


Andrew Jackson

..... Solicitors LLP

A high-speed photograph of a hand being washed under a stream of water. The water is captured in mid-air, creating a dynamic, splashing effect. The background is dark and out of focus, with some light reflecting off the water droplets. A dark, semi-transparent circular overlay is centered over the hand, containing the text 'Coronavirus: What does your business need to know?' in white, bold, sans-serif font.

**Coronavirus:
What does your
business need
to know?**

As the number of reported coronavirus cases (also known as COVID-19) in the UK continues to grow, we are receiving an increasing number of enquiries from clients, particularly around employer obligations and contracts. In light of these enquiries, we have collated the following Q&As* in the hope that they are useful to you and your business.

If you have any questions or concerns about the impact of coronavirus on the legal and contractual interests of your business, please don't hesitate to give us a call. Our team is here to provide you with up to date advice based on the needs of you and your business.

What will happen if we are unable to continue with our usual business activities of supplying goods and services?

If you are unable to continue your business due to a circumstance beyond your control, then in most commercial contracting arrangements, you would rely on the force majeure provision. This would suspend your obligations for a defined period of time and would ensure that you are not in breach of the contract.

However, always remember that as the supplier of goods or services, force majeure clauses are normally mutual, so although you would be under no obligation to supply, equally the buyer would be under no obligation to pay.

If you do not have a binding contract that contains a force majeure provision then the situation is more complicated and you would have to rely on the fact that the contract had been "frustrated" by a circumstance beyond your control. Sadly, "frustration" is a very high standard to prove and requires evidence of an absolute inability to perform.



What if we are trying to purchase goods or services and they are unavailable due to the coronavirus?

The starting point again will be understanding what contracts you have in place. As noted above, ordinarily an issue such as the coronavirus would be covered by a force majeure clause. If the force majeure clause applies then unfortunately there is nothing you can do to compel a supplier to supply in these circumstances. Please remember, force majeure suspends each party's obligations. If a force majeure clause is not in place then you could have a breach of contract action against a supplier who had committed to supply and who didn't.

What will happen if I can't procure materials that are essential to my business?

This is a situation that would, again, be covered by force majeure and hopefully this issue would be covered off in any commercial contract. If you are unable to procure key parts due to the coronavirus then you may not be held responsible to your customers as this would be a circumstance beyond your control, which should hopefully be covered in your contractual arrangements.

What will happen if my employees fail to arrive for work and this impacts how the business operates?

There could be a number of different reasons why employees do not attend work during an outbreak of coronavirus. They may be concerned about the spread of infection in the workplace or, for example, at client or customer sites. They may also be required to care for people who either have contracted or at a higher risk of contracting coronavirus. Guidance from ACAS suggests that employers should listen to any concerns that staff have.

In any event, employers should be aware of their duty to provide a safe system of work for their employees. This could include consideration of whether employees can work from home, whether lay-off is appropriate (subject to any contractual right for this to happen) or whether staff should take either paid or unpaid leave.

What if an employee refuses to come into work?

If an employee refuses to attend work without a valid reason, they could be subject to disciplinary action. The unusual circumstances of the outbreak mean that employers should consider any apparent unauthorised absence more carefully, given the wider context here.

Should employees be paid during a period of self-isolation?

The employee will be entitled to sick pay as normal if they have Coronavirus. But what about employees who are not sick but are self-isolating? Those employees who are not sick and are able to work, but have been told not to come in or self-isolate by their employer, will be entitled to their normal pay. In contrast, the Government has recently stated that self-isolation on medical advice is considered to be sickness for employment purposes and therefore entitlement to SSP arises – even if the employee is not actually sick. Whilst there was initially some doubt as to whether the SSP regulations provided for that, it now appears to be accepted that if the employee is certified by their GP or NHS 111 as having to self-isolate – even if they are not sick – then entitlement to SSP arises. The government stated on 12th March that people with either a continuous cough or a high temperature should self-isolate for seven days. It is expected that these people will also be entitled to SSP, but the government is yet to comment further on this.

BUDGET UPDATE: The Chancellor announced in the recent Budget (11th March) that employers with fewer than 250 employees will be refunded in respect of SSP that they pay to their employees due to coronavirus during the first 14 days of absence.

Do I need to pay workers that are on zero-hour contracts that are required to self-isolate or who contract coronavirus?

Generally zero hours contract or casual workers are not entitled to contractual or statutory sick pay. On that basis, you would not need to pay them if they are unable to work because they have coronavirus or if they are certified by their GP or NHS 111 as having to self-isolate. That said, there are suggestions that the Government is looking to extend payment of SSP to such workers irrespective of their employment status. This is probably to ensure that people self-isolate when they are required to rather than attend work as they would not otherwise have any income.

During the recent Budget the Government pledged to make it easier and quicker to access benefits for those workers or self-employed people who would not otherwise qualify for statutory work-related payment. Employers are advised to 'watch this space' for any new Government measures aimed at tackling this issue.

At what stage are we under legal obligation to send home employees?

All employers are under a statutory duty to ensure that they operate a safe system of work. This will include taking such steps as are reasonably necessary to protect the health and wellbeing of its employees and workers. If particular employees present a risk to the health and safety of their colleagues because, for example, they may have been exposed to the virus through travel or family or are showing symptoms, it is likely to be reasonable to send them home or require them to stay away from work. The key issue here is not simply the welfare of the

employee concerned but that of their colleagues and other users of the employer's premises.

Should I review my paid leave and sick policies?

In short - yes. The unique challenges posed by the spread of coronavirus mean that employers should review their current arrangements. For example, the circumstances under which employees will be entitled to SSP are likely to change as a result of the Government's proposals that SSP should be paid from the first day of sickness absence and also to those who are not sick but who are required to self-isolate. Furthermore, employers should confirm what their current policies actually provide for and establish the possible financial liability arising from an unprecedented increase in levels of sick pay.

Are employees entitled to paid leave if they are required to look after their children in the event of school or college closure?

In the event of schools closing, many employees may not be able to call upon others to look after their children and so will be required to take time off work. The statutory right to time off to look after dependants is limited and focuses on providing time for the employee to make arrangements for the dependant to be cared for. Neither this, nor other forms of family-friendly leave are likely to be sufficient to cover an employee who needs to look after a child whose school has closed.

In such circumstances, employers will need to take a view on whether it is realistic to expect employees to rely on basic statutory rights for limited time off. Employers will need to consider the extent to which employees can work from home and whether any agreed leave is paid or unpaid. Given that school closures are very much lead by the state, we should expect to see the Government providing guidance or regulations dealing with this situation.

What immediate actions should businesses consider taking now?

1. Review all contracts to understand what has been put in place;
2. Consider issuing a coronavirus statement to clients and supply chain partners;
3. Understand force majeure clauses and understand if there are any administrative obligations that require compliance. For example, in some contracts, you are obliged to notify the other party of a force majeure event within three days of the force majeure event occurring;
4. Review your contracts to see if there are any consequences of the suspension due to a force majeure event. For example in certain situations it may release the parties from an exclusive arrangement;
5. Consider issuing brief internal guidance to staff on coronavirus and the procedures that are in place to communicate updates.

How can we help you?

With the situation around coronavirus changing day by day it is wise to keep an eye on updates emerging from central government, as well as keeping in touch with your professional advisors.

Every business is different and we are currently advising clients in a wide range of sectors, taking into account their particular circumstances and requirements. If you are looking for help and advice, the team is here to help you and can be contacted on the details below.

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Hull Office
T: +44 (0)1482 325 242

Grimsby Office
T: +44 (0)1472 267 770

York Office
T: +44 (0)1904 275 250

Scarborough Office
T: +44 (0)1723 882 500

w: andrewjackson.co.uk

e: enquiries@andrewjackson.co.uk

 @AJLawTalk