

Covid-19 employment health and care - 2 April 2020

Read our April employment health and care newsletter to find out more about employment issues from the coronavirus outbreak.

08 April 2020

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

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

Personal Protective Equipment

The Medical Director of NHS England and Improvement, Professor Stephen Powis, co-signed by Yvonne Doyle CB MD and Carrie MacEwen have written to NHS Chief Executives on 28 March in the light of the reported difficulties regarding the supply and use of PPE.

The letter explains current guidance for the use of PPE and explains the rationale for changes to the guidance, setting out the recommended use of PPE for high risk procedures, which includes healthcare workers in intensive care units and Emergency Departments or hot zones. It also addresses the required PPE for healthcare workers in other settings where healthcare staff are within 1 metre contact with a patient with possible or confirmed Covid-19. The guidance makes it clear that PPE is to be worn in other healthcare settings including ambulance trusts, care homes and primary care.

The letter also contains the 24/7 NHS Supply Disruption Line email address to assist with any urgent PPE queries. The supply of PPE continues to be an issue and it is anticipated that the guidance will be updated this week as further efforts are being made to address supply and demand.

It has also been announced that the government has reportedly ordered an urgent national audit of personal protective equipment and has entered into a contract with a private logistics firm to help with PPE. Local resilience forum planners were earlier this week asked to share stock levels and daily consumption rates of the items at ambulance, acute trusts and in primary care and other services by 9pm on Tuesday.

Regulatory Guidance

The NMC and GMC have issued guidance for the temporary registration of Doctors and Nurses who are returning to service, in response to the Covid-19 pandemic. The GMC have confirmed that as soon as Doctors receive an email confirming their temporary registration, they will be able to begin practicing as a Doctor. The temporary registration will last for the duration of the national emergency. The NMC have a similar procedure for nursing and midwifery professionals who are temporarily registering to practice during the Covid-19 pandemic.

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

Workers entitled to carry over some annual leave for 2 years

The unpublished Working Time (Coronavirus) (Amendment) Regulations 2020 will amend the Working Time Regulations to allow workers to carry over up to 4 weeks of unused annual leave into the next 2 leave years, where it is not reasonably practicable for them to take

some, or all, of the holiday they are entitled to because of the Covid-19 pandemic.

This will allow staff to continue working in the national effort during the Covid-19 pandemic without losing out on annual leave entitlement and will allow employers more flexibility to manage the workforce. The government hopes that this will help to ensure that healthcare is not left short-staffed due to employees being required to use or lose their annual leave entitlement. This approach will differ to many policies and therefore we know some health and care organisations are writing to staff to confirm the different approach from the usual rules in view of the Covid-19 pandemic.

Statutory Sick Pay

The Amendment of the Statutory Sick Pay Regulations which allows payment of statutory sick pay from day 1 (rather than day 4) are now in force. Statutory sick pay will be payable to employees who are staying at home on government advice, due to Covid-19. An isolation note will provide employees with evidence that they have been advised to self-isolate due to Coronavirus, although for the first 7 days employees can self-certify. The amendment applies retrospectively from 13 March 2020.

For further information please see our recent [blog](#).

Updated Guidance on Pregnant Workers

The Royal College of Obstetricians and Gynaecologists have updated their guidance regarding pregnant workers and Covid-19. The guidance and recommendations remain largely the same with a minor change in relation to the risks to the baby.

The minor change states that it is “probable” that Covid-19 can have vertical transmission (transmission from mother to baby). This change was as a result of a single case report published on 26 March 2020 in which this appears likely, however reassuringly the baby was discharged from hospital safe and well. The proportion of pregnancies affected by vertical transmission and the significance to the neonate is still not yet known.

Workforce Sharing Agreements

Many organisations are already redeploying or exploring the sharing of staff across the sector and receiving offers of willing staff from local private sector and third sector organisations. Health and care organisations are also putting in place contractual arrangements for new recruits or returnees to the NHS. We are finalising various template documents which can be used to record the secondment or work sharing arrangements. Please do not hesitate to contact us if you think these may be of use to you.

Employment Tribunal Hearings

As from 25 March 2020, the Employment Appeal Tribunal (EAT) is closed until 15 April 2020. All hearings that were listed during this period will be postponed and this applies to all types of hearings, as the EAT is not in a position to conduct hearings remotely. If any appeals need to be lodged, they will have to be sent via email to the EAT. It is anticipated that a further announcement will be made on 10 April 2020, as to whether the restrictions will be updated or extended.

On 1 April 2020, London Central Employment Tribunal also confirmed that they were closing due to operational reasons. It is suggested that unless parties had already received recent contact from the ET with details of a telephone case management hearing listed between 1 – 6 April 2020 it should be assumed that all other hearings have been postponed, to be relisted at a future date. It is anticipated that this will be reviewed and another announcement will be made on 6 April 2020.

We are hearing that in some regional tribunals ET hearings which have been postponed due to Covid-19 or where applications may be made to adjourn hearings due to covid-19 may not get priority to be re-listed. This will mean cases will go to the back of the queue when they come to being re-listed, so do be aware of this if you are considering asking to postpone a hearing. With some cases being listed in the summer of next year, 2021 may be an extremely busy year for the employment tribunals, following the backlog of cases from Covid-19.

Wider Sector knowledge useful to your workforce

Furloughed Employees and the Job Retention Scheme

Clearly, this has not been an issue for health and care staff but we are conscious that friends and family of your staff will be affected by the economic conditions brought on by covid-19. Members of our wider employment team have been advising private sector employers

(small and large) on these issues. We have included links to our briefing notes on these issues as they may prove to be a helpful speed read if you are asked for information by busy and worried staff.

For further information please see our recent updates [here](#) and [here](#).

Key workers children prioritised for education provision

Key workers who are critical to the Covid-19 response will be prioritised for educational provision if their children cannot be left safely at home. For health and social care these key workers include but is not limited to doctors, nurses, midwives, paramedics, social care staff etc. This should help to ensure that key workers do not have to take time off to look after children during the Covid-19 response.

Please see the latest [government guidance here](#).

Some non-Covid 19 light relief

The Supreme Court this week issued its judgment in *Morrison v Various Claimants*. In a climate where we have never appreciated supermarkets or their staff more, the Supreme Court has ruled that Morrison should not be held vicariously liable for the criminal act of an employee.

The case involved a disgruntled employee who leaked 100,000 staff members payroll data on the internet, causing a data protection breach. The Judge held that an employer could only be held liable for the actions of employees if they were "closely connected" with their duties at work. In this case, the employee's action was not to further Morrison's business but was instead to pursue a personal vendetta, therefore the Supreme Court held that Morrison should not be held vicariously liable for this action.

Finally, we cannot end our briefing without a massive thank you to you and all of your health and care colleagues for your efforts to keep us safe and well. Please also do stay safe.

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