



**MONTHLY BREAKFAST BRIEFING: Covid-19 – General Employment
Law Update**

Presenter – Kevin Duffy

Wednesday 2 February 2022

(First Wednesday of every month)

AGENDA



- > GP Fit Notes
- > ACAS Guidance: Disciplinary and Grievance Procedures
- > Self Isolation Timescales
- > Changing Sick Pay
- > Returning to the Workplace
- > Member Companies' Experiences

GP FIT NOTES



- > Lasts for seven calendar days
- > Except: 10 Dec 21 to 26 Jan 22, then it's 28 days duration
- > 5 things to do if you are given a fit note:
 1. Check whether your employee's doctor has assessed that they are not fit for work, or may be fit for work
 2. Check how long your employee's fit note applies for, and whether they are expected to be fit for work when their fit notes expires
 3. If your employee may be fit for work, discuss their fit note with them and see if you can agree any changes to help them come back to work while it lasts
 4. If your employee is not fit for work, or if they may be fit for work but you can't agree any changes, use the fit note as evidence for your sick pay procedures
 5. Consider taking a copy of the fit note for your records (your employee should keep the original)

ACAS GUIDANCE : DISCIPLINARY AND GRIEVANCE PROCEDURES



- > [The ACAS statutory Code of Practice on discipline and grievance procedures](#)
- > Doesn't apply to dismissals due to redundancy or the non-renewal of fixed term contracts on their expiry
- > 25% uplift either way for unreasonable failure to comply
- > Further [ACAS Code Guidance during coronovarius](#)
 - Go ahead/delay
 - Consider seriousness of allegations
 - Meetings should still be held
 - Remote or in person
 - Minutes and letters
 - Right to be accompanied

SELF ISOLATION TIMESCALES



- > [Scottish Engineering summary PDF](#)
- > [NHS Inform Scotland Guidance](#)
- > Two self-isolation situations
 - Testing positive for Covid-19 (vaccination status IS NOT relevant)
 - Being a close contact (vaccination status IS relevant)

1. TESTING POSITIVE FOR COVID-19 (Vaccination status IS NOT relevant)



Symptomatic Self-Isolation

If an employee has coronavirus symptoms they must self-isolate immediately and book a PCR test



Self-isolation must last 10 days from date their symptoms started



Employees are allowed to exit self-isolation after 7 days as long as they have no fever and record 2 negative LFD tests, one on day 6 of isolation and another 24 hours later

Asymptomatic Self-Isolation

If the employee is asymptomatic but produces a positive test then they must isolate for 10 days since date of positive test result



If symptoms develop a confirmatory PCR test is not needed and they don't need to re-start their isolation period



Employees are allowed to exit self-isolation after 7 days as long as they have no fever and record 2 negative LFD tests, one on day 6 of isolation and another 24 hours later

This guidance applies regardless of age, vaccination status or previous infection.

2. BEING A CLOSE CONTACT (Vaccination status IS relevant)



Vaccinated Close Contact

If a fully vaccinated employee (2 doses of an approved covid vaccine and a booster) is identified as a close-contact, daily LFD tests can be taken instead of isolating. These must be taken 7 days in a row, or until the end of the 10 day isolation period, whichever comes first.

If symptoms develop the employee should immediately isolate and book a PCR test.

If any of the daily LFD are positive but there are no symptoms then the employee should isolate 10 days from the date of this positive test, no PCR is required to confirm.

Unvaccinated Close Contact

Unvaccinated employees must isolate for 10 days and book a PCR test. Even if PCR test is negative, they must isolate for 10 days.

If they can't be vaccinated due to clinical trials or medical reasons, the same rules for vaccinated close contacts apply.

CHANGING SICK PAY



- > Some major employers cutting sick pay for (some) unvaccinated staff
 - Ocado, Morrisons, Next, IKEA, Wessex Water
- > Some major employers NOT cutting sick pay for unvaccinated staff
 - John Lewis, Sainsbury's, Tesco, Asda

CHANGING SICK PAY – FACTORS TO CONSIDER



- > Contractual – or only policy?
- > If former, technically consultation required to change T&Cs
- > Later challenge possible (even if not challenged when change made)
- > Discrimination risk
- > Proportionate means of achieving a legitimate aim
- > Try and encourage staff

CHANGING SICK PAY – FACTORS TO CONSIDER



> [ScotGov Coronavirus \(COVID-19\): fair work statement](#)

- *“No worker should be financially penalised for following medical advice. Any absence relating to COVID-19 should not affect future sick pay entitlement or other entitlements like holiday or accrued time. It should not result in formal attendance related warnings or be accumulated with non-covid related absences in future absence management figures. This may require flexibility in standard absence/attendance management arrangements”.*

> Vaccination status not mentioned here

> BMA: [The BMA fully supports the vaccination campaign...](#)

> GMC: [In good medical practice we say that doctors should be immunised against common serious communicable diseases, unless this is contraindicated.](#)

RETURNING TO THE WORKPLACE



- > Extra hospitality restrictions over festive period
- > [Coronavirus \(COVID-19\): safer business and workplaces guidance](#) still in force
- > From 17 January 2022, large outdoor events were able to resume without capacity limits or physical distancing
- > From 24 January 22, restrictions on attendances at events (including indoor), physical distancing and seated alcohol consumption requirements in hospitality and leisure will be removed from regulations. The guidance on three households mixing indoors at any one time will also be removed

RETURNING TO THE WORKPLACE (Cont'd)



- > Facemasks still widely required indoors
- > Ventilation guidance
- > Risk Assessments
- > First Minister on 25 Jan 22:
 - > *“[Updated guidance] will recommend that, from Monday 31st January, employers should consider implementing hybrid working – following appropriate guidance - with workers spending some time in the office and some time at home.”*

RECENT CASELAW



- > [Allette V Scarsdale Grange Nursing Home Limited](#)
- > First instance ET decision
 - > *“...I was not persuaded that the claimant’s actions, in relying on unidentified Internet sources and believing that there was a conspiracy about vaccination, constituted a reasonable refusal of the management instruction to have the vaccine.”*

MEMBER COMPANIES' EXPERIENCES



- > Samantha Boslem
- > HRBP with John Bean Technology in Livingston

MEMBER COMPANIES' EXPERIENCES



> Jan Peart

> HRBP with Waukesha Bearings Ltd in Glasgow

ANY QUESTIONS?



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- Thank You