

Coronavirus – Employers Obligations

The UK Government is issuing daily guidance to individuals on how they can protect themselves and others from the epidemic; this has now included the practice of 'social distancing'.

This is having a fundamental impact on the world of work and employers have to take appropriate steps to mitigate the impacts of the pandemic. SGBs will also have to take appropriate action to manage the risks which have arisen as a result. Outlined below are some key points SGBs should consider when deciding on the appropriate response to COVID-19 with regard to staffing issues.

While the priority is, and should always be, the health of colleagues, SGBs need to also be mindful of the problems that are posed by COVID-19 will vary from SGB to SGB, depending on the way the SGB is constituted and the challenges it faces. What is appropriate to the SGB may not be appropriate to the clubs and members of the SGB.

Sick Pay

Employees will normally be eligible for either Statutory Sick Pay (SSP) or Enhanced Sick Pay depending on their contract of employment and the rights conferred within. SSP is subject to certain eligibility criteria (such as earning at least £118 per week before tax) although some of the normal criteria have changed in response to the epidemic. The key changes are summarised below:

- Normally SSP is only payable on the 4th day of an employee's absence but this will be changed so employees are eligible on the first day of any absence.
- In addition to those who contract the virus those who are self-isolating as per the current Government guidance are also entitled to SSP.

In terms of reporting these absences Fit notes will now be available from NHS 111 as opposed to GPs and this will include advice given to individuals to self-isolate. SGBs should allow an element of flexibility for individuals reporting

any sickness absence or self-isolation compared with their normal absence reporting procedures.

For any employees who currently don't earn enough to qualify for SSP, they will qualify for benefits instead so SGBs can direct affect employees to those sources to maintain their income.

The UK Government has also announced that it will enact legislation to allow small to medium-sized businesses and employers to reclaim SSP paid for sickness absence due to the coronavirus. This could allow SGB's to reclaim any SSP paid.

It is not yet clear what the scheme will look like, however we would recommend for SGB's to keep and maintain records of staff absences as employees are not required to provide a GP Fit note.

The extensive [guidance can be found on the government website](#). The guidance issued by the UK Government is being updated on a daily basis and it is recommended that SGB's keep an eye on the guidance and any relevant changes.

<https://www.gov.uk/government/publications/support-for-those-affected-by-covid-19/support-for-those-affected-by-covid-19>

What to do if an employee needs time off work to look after someone

Employees are entitled to time off work to help someone who depends on them (a 'dependant') in an unexpected event or emergency. This would apply to situations related to coronavirus (COVID-19). For example:

- if they have children they need to look after or arrange childcare for because their school has closed
- to help their child or another dependant if they're sick, or need to go into isolation or hospital

There's no statutory right to pay for this time off, but some employers might offer pay depending on the contract or workplace policy. It may be in such a situation that the possibility of home working is considered.

Working from home

If employees are not sick or required to self-isolate then due to current Government guidance in relation to 'social distancing', many SGBs may consider measures such as restricting travel by employees and implementing self-isolation or homeworking policies.

Where work can be done at home, the SGB could:

- ask staff who have work laptops or mobile phones to take them home so they can carry on working
- arrange paperwork tasks that can be done at home for staff who do not work on computers

If an employee doesn't have a work laptop an SGB could ask employees to use their own computers. However, a concern would be confidentiality/data protection issues although a suitable home working policy may have a standard protocol set up for employees using their own computer.

If there's no homeworking policy in place, a pragmatic approach may be the issuing of a letter to outline that in these unprecedented, exceptional circumstances, as an employer you would be taking measures in order to ensure both business continuity and the well-being of your employees and this includes the requirement to work from home and setting out guidelines and rules around this.

If an employee agrees to working from home, the SGB should:

- pay the employee as usual
- keep in regular contact
- check on the employee's health and wellbeing

You can, and should, reserve the right to change your policy on homeworking. We do not know how long this will last or to what extent. All employers, including SGBs, need to ensure that they do not commit to any arrangement "forever". Avoid doing so by telling staff that everything will be kept under review.

You are also entitled to instill working from home arrangements in which you monitor that work is actually being performed, but typically you would expect SGB staff to

be keen to take forward work from home, to meet deadlines and advance SGB objectives, to help clubs, members and lead their sports through this pandemic.

You should not be liable to your employee in any way if the employee asks to work from home, but they are going to also have childcare responsibility. You should ensure that you make it clear that (a) health and safety is important; and (b) they ought to try to make alternative arrangements for childcare or to try to agree that staff can work more flexibly. Keep arrangements under review.

Lay-offs and short-time working

If an SGB had to close down a part of their operation for a short time, or ask staff to reduce their contracted hours, then it is possible to try to secure this. We would advocate SGBs take specific advice before trying to action this, but if the SGB thinks they'll need to do this, it's important to talk with staff as early as possible and throughout the closure. If an employer does not have the ability to have staff take unpaid leave, there is the possibility staff will need to be asked to agree to unpaid leave (lay-off) as an alternative to a worse solution (redundancy).

Employees who are laid off and are not entitled to their usual pay might be entitled to a 'statutory guarantee payment' of up to £29 a day from the SGB. This is limited to a maximum of 5 days in any period of three months. On days when a guarantee payment is not payable, employees might be able to claim Jobseekers Allowance from Job Centre Plus.

Such steps should be carefully considered and it is strongly recommended that any SGB considering a lay off or short-time working take advice before doing so.

Do we have to close our offices?

No. Government has not outlawed offices remaining open for business.

Get in touch

If you have any particular concerns regarding events during this time, please contact us through the [sportscotland](#) expert resource legal helpline (0141 227 9333 or sportscotlandinfo@harpermaclLeod.co.uk).