

COVID-19: Guide for Employers of Personal Assistants

(PLEASE NOTE: WE ARE EXPECTING SOME UPDATED GUIDANCE FROM CENTRAL GOVERNMENT NEXT WEEK WHICH MAY REQUIRE SOME CHANGES TO THIS ADVICE)

Direct Payments or Self-Funded

The outbreak of COVID-19 (also known as coronavirus) is a current public health issue and as such certain precautions need to be taken with both your own health and also your employees.

This guide contains the most common questions we have been asked and some important information when employing personal assistants.

Please note that Government guidance and legal provisions are changing almost daily. This FAQ is for guidance only and legal advice should be taken.

Frequently asked questions

Where can I get advice if I am concerned about coronavirus?

The Government is urging you to follow the [NHS guidance](#) which is being updated regularly.

At present the public are being asked not to go to the GP or even to call NHS 111 unless they cannot cope with their symptoms at home, their condition gets worse or their symptoms do not get better after 7 days.

Who needs to self-isolate under current measures?

If you live alone and you have symptoms of coronavirus illness (COVID-19), however mild, stay at home for 7 days from when your symptoms started.

If you live with others and you are the first in the household to have symptoms of coronavirus, then you must stay at home for 7 days. Also, all other household members who remain well must stay at home and not leave the house for 14 days. The 14-day period starts from the day when the first person in the house became ill.

For anyone else in the household who starts displaying symptoms, they need to stay at home for 7 days from when the symptoms appeared, regardless of what day they are on in the original 14 day isolation period. Staying at home for 14 days will greatly reduce the overall amount of infection the household could pass on to others in the community.

My employee has self-isolated as they or someone in their household have shown signs of a consistent cough or fever - what do they do?

Self-isolating employees are legally defined as being unfit to attend work. They should therefore notify you of their intention to self-isolate in accordance with your sickness and absence procedures.

They have the right to remain away from work for a period of 14 days from the symptoms becoming known. You can find detailed Government guidance on staying at home due to a possible coronavirus infection [here](#). As the employee is considered to be unfit for work, they are entitled to statutory sick pay (if eligible) from day one of the absence.

Statutory sick pay is payable to employees who:

1. are employees or workers (includes zero hours and casual workers) and have earned on average £118 per week over the last 8 weeks, and
2. have given you the correct notice.

If the employee is not eligible you must provide them with the SSP1 form to explain why, which will allow them to present a claim for possible benefits.

Statutory sick pay is paid at a rate of £94.25 per week, rising to £95.85 from 6th April 2020.

The Government has announced it will repay payments of SSP, up to 14 days, for each employee.

If your employee is genuinely poorly with the virus themselves, they may well need more than 14 days. The NHS would expect to hear from them if symptoms have not alleviated after 14 days and so it is likely that further medical treatment and testing would be required at that stage. If the sickness absence persists beyond 14 days your normal sickness reporting procedures will apply, as will ongoing payment of SSP.

What about medical evidence of sickness?

In normal cases of sickness absence, you can ask the employee for a medical certificate, after the first seven days of absence. Under circumstances of self-isolation however, it is not advisable that you press for such evidence as the current guideline to self-isolating employees is that they are not to go to the GP. It would also be impossible for you to demand evidence of another householder's private medical affairs where someone else is the reason your employee is self-isolating.

I and/or someone in my household have shown symptoms of the virus what do I do?

The current guidance is that if one person in any household has a persistent cough or fever, everyone living there must stay at home for 14 days. The purpose of this provision is to try to prevent the spread of infection. You can find detailed Government guidance on staying at home due to a possible coronavirus infection [here](#).

What do I do to get the support I need?

You can call upon your usual resources when employees are on sick leave.

If you have other employees, you may be able to compel them to attend work to cover absences. Check your contract of employment with them to see how clear your rights are. Casual workers may be called upon to fill in hours also.

If you have no other employees, use of a temporary agency may work for you.

If you cannot manage to get replacement cover speak to us urgently on 0161 253 5151 who will direct your call to the most appropriate person to support you.

If you incur additional expenditure in sourcing this temporary support you may utilise slippage within your existing budget. If you do not have funds available within your existing budget please contact 0161 253 5151 who will direct your call to the most appropriate person to support you. **Please keep all evidence of this additional expenditure for the purpose of your audit.**

If I self-isolate does that mean I go without care?

No. The Government is urging everyone to stay at home and where possible to allow employees to work from home. However, it is recognised that you may not be able to manage without your Personal Assistant(s), and so you are not under an obligation to remove your employees from the household.

Where you continue to receive employee support at home you remain under an obligation to ensure that there is a safe system of work in place and that the employees are provided with Personal Protective Equipment and clothing (PPE) where necessary. You will find Government guidance on good practices in the following Government guides: [Stay at home guide](#) [Residential care guidance](#)

Personal Protective Equipment

You only need your personal assistant to use PPE when you have symptoms.

If you have no symptoms you do not need to use it.

Information on the symptoms is found [here](#). Information on the personal protection equipment required is found [here](#). Care workers should use personal protective equipment (PPE) for activities that bring them into close personal contact, such as washing and bathing, personal hygiene and contact with bodily fluids.

Aprons, gloves and fluid repellent surgical masks should be used in these situations. If there is a risk of splashing, then eye protection will minimise risk.

New personal protective equipment must be used for each episode of care. It is essential that personal protective equipment is stored securely within disposable rubbish bags.

These bags should be placed into another bag, tied securely and kept separate from other waste within the room. This should be put aside for at least 72 hours before being put in the usual household waste bin.

You will need to buy your own personal protective equipment (PPE) to supply to your employee.

The Government is increasing the supplies of PPE but we recognise it is in very short supply nationally.

You may utilise slippage from within your personal budget to purchase PPE. If you do not have funds available within your existing budget please contact 0161 253 5151. **Please keep all evidence of this additional expenditure for the purpose of your audit.**

If you cannot source PPE then please contact us on 0161 253 5151 as we have a small supply.

Make sure that new health and safety rules and procedures are always fully explained to your workers and ensure to enforce them. Ideally, a record should be made of the measures you have implemented and keep records of PPE obtained and used in your home.

Advice on Cleaning

If your personal assistant undertakes cleaning duties, then they should use usual household products, such as detergents and bleach as these will be very effective at getting rid of the virus on surfaces. Frequently touched surfaces should be cleaned regularly.

I would rather not have my employees come into my home whilst my household is self-isolating, and I believe I can cope without paid support for 14 days, what are my employee's rights?

For permanent employees who work regular hours you may find that there is a right in the contract to put them on a period of lay off. This means a temporary suspension of their work and pay. Please note that this will only apply if your contract is very clear that you have a right to lay off the employee under these circumstances.

An employee on lay off has a right to statutory guarantee pay which is up to £29 per day (rising to £30 from 6th April 2020) and is only payable for the first five days of absence.

If you do not have a lay off clause you can ask the employee not to attend work and pay them in full during the absence. If there is a lay off clause, but you want to pay your employee anyway, it would be sensible to check with your funding body (local authority or CCG) to make sure they are happy for you to pay it.

If you use casual or zero hours workers and work has not already been agreed in advance, you do not have to offer them work during this time.

We will continue to pay you your budget during this time and encourage you to continue to pay your personal assistant.

What do I tell my employees to do?

Assuming your employees are themselves fit and willing to attend work, they should carry on fulfilling their duties. It is essential that they take very seriously any new rules on health and safety procedures you implement. It is not just for their own protection but also to prevent the spread of infection to other people in the household, fellow colleagues and the public at large when leaving your home.

Employees should not remove stocks of PPE from your home and they should notify you in advance of stocks becoming low to allow you plenty of time to re-stock.

If your employee develops symptoms they must remain at home and isolate themselves and their household

The Government has suggested that people over 70, those who are pregnant and those with serious health conditions are high-risk and should consider social distancing for 12 weeks;

I or someone in my household falls into that category, but I still need care, what can I do?

You can social distance and avoid going out in public as the Government has recommended, but still have workers come into your home to provide care.

Of course, if no one in the household has any symptoms of the virus and neither do the workers, there isn't strictly a need to put in place stringent health and safety procedures above and beyond your current regime. However, as you are a high-risk household you can choose to insist on greater standards and hygiene and care from your workers.

I am in the high-risk category and do not want to take the risk of having workers coming into my home. I'd prefer to have unpaid support from my family for a 12 week period - what can I do?

This depends on your circumstances. Such a large gap in cover from an employee would usually result in terminating the employee's contract on grounds of redundancy, as their work has diminished and they are no longer required. However, you probably want to re-instate the employee once the 12 week period is over and so wouldn't want the suspension of their duties to be permanent.

As you have a direct payment as a result of a care and support plan, any changes you make will need to be agreed with your funding body. Speak to your payroll provider for guidance on the options, which can be summarised as the following:

1. Terminate the employee's contract on grounds of redundancy. Your employee would be entitled to a statutory redundancy payment if they have completed two years' service. You would also need to pay the employee in full for any notice period and annual leave which has been accrued and not taken.
2. Pay the employee in full whilst they are not attending work. You should seek confirmation from your funding body before making this decision – Bury Council encourages you to adopt this option, we will continue to pay your personal budget

3. If redundancy appears to be a very realistic option, meaning the employee faces the permanent termination of employment and there is no way to simply cover their full pay instead, the final option is to lay them off by mutual agreement. The unique circumstances may encourage an employee to go on a period of leave without pay, until such time as the 12 weeks has passed. In agreeing to a period of lay off, the employee gains the chance to keep their continuity of service in place and know they can return to work at the end of the 12 weeks. Holidays also continue to accrue at the same rate that they did while the PA was working. You could offer, in exchange for this agreement, to relax the rules on fidelity which would allow the employee to accept work elsewhere during the 12 weeks.

Please remember that the Government is changing the law regularly to ensure they are taking the steps to protect the UK. It is possible that emergency legislation could be introduced that will allow you to lay off an employee without pay whether a contractual right exists or not. Please ensure you take advice if you are facing a long absence from your workers.

Where 12 weeks of absence isn't a realistic consideration for you, remember that the employee has accrued annual leave which can be used to give them time off with full pay.

If you use casual or zero hours workers and work has not already been agreed in advance, you do not have to offer them work during this time.

My worker is in the high-risk category but wants to continue to attend work, can I allow them to?

Yes, you can. The Government has made recommendations for high-risk individuals to stay at home, but it is not mandatory.

If your employee continues to attend work, it would be wise to increase your hygiene and health and safety procedures so you are doing everything you can to prevent the risk of spreading infection between you. Make a written record of steps you have taken to protect each other

My worker is in the high-risk category and is refusing to attend work, what can I do?

Under normal circumstances, an employee who isn't sick but is refusing to attend work would be in breach of contract that would justify disciplinary action, and potentially lead to termination of employment. However, under the circumstances, and given that they are acting upon Government guidance, it is far less likely that a dismissal on such grounds would be reasonable.

Those who are highlighted as being at risk and recommended to stay at home for 12 weeks, are also employees who have protected characteristics under the Equality Act 2010. In cases of those with disabilities, you are under an obligation to make reasonable adjustments and alter working practices so they do not suffer a detriment. In the case of those with a comparably different age to the rest of your work force and pregnant women, you cannot allow them to suffer a detriment as a result of their

protected characteristic. You must also not penalise these workers for having attempted to assert their rights.

For these workers, you may be able to simply agree that they remain away from work. You would have no obligation to pay them during this time, but holiday would continue to accrue as normal. Remember that accrued annual leave can be taken during this time. Please contact Bury Council on 0161 253 5151 if you are struggling to arrange replacement cover and you will be directed to the most appropriate person to help you.

For those who are pregnant and staying off work without pay, it is important to note that this could impact their rights to claim Statutory Maternity Pay (SMP) when their maternity commences. To be eligible for SMP the employee must have earned an average of £118 per week during the 8 weeks prior to the qualifying week (the 15th week prior to the due date). A period of 12 weeks with no pay whatsoever could interfere with her average earnings. This issue may not stop her from taking the time out, but it is advisable for you to notify her of the risk. If she does not qualify for SMP when the time comes, she will need to apply to the Government for Statutory Maternity Allowance instead.

Can I dismiss my PA and pay my family member instead?

It is generally not fair to dismiss an employee because of a preference for someone else. However, the restrictive measures in place for the movement of vulnerable people may be relevant. It is important to take specific advice from your payroll provider and insurance company before you decide to dismiss anyone. Family members may only provide paid care in exceptional circumstances and this would only be a temporary measure whilst the government restrictions are in place. **Please inform Bury Council on 0161 253 5151 if you make such changes.**

My employee is employed to help me socialise in the community. As I can't go out anyway, do I have to keep them on?

If you are proposing to stay at home for a long time and you genuinely have no use for your employee, you may want to consider making them redundant as their work has diminished entirely. Make sure you have carefully thought through any alternative options and sought advice, before you decide and discuss with your personal assistant.

What happens now schools are closing and my PA can't get childcare?

Employees have the right to take emergency leave to care for a dependant. This right includes the unexpected need to care for a child who cannot attend school. The right exists for a reasonable time to allow the employee to make alternative arrangements and the leave is without pay. What is 'reasonable' will entirely depend upon the circumstances. The Government has allowed placements for some children of key workers to continue. Key workers will include those caring for vulnerable people.

Some employees may be able to rely on family members or friends to help with childcare, but the chances are reduced more than usual as more people self-isolate or social distance for some time. The risk of spreading infections to the high-risk

category of persons, such as grandparents over 70 or with health conditions, is one of the reasons the Government delayed school closures.

You are encouraged to have good communication with your employee to ensure you are satisfied they have a genuine need to be away from work. Under the circumstances it is expected that a high number of parents will not be able to attend work for some time and will rely on unpaid parental leave rights. If they are eligible for such leave you cannot allow them to suffer a detriment because of it.

Bury Council has made provisions in our schools for key workers and your personal assistant is a key worker. If your personal assistant is struggling to get childcare, our Family Information Service (FIS) is available to support families who may require childcare or other assistance, and has a range of information through [The Bury Directory](http://www.theburydirectory.co.uk) www.theburydirectory.co.uk.

You can email FIS at childinfo@bury.gov.uk and they will be able to put you in touch with appropriate childcare providers who remain open.