

Coronavirus (COVID-19)

Guidance for REC members

18 March 2020 v.3

This is the third REC guidance on Coronavirus.

We are continuing to see a significant number of calls and emails to the REC Legal Helpline and we have updated this guidance with the following:

Four major updates:

- The details about the right to SSP from day one (for Coronavirus) will be included in the Coronavirus Bill - expected to be put to Parliament Wednesday 18 March 2020.
- Government have confirmed SSP from day one will be backdated to Friday 13 March 2020.
- The legislation is expected to be in force by the end of March 2020.
- IR35 has been delayed until 6 April 2021 in light of Coronavirus. See the [IR35 hub](#) for more details.

We have updated the Useful Links section.

FAQs

We have added more FAQs with a reminder of the [qualifying criteria for SSP](#), information on [client closures](#) and [AWR rights](#) and contractors working through limited companies.

Official government guidance is constantly being updated.

Use this guidance for your internal staff, and for where you place permanent candidates or supply temps to your clients. We'll refer to temps as agency workers in this guidance. If you don't supply agency workers, the guidance relating to employees will still be relevant to you.

Part one of this guidance provides useful links to key resources and government guidance. Part two includes key updates since the previous guidance and part three answers some of the main questions that we have been asked by members so far.

Keep in mind that the Coronavirus is a challenging health issue and the government and health experts are constantly reviewing the situation. As such, while this guidance is up to date at the time of writing – it will be updated as and when any changes are required.

1. Useful links

Government guidance

We advise you to stay updated with the government guidance – this is a fast-moving area and the guidance is being updated daily at 2 p.m.

[Coronavirus \(COVID-19\): latest information and advice](#) on the gov.uk website includes:

- Travel advice
- Guidance issued by Public Health England and the Department for Health.
- Guidance for employers and businesses
- 'Stay at home' (self-isolation) guidance

[What will the Coronavirus Bill do?](#) – government guidance on the intention behind the Bill and what to expect.

Anyone working in the healthcare sector should also review the [Guidance for healthcare providers: healthcare workers with relevant travel, healthcare or household contact history](#).

Anyone working in the education sector may find it useful to review the [Guidance for educational settings](#).

Additional guidance is likely to be added to the [gov.uk](#) website so do review this regularly, putting 'Coronavirus' into the search function.

Other guidance for employers

ACAS has released guidance for employers - [ACAS Coronavirus: advice for employers and employees](#) that you can refer to.

The government has guidance about placing employees on [short time working or temporary lay off](#) if you're unable to provide work. This only applies to your employed staff (staff on a contract of employment).

2. Updates

2.1 What did the government announce about SSP for Coronavirus on 17 March 2020?

- The details about the right to SSP from day one (for Coronavirus) will be included in the Coronavirus Bill - expected to be put to Parliament Wednesday 18 March 2020.
- Government have confirmed SSP from day one will be backdated to Friday 13 March 2020.
- The legislation is expected to be in force by the end of March 2020.
- IR35 has been delayed until 6 April 2021 in light of Coronavirus. See the [IR35 hub](#) for more details.

2.2 What announcements were made in the 2020 budget about Coronavirus (COVID-19)?

The [Budget Report](#) states the following:

The Prime Minister has already announced that the forthcoming COVID-19 Bill will temporarily allow SSP to be paid from the first day of sickness absence, rather than the fourth day, for people who have COVID-19 or have to self-isolate, in accordance with government guidelines. The Budget sets out a further package to widen the scope of SSP and make it more accessible.

On 11 March 2020 the Chancellor announced additional measures:

The government will temporarily extend SSP to cover:

- *individuals who are unable to work because they have been advised to self-isolate*
- *people caring for those within the same household who display COVID-19 symptoms and have been told to self-isolate*
- *the government and the NHS will bring forward a temporary alternative to the fit note in the coming weeks which can be used for the duration of the COVID-19 outbreak. This system will enable people who are advised to self-isolate to obtain a notification via NHS111 which they can use as evidence for absence from work, where necessary. This notification would meet employers' need for evidence, whilst taking pressure away from General Practices*
- *Statutory Sick Pay – The government will support small and medium-sized businesses and employers to cope with the extra costs of paying COVID-19 related SSP by refunding eligible SSP costs. The eligibility criteria for the scheme are as follows:*
 - *this refund will be limited to two weeks per employee*
 - *employers with fewer than 250 employees will be eligible. The size of an employer will be determined by the number of people they employed as of 28 February 2020*
 - *employers will be able to reclaim expenditure for any employee who has claimed SSP (according to the new eligibility criteria) as a result of COVID-19.*
 - *employers should maintain records of staff absences, but should not require employees to provide a GP fit note*
 - *the eligible period for the scheme will commence from the day on which the regulations extending SSP to self-isolators come into force*
 - *while existing systems are not designed to facilitate such employer refunds for SSP, the government will work with employers to set up a repayment mechanism for employers as soon as possible*

The REC is aware that employment businesses are small businesses in terms of internal staff (recruitment consultants etc) but have large numbers of temporary workers on their books which push them over the 250 employee threshold. This would mean that the SSP refund provisions will not apply. We are making representations to government to clarify what is meant by 'employees' when working out the headcount of 250 and making the case for employment businesses to be included in the refund provisions.

However, it's possible that we will not get any full clarification on the definitions that will apply here until the COVID-19 Bill (the legislation that will bring all of these changes into effect) has been published.

Matt Hancock, Secretary of State for Health announced on 11 March that the Bill will be put before Parliament 'before next week'.

Similarly, we expect the Bill to also provide the details of all of the other SSP provisions announced in the budget, including the proposal to make SSP payable from day 1 for Coronavirus self-isolation absence. We appreciate that members need to know exactly how all of these changes will apply, but until we have the further details from the Bill we won't be able to advise members any further.

2.3 Updated health – stay at home guidance issued 12 March 2020

The government has significantly changed its health guidance for people with even mild symptoms of Coronavirus.

The advice now is:

If you have symptoms of Coronavirus infection (COVID-19), however mild, do not leave your home for 7 days from when your symptoms started.

You do not need to call NHS 111/ NHS24 to go into self-isolation. If your symptoms worsen during home isolation or are no better after 7 days, contact NHS 111 online/ NHS24.

[Public Health England](#), [NHS Service Scotland](#) and [Public Health Wales](#) have all issued guidance effective from 12 March 2020 to reflect this updated policy.

Full details of the new policy, including further advice about self-isolation, when to end self-isolation and when to seek medical advice or help is available on the [Public Health England](#), [NHS Service Scotland](#) and [Public Health Wales](#) websites.

At the time of writing, it is also being reported that the self-isolation policy may be extended and for anyone over the age of 70 to stay at home.

2.4 Updated Statutory Sick Pay entitlement for those self-isolating

New regulations have updated the eligibility criteria for SSP to specifically include anyone who is unable to work because they are isolating themselves from other people to prevent infection or contamination with Coronavirus disease.

This change came into effect on 13 March 2020. This change together with 'Updated health – stay at home guidance' (see above) does now mean that those self-isolating because of Coronavirus will be entitled to SSP if they meet the other criteria, without needing to have been directed in writing to self-isolate.

3. Frequently asked questions

3.1 What information should I provide to my employees and our agency workers?

Employers should inform all internal staff and agency workers with information about Coronavirus, in particular:

- Symptoms of Coronavirus
- Basic hygiene to help protect themselves and others
- Where they can get more information
- When they should seek medical guidance if they have or may have been exposed to the virus

Symptoms:

At the time of writing the common symptoms are:

- Respiratory symptoms
- Fever, cough
- Shortness of breath
- Breathing difficulties

Hygiene

The current guidance is to:

- Cover your mouth and nose with a tissue or your sleeve (not your hands) when you cough or sneeze
- Put used tissues in the bin immediately
- Wash your hands with soap and water often – do this for at least 20 seconds
- Try to avoid close contact with people who are unwell
- Don't touch your eyes, nose or mouth if your hands are not clean

Further information and when to seek medical assistance

Share the links in the '[useful links](#)' section above with your staff. Presently people are advised to contact the NHS 111 number if they feel unwell or if they may have been exposed to the Coronavirus. They should not go to the GP if as they could spread the virus if they have it.

3.2 What other steps can I take to protect my staff?

As well as providing information to your staff, you could designate an 'isolation room' where an employee can go if they feel ill to sit away from their colleagues and privately call '111' before taking further action.

3.3 What information do I need to get from my client if I supply agency workers?

You should ask clients if they have put any specific policies in place to manage Coronavirus risks in their workplace. If so, it should be shared with all agency workers on assignment there. The information available is likely to depend on the nature of your client's business – for example clients operating in healthcare settings may have very specific provisions for healthcare workers.

Remember that if you supply agency workers you've got an obligation to obtain information from your client about any health and safety risks. You should get this information at the time the client instructs you to find agency workers. The information should be shared with your agency workers when they are offered the assignment and updated if the information changes.

3.4 Do I need to check if my agency workers have been exposed to Coronavirus?

You should share information with your internal staff and agency workers about Coronavirus. You should tell them about the circumstances in which they should seek medical advice and they should be encouraged to inform you if they either have symptoms or may have been exposed, or have been directed to self-isolate – e.g. following advice from a GP or NHS 111.

3.5 If a member of staff is not unwell but has chosen to self-isolate, are they entitled to sick pay?

Statutory Sick Pay

Employees (your staff who work on contract of employment) are entitled to Statutory Sick Pay (SSP) if they meet all of the qualifying criteria for it. SSP also applies to agency workers engaged on a contract for services because they're treated as employees for SSP purposes.

At the moment, SSP applies if the employee/agency worker is actually sick and unable to work (due to illness or injury) but the current regulations also extend SSP to someone who is not unwell if they are abstaining from work;

- On the basis of being given a written notice issued under legislation;
- Because they are infectious or could reasonably be believed to be infectious or to have been in contact with an infected person; and
- The infection is a disease which is subject to legal regulation for public health reasons.

The government has issued specific Coronavirus regulations which put measures in place to protect public health. Under the regulations a person can be directed to self-isolate because they could be infected or have been exposed to someone else who was infected by Coronavirus.

If the conditions above apply, a person will be treated as if they are unable to work due to sickness and therefore be eligible to receive SSP.

Employers should exercise discretion when requesting written evidence of sickness given that the current advice is for people to avoid going to their GP, and they may therefore not be able to provide a sick note ('fit note') if they've been told to self-isolate for 14 days.

Note – on 4 March 2020 the government announced plans to amend the qualifying criteria for SSP so that it is payable from the first day of sickness rather than the fourth day. The change has not yet come into force at the time of this guidance document.

We are expecting these changes to be brought into force in a new Coronavirus Bill – see the [‘Updates’](#) section 2 above. Until we see the legislation we won't have any further details about how and this will be implemented. We ask members to bear with us . We'll issue updates as soon as we know anything more.

Company sick pay

Statutory Sick Pay (SSP) is the legal minimum requirement for sickness absence but many employers also provide company sick pay that's more generous than SSP. Do check the terms of your employee contracts and your contracts for your temporary workers - although for most recruiters, company sick pay is usually only provided to internal employees. Check your sickness policy, too, if you have one. Company sick pay might only be payable to staff who are actually sick – but this is often balanced with a discretion to make payment to employees in other circumstances.

If you'd prefer that your employees don't attend work in these circumstances it would be advisable to consider paying sick pay in this situation to avoid any risk to your other staff.

Alternatively, you might want to allow your employees to work from home or use their annual leave. Flexibility is key, otherwise you run the risk of them coming into work and potentially spreading the virus.

When you're deciding how to handle Coronavirus you should think about your duty of care to other staff - you will need to take particular care if you have employees with underlying medical conditions who may be more at risk if exposed to the Coronavirus.

3.6 What steps do I need to take with my clients if my agency workers may have been exposed to Coronavirus?

Where you are supplying agency workers to clients, you need to get information regarding any health and safety measures that your clients have put in place. In relation to Coronavirus, this could include restricting who can come into their workplace if they have potentially been exposed to Coronavirus (their staff, agency workers, contractors and even clients and customers).

You have an obligation to take certain steps if you are made aware that an agency worker either is, or could be unsuitable for the role they are working in. This could certainly include a situation where you are informed that they have been or could have been exposed to Coronavirus.

If you believe that an agency worker is unsuitable for their assignment, you are required:

- To inform the client; and
- End the assignment

If you are not sure but you think that the agency might be unsuitable, you need to:

- Inform the client;
- Investigate; and
- If you conclude that the agency worker is unsuitable, you are required to end the assignment

When deciding if an agency worker is unsuitable to continue working in the assignment, you'll need to consider the client's own policy. You would need to understand the nature of the work and the setting (e.g. if an agency worker is working in a medical/healthcare setting with service users who are at higher risk), and get information from the candidate about potential exposure.

3.7 Do I have to pay my agency workers if their assignments are ended by a client if they close due to Coronavirus?

If your client ends the assignment of an agency worker, the question of whether you need to pay your agency worker, will depend on the terms and conditions in the contract that you have with your worker. Usually, the terms set out in a contract for services will mean that the agency worker is not under an obligation to do work and similarly, there is no obligation for you to provide work to your agency workers. It's also common for the terms to allow you to terminate the assignment without any further payments, if the client no longer requires the agency worker's services.

If your agency workers are engaged on contracts of employment you may have an obligation to make payment if, for example, there are minimum guaranteed hours.

Agency workers who are engaged on 'Swedish derogation' will be entitled to pay between assignments if a client ends an assignment and the agency worker is available to work but you can't find another suitable assignment for them. This is a specific legal obligation but it will only apply until 5 April 2020. After that date any entitlement to pay between assignments will only apply if the contract provides for it.

Read the [REC Agency Workers Regulations](#) online legal guide for more information about pay between assignments.

3.8 If an employee/agency worker has travelled to an affected area – what steps should we take?

The countries and regions that are categorised as 'affected areas' are being updated regularly. You should check via the latest government guidance which countries have been affected and the latest guidance for travellers to those places. At the time of writing, people who have returned from

affected areas are being advised to stay away from their GP surgeries if they feel that that may have been exposed and to call 111 instead for medical advice. You can pass this information on to staff who have been affected.

3.9 What if employees do not want to come to work?

Some people may be worried about catching Coronavirus and therefore unwilling to come into work. If this is the case you should listen carefully to the concerns of your employees and if possible, offer flexible working arrangements such as homeworking. Employees can also request time off as holiday or unpaid leave but there is no obligation on employers to agree to this. If an employee refuses to attend work, disciplinary action may be reasonable, but this does need to be looked at on a case by case basis. Particular care should be taken in respect of employees who have other underlining health conditions that may mean that they have reduced immunity or are otherwise more vulnerable to the virus.

Agency workers working under a contract for services are not under the same obligation to attend assignments. They have more flexibility to choose when they are available to work. But do check the particular contract and assignment terms that have been agreed with the agency worker.

Agency workers could use their annual leave to manage time away from assignments.

3.10 We supply to schools and we are concerned about potential school closures. What happens if we have less or no work for our internal employees? Can I temporarily say that we have no work for staff?

If you have enough notice and anticipate in advance that you will have a quiet period, you may wish to manage this time using annual leave.

Where your employment contract does have an express clause that allows you to temporarily lay staff off without pay you may still have to pay 'guarantee payments'. But note that this right only applies to employees who you have employed for at least one month.

3.11 What is the Guarantee pay rate?

Rate and length of statutory lay-off pay

Employees who have been employed for at least one month are entitled to guarantee pay during lay off or short-time working. The maximum amount is £29 a day for 5 days in any 3-month period - so a maximum of £145.

Any employees who earn less than £29 a day will get their normal daily rate. Employees who work part-time get a proportional amount.

3.12 Are agency workers entitled to more generous sick pay under the AWR if the client's staff get more than SSP?

The Agency Workers Regulations (AWR) give agency workers the right to at least the same treatment as the staff of the client they are supplied to, in respect of certain employment terms and

conditions. This includes pay BUT company sick pay is excluded from the AWR. So if your client provides more generous sick pay provisions than SSP, either in terms of the amount or the circumstances in which it is paid, agency workers will not be entitled to this under the AWR.

3.13 Are agency workers entitled to be paid under the AWR if a client closes down for a period of time and the client continues to pay their own staff?

It's likely that clients will use contracts of employment for their own staff, meaning that they are employees with full employment rights. Ordinarily, employers have an obligation to provide work to their employees, if they close they will still need to pay them.

The Agency Workers Regulations (AWR) give agency workers the right to be treated at least the same as the staff of the client they are supplied to, in respect of certain employment terms and conditions. This applies if the agency worker has completed a 12 week qualifying period. It's reasonable to ask then, whether agency workers could argue that they are entitled to at least the same hours as the client's employees, meaning that they should also be paid if they are prevented from working due to a closure.

While duration of working time is one of the terms and conditions covered by the AWR, it has been made clear from a previous case ruled on by the Court of Appeal that the AWR 'do not entitle agency workers to work the same number of contractual hours as a comparator'. The Court of Appeal also recognised that if agency workers were entitled to the same amount of working time as the client's staff, this would 'be contrary to the whole purpose of making use of agency workers, which is to afford the hirer flexibility in the size of workforce available to it from time to time'.

So, if the AWR do not give agency workers the right to be paid if the client closes its site and no longer needs agency workers, the questions about pay will be down to what is in the contracts. If the contract between the client and employment business allows the client to end assignments without any further liability, the client can do this and if the contract between you and your agency workers allows you terminate the contract without any liability, then you can do so. Do check though whether any notice provisions have been agreed in either contract because if the client has to give you notice to terminate the assignment they may be liable to make a payment to you if they don't give the notice. Similarly, if you have agreed to give your agency workers notice to terminate the assignment, you may be liable to make a payment to your agency workers for the period of notice.

3.14 If our temporary workers are working through an umbrella company – who is responsible for paying them SSP?

An employer is liable to pay SSP. If the umbrella company workers are employed by the umbrella company (they have a contract of employment with the umbrella company) then the umbrella company will be responsible for paying their SSP. If the umbrella company is providing purely an outsourced pay roll function; processing pay on your behalf but has no contract with your temporary workers; then you will be the employer for SSP purposes if your temporary workers are engaged by you.

4. New FAQs added 16 March 2020

4.1 What are the qualifying criteria for SSP?

- SSP is payable to employees and certain other 'employed earners' who pay Class 1 NI contributions, such as agency workers – they are treated as employees for SSP purposes.
- It's paid for sickness absence - when an employee is unable to work or is deemed unable to work (when certain conditions apply).
 - As of 13 March 2020 it is payable to employees who are self-isolating in line with Coronavirus self-isolation guidance issued from 12 March 2020 by [Public Health England](#), [NHS Service Scotland](#) and [Public Health Wales](#).
- Employee must have weekly earnings of at least the lower earnings limit - currently £118 per week (£120 from April 2020).
- Employees must notify their employer of the sickness absence as per the regulations and any agreement with the employer.
- Employees must provide evidence of incapacity – normally a self-certificate for the first 7 days and doctor's fit note following that (although employers are being urged to be flexible given that people are being advised not to go to their GP if they suspect they have or have been exposed to Coronavirus).
- SSP is currently £94.25 per week (increasing to £95.85 per week from April 2020).
- Currently only paid from the fourth qualifying day of absence but the Prime Minister has announced that it will be payable from day 1 where related to Coronavirus. See section 2 'Updates' above. We still don't know what date this will be in force from as the legislation needed to implement the change has not yet been passed.