



## Employees at Increased Risk of Covid-19 Returning to Work

**On 31 March 2020, the Secretary of State for Business, Energy and Industrial Strategy advised in a letter to the UK construction industry on:**

*"...that wherever possible, people should work at home. However, we know that for many people working in construction their job requires them to travel to their place of work, and they can continue to do so. This is consistent with the Chief Medical Officer's advice".*

**It is important to understand the following guidelines by which workers should or should not travel to work as outlined below.**

<b>Social distancing</b>	Workers in the construction industry should follow the guidance on staying at home and away from others (social distancing <sup>1</sup> ). Where they cannot work from home, they must follow the same principles of social distancing while travelling to and from work and while at work.
<b>Self-isolation</b>	Anyone who either has a high temperature or a new persistent cough or is within 14 days of the day when the first member of their household showed symptoms of Coronavirus (Covid-19) should not come to site, but must follow the guidance on self-isolation <sup>2</sup> .
<b>Person at increased risk</b>	Anyone who is at increased risk of severe illness <sup>1</sup> from Coronavirus (Covid-19) is strongly advised to work at home and should be particularly stringent about following social distancing measures.
<b>Persons defined on medical grounds as extremely vulnerable</b>	Anyone identified as extremely vulnerable will be advised by their health authority and must follow the guidance on shielding and protecting extremely vulnerable people <sup>3</sup> .
<b>Living with a person in one of the above groups</b>	Anyone living with a person who is at increased risk of severe illness, or an extremely vulnerable person who is shielding <sup>3</sup> from Coronavirus (Covid-19), should stringently follow the guidance on social distancing <sup>1</sup> and minimise contact outside the home.
<b>If someone falls ill</b>	If a worker develops a high temperature or a persistent cough while at work, they should: <ul style="list-style-type: none"><li>• Ensure their manager or supervisor is informed</li><li>• Return home immediately</li><li>• Avoid touching anything</li><li>• Cough or sneeze into a tissue and put it in a bin, or if they do not have tissues, cough and sneeze into the crook of their elbow.</li></ul> They must then follow the guidance on self-isolation and not return to work until their period of self-isolation <sup>2</sup> has been completed.

The above guidance could lead to more questions than it answers for contractors who wish to un-furlough their staff and return to work. The NFRC Technical team has produced this Q&A guidance to help further clarify your responsibilities to your employees. If you are unsure or require any clarity on whether you are complying with the guidance, please contact the NFRC Coronavirus Helpdesk<sup>4</sup>.

### An Extremely Vulnerable Person

#### Can an extremely vulnerable person still work?

If any employee has received a letter from the NHS, then they should follow the government guidance on shielding and protecting extremely vulnerable people<sup>3</sup>. If the employee can work from an isolated safe environment (*like their home*) they do not have to be furloughed by their employer, they can continue working during the three-month isolation period, however if they cannot work from home then they should be furloughed.

*Please note that it is important that any employee that resides with an extremely vulnerable person should also follow social distancing guidelines within the home.*

### A Vulnerable Person

#### Does the government guidance mean that a defined vulnerable person cannot go to work when they cannot work from home?

Due to their underlying conditions it is recommended that these individuals undertake additional measures to prevent them contracting the Covid-19 virus, one of which is staying in the home/isolated environment; however, it is not mandatory. The task that they are required to undertake needs to be assessed to ensure that it can be undertaken whilst conforming with the public health guidelines. The only individuals that should stay at home are those in the extremely vulnerable category that have been contacted by the NHS.

#### Should the decision be up to the individual in question?

No, the decision should only be made following a consultation between the employer and the employee as the employee is protected by law against unfair treatment and dismissal, if it is because of:

- Pregnancy
- Age
- A health condition that's considered a disability under the Equality Act 2010<sup>5</sup>

Although everyone is advised to practise social distancing, it is particularly important for those in a vulnerable group. Employers must be especially careful and take extra steps for anyone in their workforce who are in a vulnerable group, by having a long-term health condition, for example asthma, diabetes, heart disease, or a weakened immune system as the result of medicines such as steroid tablets or chemotherapy. However the recommendations for social distancing are the same apart from being extra vigilant.

It is the employer's legal responsibility to provide a safe working environment for their employees and as such a mutually-agreed decision should be made. For example you may agree to more flexible ways of working for the employee so that they do not go on large building sites with numerous operatives or you may agree that they travel to site on their own. As you can appreciate employees may be feeling anxious about coming to work and how this could impact on their livelihood. Employers should ensure staff are fully briefed and appropriately supported at this time.

#### If the company returns to work but the employee decides that they do not want to take the risk of potential exposure to Covid-19, are they or the company entitled to any financial support?

There is no legal right for an employee to stay at home during the pandemic simply because they are generally concerned about catching the virus.

- I. Decide if the employee has any underlying health conditions or caring responsibilities for anyone within their household as the employer may be able to arrange with their employee to take the time off as a holiday or unpaid leave. (*Please note that the employer does not have to agree to this*).
- II. If the employee has underlying health conditions or someone within their household does, then the employer would need to determine whether a safe working environment can be provided by implementing additional measures in line with the social distancing requirements and in conjunction with the employee.
- III. Any employee failing to attend work can be dealt with in the usual way under the company's formal process and any nonattendance can be unpaid.

#### Could I extend their furlough?

Employees can be put on furlough following consultation with them if your company business has been affected by Covid-19. At present the review process for an employee on furlough is every three weeks. Following this review the employee can be furloughed for an additional three weeks.

#### Would they be entitled to Statutory Sick Pay<sup>6</sup> (SSP)?

An employee cannot claim SSP unless they are off work due to illness (*which includes being ill [self-isolating for 14 days] with Covid-19*). As of 13 March 2020, employees and workers must receive any SSP due to them from their first day of self-isolation if it is because:

- They have coronavirus
- They have coronavirus symptoms, for example a high temperature or new continuous cough
- Someone in their household has coronavirus symptoms
- They've been told to self-isolate by a doctor or NHS 111

Please note that an employer cannot pay less than statutory sick pay, but they are allowed to pay more at their discretion.

#### Financial support from the employer?

The furlough payment scheme entitles an employee to get paid up to 80% of their wage to a maximum ceiling of £2,500 per month, if the company pays any monies to the employee over and above this amount it is completely at the discretion of the company. That said, if the employee is not furloughed but their employer wants them to remain at home due to a medical condition (*not claiming SSP*) then once again any payment given to the employee from the employer is completely at the company's discretion.

#### Is there any other financial support available?

Anyone not able to claim SSP can claim Universal Credit<sup>7</sup> if they are self-employed.

## A Person Living with a Vulnerable Person

### If an employee lives with a vulnerable person, does this mean they can or cannot go to work?

Prior to going to work, their work tasks need to be rigorously risk assessed to confirm that you have mitigated all risks of contracting Covid-19 for the employee. For example, following the social distancing rules set out in version three of site operating procedures<sup>8</sup>—therefore reducing the risk of contracting the virus and taking it back into the safe environment where the vulnerable person resides. If both the employer and employee have agreed that there is no risk of infection, then there is no guidance that states that they must stay off work.

### Should this decision be up to the employee in question?

No, the decision should only be made following a consultation between the employer and the employee.

### If the rest of my company is back to work but an employee decides that they do not want to take the risk can they refuse?

There is no legal right for an employee to stay at home during the pandemic simply because they live with a vulnerable person as the rest of the household do not need to start shielding themselves just because one member of the house is classed as vulnerable. Social distancing should be followed—both inside and outside of the house.

Employers must be especially careful and take extra steps to revise their working practices and implement the social distancing guidelines for anyone in their workforce who is in a vulnerable group or is living with a vulnerable person.

If an employee does not want to take the risk of going to work the employer may be able to arrange with their employee to take the time off as a holiday or unpaid leave. Please note that the employer does not have to agree to this and any employee failing to attend work can be dealt with in the usual way under your formal process where any nonattendance can be unpaid.

### Will they be able to claim Statutory Sick Pay<sup>6</sup> (SSP)?

If the employee or a dependant of the employee such as a partner, child or relative residing in the same household gets Coronavirus symptoms, they can receive Statutory Sick Pay (SSP) as a minimum for this time.

### Is furloughing the employee an option?

Government guidance states that employees who are unable to work because they have caring responsibilities resulting from Coronavirus (Covid-19) can be furloughed.

The furlough payment scheme entitles an employee to get paid up to 80% of their wage to a maximum ceiling of £2,500 per month, if the company pays any monies to the employee over and above this amount it is completely at the discretion of the company. That said, if the employee is not furloughed but their employer wants them to remain at home due to a medical condition (*not claiming SSP*) then once again any payment given to the employee from the employer is completely at their discretion.

### What happens if an employee has to care for someone who they don't cohabit with?

Employees are entitled to time off work to help someone who depends on them (a 'dependant') in an unexpected event or emergency. This could apply to situations to do with Coronavirus. A dependant does not necessarily have to live with the person, for example they could be an elderly neighbour or relative who relies on the person for help. There is no statutory right for the employer to pay for this time off, but some employers might offer pay at their discretion. The amount of time off an employee takes to look after someone must be "reasonable" for the situation.

Please note that furlough is not an employee right. It is up to the employer whether or not it is offered and when it may be terminated. This is the case unless an agreement to the contrary was reached in the original furlough agreement when you were placed on furlough.

The government guidance states that it "urges employers to take socially responsible decisions and to listen to the concerns of the workforce".



#### Please note that it is good practice for employers to:

- Keep everyone updated on actions being taken to reduce risks of exposure to Coronavirus (Covid-19) in the workplace.
- Ensure employees who are in a vulnerable group are strongly advised to follow social distancing guidance<sup>9</sup>.
- Ensure employees who are in an extremely vulnerable group and should be shielded<sup>3</sup> are supported to stay at home.
- Make sure everyone's contact numbers and emergency contact details are up to date.
- Make sure managers know how to spot symptoms of Coronavirus (Covid-19) and are clear on any relevant processes, for example sickness reporting and sick pay, and procedures in case someone in the workplace is potentially infected and needs to take the appropriate action.
- Make sure there are places to wash hands for 20 seconds with soap and water, and encourage everyone to do so regularly.
- Provide hand sanitiser and tissues for staff, and encourage them to use them.



### Further information

- <sup>1</sup> Staying at home and away from others (social distancing)  
[www.gov.uk/government/publications/full-guidance-on-staying-at-home-and-away-from-others/full-guidance-on-staying-at-home-and-away-from-others](http://www.gov.uk/government/publications/full-guidance-on-staying-at-home-and-away-from-others/full-guidance-on-staying-at-home-and-away-from-others)
- <sup>2</sup> UK Government stay at home guidance:  
[www.gov.uk/government/publications/covid-19-stay-at-home-guidance/stay-at-home-guidance-for-households-with-possible-coronavirus-covid-19-infection](http://www.gov.uk/government/publications/covid-19-stay-at-home-guidance/stay-at-home-guidance-for-households-with-possible-coronavirus-covid-19-infection)
- <sup>3</sup> Guidance on shielding and protecting people who are clinically extremely vulnerable from Covid-19:  
[www.gov.uk/government/publications/guidance-on-shielding-and-protecting-extremely-vulnerable-persons-from-covid-19/guidance-on-shielding-and-protecting-extremely-vulnerable-persons-from-covid-19](http://www.gov.uk/government/publications/guidance-on-shielding-and-protecting-extremely-vulnerable-persons-from-covid-19/guidance-on-shielding-and-protecting-extremely-vulnerable-persons-from-covid-19)
- <sup>4</sup> NFRC Coronavirus Helpdesk:  
0330 123 4714 [coronavirus@nfrf.co.uk](mailto:coronavirus@nfrf.co.uk)
- <sup>5</sup> Equality Act 2010:  
[www.legislation.gov.uk/ukpga/2010/15/data.pdf](http://www.legislation.gov.uk/ukpga/2010/15/data.pdf)
- <sup>6</sup> ACAS guidance on SSP:  
[www.acas.org.uk/checking-sick-pay/statutory-sick-pay-ssp](http://www.acas.org.uk/checking-sick-pay/statutory-sick-pay-ssp)
- <sup>7</sup> Guidance on Universal Credit:  
[www.understandinguniversalcredit.gov.uk/employment-and-benefits-support/](http://www.understandinguniversalcredit.gov.uk/employment-and-benefits-support/)
- <sup>8</sup> CLC Site Operating Procedures v3:  
[www.constructionleadershipcouncil.co.uk/wp-content/uploads/2020/04/Site-Operating-Procedures-Version-3.pdf](http://www.constructionleadershipcouncil.co.uk/wp-content/uploads/2020/04/Site-Operating-Procedures-Version-3.pdf)
- <sup>9</sup> Covid-19: guidance on social distancing and for vulnerable people:  
[www.gov.uk/government/publications/covid-19-guidance-on-social-distancing-and-for-vulnerable-people](http://www.gov.uk/government/publications/covid-19-guidance-on-social-distancing-and-for-vulnerable-people)

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