

Self-isolate or face the consequences

Employers who knowingly permit a member of staff to come to work when they should be self-isolating could now be fined, warn Emma Burrows and Anna Scott

Employers all need to be aware of the new Health Protection (Coronavirus, Restrictions) (Self-Isolation) (England) Regulations 2020 (the regulations), which came into force on 28 September. As well as the legal duty on anyone in England who tests positive to self-isolate or face a fine of up to £10,000, there are specific duties on employers. These new duties only apply in England but similar rules are expected to be enacted in Scotland, Wales and Northern Ireland.

Who has to self-isolate?

Anyone who has tested positive for Covid-19 has to self-isolate for ten days after first displaying symptoms or after the date of the test if they did not have symptoms. Anyone who lives with someone who has tested positive will have to self-isolate for 14 days after the onset of symptoms (assuming they develop symptoms) or after the date of the initial person's positive test.

Self-isolation rules also apply to anyone who is instructed to self-isolate by NHS Test and Trace because they have had close contact with someone outside their household who has tested positive. They are legally required to self-isolate for the period notified by NHS Test and Trace regardless of whether they have symptoms or, if they develop symptoms and then take a test, whether the test is negative.

The regulations do not cover those who have been contacted and told to self-isolate via the NHS Covid-19 app. This is because users of the app are anonymous and so they cannot be forced to self-isolate or be identified if they are not self-isolating.

The regulations provide specified exceptions from the requirement to remain in self-isolation. These include leaving the place of self-isolation to:



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- seek urgent medical assistance;
- fulfil a legal obligation (for example attending court or satisfying bail conditions);
- attend the funeral of a close family member; and

A failure by an employee to provide the required information to an employer will result in criminal liability and a fixed penalty of £50.

- obtain basic necessities such as food or medical supplies when it is not possible to do so by another means.

Employees who breach their self-isolation requirements will usually commit a criminal offence. The government has made it clear that it will take a number of steps to ensure that people are complying with the duty to self-isolate. These include:

- NHS Test and Trace call handlers increasing contact with those self-isolating;
- using policy resources to check compliance;
- investigating 'high-profile and egregious cases of non-compliance'; and
- acting on instances where third parties have identified others who have tested positive but are not self-isolating.

Duty on those self-isolating to inform their employer

The regulations stipulate that a self-isolating worker must notify their employer of the requirement to self-isolate and the start and end dates of the isolation period. They must provide this information as soon as reasonably practicable and, in any event, before they are next due to start work within the isolation period. In the case of agency workers, the obligation will be to inform the agency, which will have to pass the self-isolation information on to the end user.

A failure to provide the required information will result in criminal liability and a fixed penalty of £50.

Employer liability

Under the regulations, it is an offence for an employer to knowingly permit a worker (and this extends to agency workers) to attend any place other than where they are self-isolating. This means that a self-isolating worker is permitted to work from home if they can.

The penalty will be £1,000 for a first offence (in line with the penalty for breaking quarantine after international travel), £2,000 for a second, £4,000 for a third and £10,000 for each subsequent offence. These fines will be imposed on an employer if it knowingly permits the worker to attend work 'without reasonable excuse'. Individuals who fail to self-isolate face similar penalties.

The government has put in place a new Test and Trace Support Payment of £500 for those on lower incomes who are required to self-isolate.

The intention behind these measures is to prevent employers from doing things such as threatening self-isolating staff with redundancy if they do not come to work. The government has stated that the fines send out 'a clear message that this will not be tolerated'.

Directors and managers can also be liable for a breach of the regulations that has been committed with their 'consent or connivance' or that can be attributed to their neglect.

Support for those on lower incomes who have to self-isolate

The government has put in place a new Test and Trace Support Payment of £500 for those on lower incomes who are required to self-isolate. This payment will be on top of any Statutory Sick Pay or benefits that the individual receives. Again, this payment is currently only available in England. However, the UK government has said that it is engaging with the devolved administrations to explore opportunities for a UK-wide scheme and is seeking as much alignment as possible.

To be entitled to the self-isolation payment the individual must:

- have been instructed to self-isolate by NHS Test and Trace, either because they have tested positive or are the close contact of a positive case;
- be employed or self-employed;
- be unable to work from home and so will lose income as a result of self-isolating; and
- be receiving Universal Credit, Working Tax Credit, income-based Employment and Support Allowance, income-based Job Seeker's Allowance, Income Support, Housing Benefit and/or Pension Credit.

Councils also have the discretion to make payments to those who do not receive the qualifying benefits but are on a low income and could suffer financial hardship as a result of not being able to work.

Local authorities are responsible for setting up Test and Trace Support Payment schemes. Individuals who have been told to self-isolate since 28 September will be entitled to receive backdated Test and Trace Support Payments if they are eligible for them. The police will determine what follow-up action to take when there is clear evidence that someone is not following the rules. ■

Key points for employers

It is important to avoid any inadvertent breach of the regulations and so it will be good practice for in-house counsel to ensure that HR and line managers are aware of the legal position and the organisation's policies. These are some practical pointers to share with them:

- Inform staff that if they are self-isolating, they are not to come into work under any circumstances and must remain at home. If they are able to work from home then they should do so for the period of self-isolation.
- Make it clear that staff are legally obliged to inform you if they have to self-isolate. Let them know that if they fail to do so they will potentially face a fine, a criminal record and ultimately dismissal.
- If a member of staff comes into work when they should be self-isolating, it will be possible to take disciplinary action against them and, following a fair procedure, dismiss them for breaking the law.
- If it appears to you that a member of staff has Covid symptoms, or you have heard from another member of staff or another source that they should be self-isolating, then make sure you investigate. If you fail to do so then it is unlikely the organisation will be able to show that it had a 'reasonable excuse' to permit them to remain at work.
- Think in advance about whether workers will be able to work from home if they have to self-isolate. If they are unable to do so then the organisation's policy on payment during self-isolation will apply (some organisations may offer company sick pay or full pay in this situation).