



## **Covid-19 and Employment Law: An Important Update**

### **Who should read this?**

All Employers, business owners and HR personnel.

### **What has been announced?**

On 25<sup>th</sup> March 2020 the Coronavirus Act 2020 was passed by the Houses of Parliament and received Royal Assent.

Whilst the Act deals with many substantive issues, Schedule 6 which deals with emergency volunteers, section 51 which deals with Tribunals, and section 37 which deals with Statutory Sick Pay, which will be important for employers.

You can read the entire Act by following this link:  
[https://www.legislation.gov.uk/ukpga/2020/7/pdfs/ukpga\\_20200007\\_en.pdf](https://www.legislation.gov.uk/ukpga/2020/7/pdfs/ukpga_20200007_en.pdf).

### **What does the Act do?**

The Bill has four primary categories of effect:

- enhancing capacity and the flexible deployment of staff;
- easing of legislative and regulatory requirements;
- containing and slowing the virus; and
- managing the deceased.

The policies in the Bill are designed for use temporarily in an emergency.

### **Emergency Volunteers**

The bill enables appropriate authorities to maximise the pool of volunteers that they can draw on to fill capacity gaps by addressing two primary deterrents to participation: risk to employment and employment rights, and loss of income.

It therefore, creates a temporary new form of statutory unpaid leave for employees and workers who wish to volunteer – Emergency Volunteering Leave.

The clause also includes certain rights and protections for employees and workers who take Emergency Volunteering Leave, including, for example, the maintenance of terms and conditions of employment during any period of leave and protection from detriment for taking the leave. The clause also provides an obligation on the Secretary of State for Health and Social Care to establish a compensation scheme to compensate eligible volunteers for some loss of income and expenses incurred.

Three working days before an employee is due to start emergency volunteer leave, they must notify their employer in writing of their intention to be absent from work on leave for the period specified in the emergency volunteering certificate, and provides their employer with a copy of the emergency volunteering certificate.

An employee who takes emergency volunteering leave is, during any period of leave entitled to the benefit of all of the terms and conditions of employment which would have applied if the employee had not been absent, and bound by any obligations arising under those terms and conditions.

A worker has the right not to be subjected to a detriment by any act, or any deliberate failure to act, by their employer on the grounds that the worker took emergency volunteering.

**A worker may present a complaint to an employment tribunal that they have been subjected to a detriment due to emergency volunteering.**

**An employee who is dismissed will be regarded as unfairly dismissed if the reason (or, if more than one, the principal reason) for the dismissal is that the employee took, sought to take, or made use of the benefits of, emergency volunteering leave.**

### **What does this mean for employers?**

The introduction of a new temporary form of unpaid statutory leave will impact employers and businesses at a time when the overall economy will be hit hard by reductions in productivity and disrupted supply chains.

To mitigate this, the measure limits the total consecutive amount of Emergency Volunteering Leave an individual can take to 4 weeks in any volunteering period of 16 weeks.

The measure also provides exemptions for micro businesses (those with 10 or fewer employees), civil servants, the military, police and parliamentary and commission staff; there is also a power to make regulations to add to the list exemptions.

### **Courts and Tribunals: use of video and audio technology**

Proceedings can now be conducted in more circumstances than currently allowed and also entirely by video and or telephone to avoid the risk of the spread of disease through public congregation in public places. These arrangements would enable the use of fully video and video enabled courts, so that proceedings could be conducted with all parties at remote locations.

The clauses would:

- permit the expansion of the use of fully video and video-enabled hearings in various criminal proceedings
- make provision for public participation in those fully video hearings to ensure that the principle of open justice is protected
- provide for all parties to an appeal to the magistrates' court against a quarantine order to participate by video link unless the court directs otherwise

### **Statutory Sick Pay (SSP)**

Currently, employers are obliged to pay Statutory Sick Pay (SSP) to eligible employees who are unable to work because of sickness. It is paid at a flat rate of £94.25 (increasing to £95.85 from 6 April 2020) for up to 28 weeks. The full cost of SSP is met by the employer.

The government wants to ensure that small and medium enterprises (SMEs) receive financial support where they incur additional SSP costs due to absences relating to coronavirus. The ability to recover SSP in this scenario is important to ensure that these employers are supported in a period when their payments of SSP are likely to escalate, and that employees are incentivised not to attend work when advised not to for reasons of public health security.

The provisions in the Bill will allow for a rebate to be paid to employers to refund employers the costs of SSP for absences relating to coronavirus.

Statutory sick pay (SSP) is paid from the fourth qualifying day of sickness absence. The first three days are known as waiting days.

There is concern that not paying sick pay for the first three days of sickness absence will encourage people to go into work even if they are sick, or if they are not sick but have been advised to self-isolate. This will reduce the effectiveness of efforts to contain or limit the spread of the virus.

The provisions in the Bill will allow for the government to temporarily suspend waiting days in the event of a severe outbreak/pandemic and lapse once the outbreak is over.

### **What this means for Employers**

The change will only apply to absences relating to coronavirus. In practice it will be for employers to determine which cases of sickness absence relate to coronavirus and which are due to other sickness reasons.

Temporarily suspending waiting days will place a direct financial burden on employers.

**As a result of the suspension of the rule, employees will also receive the daily rate of SSP for the first three qualifying days of absence, meaning SSP can be claimed from day 1 of absence in respect of coronavirus.**

The cost to the employer per employee will vary depending on the number of qualifying days that the employee has in a week.

To offset some of these costs, the provisions in the Bill will also allow for a rebate to be paid to employers to refund employers the costs of SSP for absences relating to coronavirus.

**If you would like to discuss any of the above, please do not hesitate to get in touch with the Employment Team.**