



February 2022 Update

Welcome to this month's update - where we discuss the latest legislation and guidance.

In this month's edition, we report on:

- End of self-isolation rules: how are companies reacting?
 - Can employers adjust sick pay for unvaccinated workers?
 - Platinum Jubilee Bank Holiday
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End of self-isolation rules: how are companies reacting?

As the requirements for those who test positive are being lifted, we review what businesses need to consider. After nearly two years, self-isolation requirements for those who test positive for Covid were set to expire at the end of March, but as we know the rules will end in February instead.

What will this mean for businesses? It seems that any new guidance will likely shift the onus onto employers. This requires businesses to develop and implement their own policies about what happens when a member of staff tests positive, as businesses have a 'duty of care' towards their employees.

Some workers may still be anxious about the risk of infections due to Covid, and businesses should consult with people to understand their individual concerns to agree what adjustments can be made.

Many businesses want to get back to normal. However, many are keeping strategies in place, such as allowing masks to be optional, still conducting temperature checks, asking employees to respect social distancing, and continuing to ask employees to work from home if they have a positive test.

Even though the rules requiring people who test positive to self-isolate will no longer be in place, many businesses will face a dilemma in not wanting employees to come into the workplace. However, many people who test positive may well not have any symptoms, as well as those who have not tested themselves.

The key thing employers need to take into account is what other measures should be taken to keep co-workers and the public safe? In addition, what should a business pay their staff if they are 'ready, able and willing to work' and it is the employer that is preventing them from doing so?

Bear in mind that the current additional statutory sick pay (SSP) arrangements for coronavirus-related absences will expire on the 24th March 2022. This means that SSP will no longer be payable for asymptomatic workers or workers who have been in contact with a person who tests positive, as well as an end to employees receiving SSP on day one of their illness.

The key thing is that if workers who test positive essentially feel fine, employers should still consider their duty of care to all employees and encourage home working in this case. Employers should therefore start to think very carefully about how they can move forward once the rules are relaxed.

Employers: Have a 'frank' conversation with employees to discuss concerns and set out clear policies.

Contact us: We can assist with Covid related questions

Can employers adjust sick pay for unvaccinated workers?

Some large employers have hit the headlines recently after announcing an adjustment of sick pay rules, being they will no longer pay company sick pay to voluntarily unvaccinated

employees who may be asked to stay at home, if for example they have someone in their household who tests positive, and they cannot remote work. In addition, some employers are looking to not pay sick pay if an unvaccinated employee catches Covid-19.

In both situations, the employee will be entitled to statutory sick pay.

For company sick pay rules, it will depend on the wording of the contract of employment. As it is unlikely the contract will distinguish between types of sickness, an employee ill with Covid-19 will be entitled to company sick pay.

Some contracts say that sick pay is discretionary. Even if this is the case, it would be high risk to exercise the discretion to withhold sick pay for unvaccinated employees as those who are vaccinated can still catch Covid-19.

However, there is more scope for employers to use their discretion to withhold sick pay for those who are unvaccinated who have to remain at home and can't remote work. Though bear in mind any rule that requires employees to be vaccinated could be challenged as discriminatory.

It seems that around 10 per cent of employers were looking to adjust their sick pay rules for unvaccinated staff in certain situations.

Employers: These considerations may change as the rules on self-isolation are relaxed but many employers are putting in policies for self-isolation to continue to protect their workforce

Contact us: We can assist with Covid related and other sickness absence.

Platinum Jubilee Bank Holiday

This year, the late May bank holiday weekend will be moved to Thursday 2 June, with an extra bank holiday being announced for Friday 3 June, to celebrate The Queen's Platinum Jubilee.

In advance of this date, companies will be wondering whether they need to give staff an additional paid holiday.

The legal position is that there is no automatic entitlement for an employee to take leave on 3 June 2022, just because it has been announced as a public holiday.

Whether an employee will be entitled to take an additional paid holiday on this date will depend on the wording of their contract of employment. If the contract specifies the particular days that will be granted by the employer as public holidays, then it is unlikely that the employer will be obliged to give the additional Platinum Jubilee Day as an extra public holiday. However, few contracts actually specify the public holiday days.

However, a contract that gives employees in more general terms to all recognised public holidays may well provide a basis for employees to be entitled to this additional holiday. Most employment contracts are drafted in these terms.

Employers whose employees are entitled to the Platinum Jubilee public holiday, and who are worried their operations may be affected may try to agree with staff alternative arrangements, such as granting a day's holiday in lieu to be taken at another time or paying a public holiday premium to employees who need to work on that day.

Employers who expect their employees to work on the Platinum Jubilee public holiday should make sure they have the contractual right to require their employees to work on a public holiday.

Employers: May need to consider planning at an early stage if they have any operational needs on the extra bank holiday

Contact us: We can assist with contracts of employment and policies

For more information or assistance Email: enquiries@employmentlawsupport.co.uk



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