimester. Further information is being sought by RCOG so that this can be shared with health staff.

Pregnant women also fall within the group of vulnerable persons who have been advised by the Government to be particularly stringent in following social distancing measures.

## Regulatory Guidance

The NMC and GMC have issued guidance and assurance for professional staff in respect of carrying out duties during the fight against COVID-19 and have also written to who have retired in the last 3 years asking if they will return to support the service in a move to boost workforce numbers.

## Coronavirus Act

The Coronavirus Act received Royal Assent yesterday (25 March). It provides a raft of emergency measures to protect life and public health. The Act contains key workforce components to support NHS and social care staff in delivering essential front-line services.

- **Pensions**

The Act will suspend certain rules that currently prevents some NHS staff from returning to work after retirement for more than 16 hours a week along with rules on abatements and draw down of NHS pension that apply to retirees.

- **Emergency registration of health professionals**

New temporary registration powers will be introduced for the NMC and HCPC to register fit, proper and suitably experienced persons as regulated healthcare professionals.

NMC registration will cover nurses, midwives and nursing associates and the HCPC will cover paramedics, ODPs, scientists and other relevant health professionals.

This may include recently retired professionals and students approaching the end of their training.

This cohort of staff can be used as appropriately determined at local level during the height of the epidemic.

- **Emergency volunteers**

These measures will enable volunteers to fill gaps in capacity helping to safeguard essential services that could be at risk due to increased demands of the epidemic.

The Act introduces a new form of unpaid emergency statutory leave in blocks of 2, 3 or 4 weeks and provision for a UK wide compensation scheme for some loss of earnings, travel and subsistence for those who volunteer through an appropriate authority. This requires 3 days' notice to an existing employer and an emergency volunteering certificate. The volunteering arrangement can fit into a volunteering period of up to 16 weeks.

Please note that the provisions in respect of emergency volunteers do require secondary legislation to bring this into force. We anticipate that these will be progressed as quickly as possible.

- **Indemnity**

The Act also sets out an indemnity 'safety net' where clinical negligence arising from the provision of such services is not covered under pre-existing indemnity arrangement and provisions to ensure that NHS staff can care for patients if they are moving outside their day to day duties whilst making use of skills and training.

Sending our best wishes to you all at this very difficult and challenging time.

Co-authored by [Jacqui Atkinson](#), [Bridget Prosser](#) and [Helen Badger](#).

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