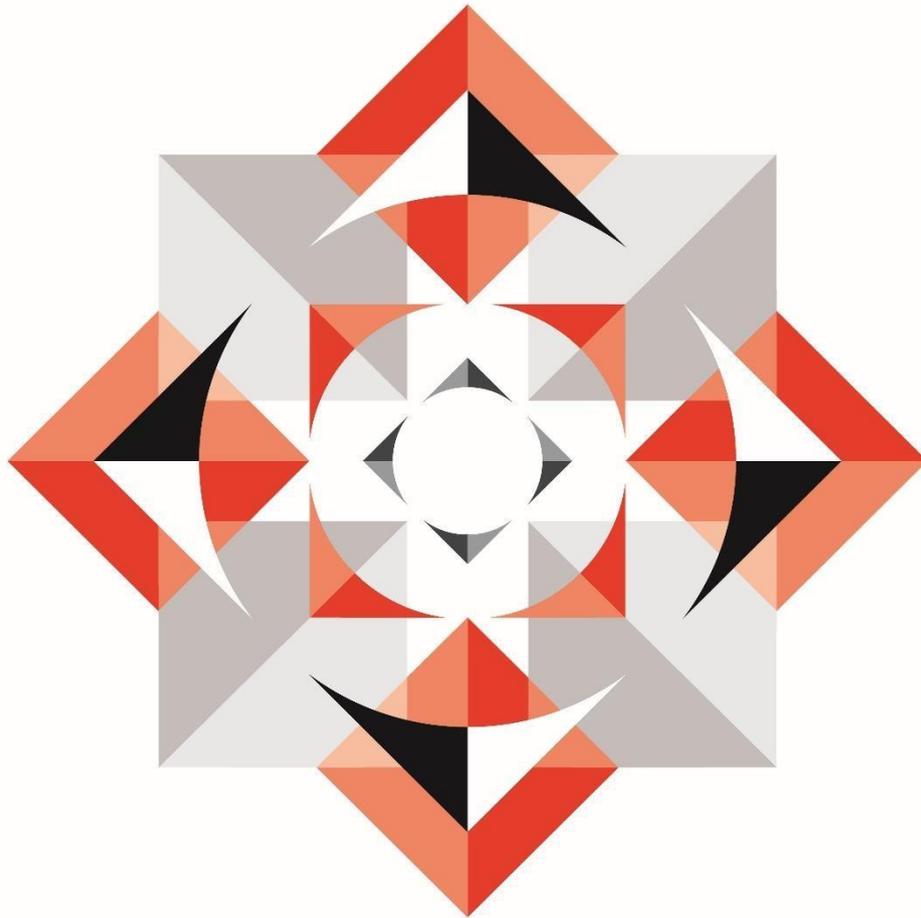


Coronavirus – FAQs for employers in Ireland



Updated as of 16 April 2020

Coronavirus – FAQs for employers

The new strain of Coronavirus (COVID-19) is spreading rapidly. As it becomes more widespread, it is giving rise to a number of issues for employers. We have prepared the following Q&As for employers, with guidance on how businesses should respond based on questions we have been asked. They should be read in conjunction with the latest [updates from the Irish government](#) and advice from:

- [the Department of Health](#)
- [the Health Service Executive \(HSE\)](#);
- [the Health Protection Surveillance Centre \(HPSC\)](#);
- The Health and Safety Authority (HSA) [guidance for employers](#) and [FAQ for temporary home working](#);
- the Department of Employment Affairs and Social Protection particularly [the COVID-19 information for employers and employees site](#) and the [latest updates on COVID-19 site](#);
- The Revenue [guidelines](#), [FAQ](#) and [guidance on employer eligibility and supporting proofs](#) in connection with the Temporary Covid-19 Wage Subsidy Scheme.

And any other applicable guidance issued by the government or public health authorities as the situation develops.

We will keep these Q&As updated in light of the changing situation and new government advice.

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Travel

1. Should we restrict all work travel?

Yes, unless it is essential. The Government and the public health authority's [advice](#) is that individuals should stay at home wherever possible. There are exceptions for workers who provide an [essential service](#) and who cannot work from home. This includes workers in shops providing essential food and beverages, healthcare workers, carers, postal workers and banking and financial services workers (see section on [working from home](#)).

The [Department of Foreign Affairs](#) and the Government is also advising against all non-essential travel overseas and within Ireland in order to limit the spread of Coronavirus. There is a nationwide restriction on travel outside of two kilometres from a person's home for non-essential reasons and social gatherings or visits are not permitted. If an employee is required to travel to their workplace or travel for work, they may require a letter from their employer confirming they are an essential worker and that they cannot work from home.

In keeping with their duty to protect the health, safety and welfare of all employees, employers should review their work travel requirements in light of any relevant government guidance. Employers should review whether the work is an essential service, and if so, what travel is genuinely needed and what could be postponed or replaced with telephone or video-conference calls.

2. Can we stop employees' personal travel to affected areas?

Probably not.

Employers can instruct employees not to do any work travel but do not normally have a contractual right to restrict employees' personal travel.

Preventing travel to affected regions may also indirectly discriminate against certain employees, e.g. staff from outside of Ireland, because such a ban would disproportionately affect them. It is a defence to a claim of indirect discrimination that the action is a proportionate means of achieving a legitimate aim. Trying to protect the health and safety of all staff would be a legitimate aim but an absolute travel ban might be disproportionate in the current situation, as an employer could instead ask employees to notify them of travel to an affected area and require them to work from home or, where remote working is not possible, take extra holiday to self-quarantine at home for 14 days on their return.

If the employee cannot work remotely and the employer cannot do without the employee for that length of time (the holiday plus 14 days quarantine), it might be able to refuse (or revoke) holiday approval on those grounds (see section on [holidays](#)). Again, this might be indirectly discriminatory but provided the employer's aim is legitimate and it is acting proportionately, it may be able to defend against such a claim.

3. Should we encourage staff not to use public transport?

Employers could encourage this but not insist upon it.

Employers should keep government guidance under review. The public health authority's [advice](#) is that individuals should work from home. There are exceptions for workers who provide an [essential service](#) and who cannot work from home. This includes workers in shops providing essential food and beverages, healthcare workers, carers, postal workers and banking and financial services workers. If the workplace is an essential service, employers may want to consider encouraging staff to walk, cycle or drive to work. But this will not be practicable for many employees.

If it is not possible to avoid public transport, employers who can do so might consider adjusting start and finish times so that employees can avoid the busiest times and this is in line with the latest government [guidance](#) outlining updated measures to reduce social interaction.

There is also a nationwide restriction on travel outside of two kilometres from a person's home for non-essential reasons. If an employee is required to travel to their workplace, they may require a

letter from their employer confirming they are an essential worker and that they cannot work from home

Quarantine

4. Can we require people to inform us about their health and ask them not to come into work?

Employers can ask employees for information about their health where this is relevant to the workplace, particularly if required to protect the health and safety of others. However, this is special category personal data and so should be treated confidentially.

The Data Protection Commission in Ireland has published [guidance for employers](#) on data protection issues posed by Coronavirus in the workplace and advises that employers would be justified in requiring employees to inform them if they have been diagnosed with the Coronavirus in order to allow necessary steps to be taken.

Employers have a duty to protect the health and safety of their staff, and so can ask employees not to come to work where this is reasonably required to protect others. In such circumstances, employees should be advised to work from home for as long as is necessary to protect others in line with public health authority guidance. Employers who temporarily suspend staff without pay as a precautionary measure could face claims for breach of contract (including injunctive relief), payment of wages claims, constructive dismissal claims as well as grievances. Employers may also face discrimination claims if employees are not treated consistently where possible in terms of who is being requested to work from home (see [question 8](#) and [question 9](#) for details about the impact on pay).

5. Can we ask people to stay away from work in the following situations?

The current government [guidance](#) is that individuals should work from home. This means employees should only attend the workplace where their work is considered an [essential service](#) and they cannot work from home.

(a) If showing symptoms?

Employers should check the latest [public health authority guidance](#) on when individuals should self-isolate if they are showing symptoms. The guidance has been updated to provide that all people are required to self-isolate if they have flu-like symptoms (e.g. fever, cough etc) regardless of travel or contact history.

(b) If no symptoms but have returned from somewhere with an outbreak?

Employers should check the latest [public health authority guidance](#) on when individuals should self-isolate after having returned from overseas. Employers can require their employees to follow this guidance.

(c) If no symptoms but have had contact with someone who has been diagnosed, or who has travelled from affected area?

Employers should check the latest [public health authority guidance](#). The current guidance is that individuals need to restrict their movements for 14 days if they are in close contact with someone who has been diagnosed or if the individual has returned to Ireland from another country. It is likely to be reasonable in such circumstances to require an employee to stay away from work for the 14-day period. The government is not currently advising that individuals need to restrict their movement if they have been in close contact with someone who has returned from an affected area, but it may be reasonable to ask employees to do so if their close contact has returned from the affected area and is also showing symptoms.

(d) If diagnosed with Coronavirus?

Yes, employees can be required to inform their employer of a Coronavirus diagnosis and required to stay away from work for as long as is necessary to protect others in line with public health authority

guidance (see [question 9](#) for details about impact on pay).

Pay

6. Do we have to pay employees who are off sick with diagnosed Coronavirus?

There is no statutory right to employer funded sick pay in Ireland so any entitlement to receive sick pay from an employer will depend on the terms of any applicable employer sick pay policy/practice. Employees who are absent due to medically required self-isolation or a diagnosis of Coronavirus may be entitled to social welfare supports such as [enhanced Illness Benefit](#) from the Department of Employment Affairs and Social Protection. On 24 March 2020, the government increased the rate of enhanced Illness Benefit from €203 to €350 per week. The government has previously recommended that employers support the public health initiatives in dealing with the outbreak by continuing to pay employees so that they don't have to claim the enhanced Illness Benefit or, at a minimum, pay employees the difference between the enhanced Illness Benefit rate and their normal salaries. The Department of Employment Affairs and Social Protection intends to provide enhanced Illness Benefit to employees for the full duration of any absence due to a confirmed diagnosis of Coronavirus (up to a maximum 10 weeks) or for a maximum two-week period where employees are medically required to self-isolate. The enhanced Illness Benefit will apply for any eligible absences from 9 March 2020.

7. Do we have to pay employees who are off sick with Coronavirus symptoms, but who have not been diagnosed?

The updated government guidance is that anyone who has symptoms of Coronavirus should self-isolate regardless of their travel or contact history. As such, someone who is off sick with symptoms but has not been diagnosed should self-isolate in accordance with the most recent guidance.

Unless it is provided for in the employer's own sick pay policy/practice, employers are not obliged to pay employees in this situation. However, the best way to ensure employees follow government advice and do not come to work during a government-advised quarantine period is to provide full pay in all cases. An employee who is faced with no pay is likely to try to come to work. Employees who self-isolate in such circumstances may be entitled to such as [enhanced Illness Benefit](#) from the Department of Employment Affairs and Social Protection for a maximum period of two weeks where they are confined to their home or medical facility (see [questions 8](#) for detail). On 24 March 2020, the government increased the rate of enhanced Illness Benefit from €203 to €350 per week. The government previously urged employers to continue to pay employees who self-isolate or quarantine on medical advice their normal pay where possible so that the employees don't need to claim the enhanced Illness Benefit, or at a minimum, pay employees the difference between the enhanced Illness Benefit rate and their normal salaries.

Where employers do not top-up the government enhanced Illness Benefit for an employee's quarantine period and this would cause the employee financial distress, the employee may be able apply for means tested [Supplementary Welfare Allowance](#) from the government.

In considering what approach to adopt, it is important to treat everyone consistently in order to avoid grievances or claims of discrimination.

8. Do we have to pay employees who aren't actually sick but are asked to self-isolate according to medical/government advice?

Where employees are required to self-isolate according to medical advice but can still work remotely, they should continue to be paid as normal.

Where an employer provides sick pay and where an employee is self-isolating and unable to work remotely, employers may not be obliged to pay as the employees is not technically sick. The risk of this approach should be assessed on a case by case basis as employees may have a strong argument that they are not fit for work as they have been advised to self-isolate on medical grounds and should, on that basis, be covered by the employer's sick pay policy or practice.

Where possible employees should continue to be paid as this is the best way to ensure employees

follow the public health advice and do not come to work when required to self-isolate. An employee who is faced with no pay is likely to try to come to work.

Employees who are medically required to self-isolate may apply for [enhanced Illness Benefit](#) from the government for a maximum two week period where they are confined to their home or medical facility and cannot work. On 24 March 2020, the government increased the rate of enhanced Illness Benefit from €203 to €350 per week. Where employers do not pay employees full pay or top-up the enhanced Illness Benefit for an employee's self-isolation period, resulting in financial distress for the employee, the employee may be able to apply for means tested [Supplementary Welfare Allowance](#) from the government.

In considering what approach to adopt, it is important to treat everyone consistently in order to avoid grievances or claims of discrimination.

9. Do we have to pay employees if we ask them not to attend work?

If an employer requests a staff member to stay at home and does not pay them for that period, the employer is effectively suspending the employee without pay and the employer could face claims for breach of contract (including injunctive relief), payment of wages claims, constructive dismissal claims as well as grievances.

If the employer cannot continue to pay employees in this situation, the government advice is that employees will be regarded as temporarily laid-off and the employee can apply for social welfare income support in the form of the [Covid-19 Pandemic Unemployment Payment](#) or Jobseeker's payment. The Covid-19 Pandemic Unemployment Payment is an emergency government funded payment available for all employees whose employers are unable to pay them and who have lost employment due to the Coronavirus outbreak. This is a payment of €350 per week and is paid directly to the employee by the Department of Employment Affairs and Social Protection.

The government is encouraging employers to retain staff on payroll where possible and, on 24 March 2020, announced a new [Temporary Covid-19 Wage Subsidy Scheme](#) (the "**Wage Subsidy Scheme**"). The Wage Subsidy Scheme replaces the Employer Covid-19 Refund Scheme. The Wage Subsidy Scheme will allow employers to continue to keep an employee on payroll and claim a refund from the Department of Employment Affairs and Social Protection. It is intended that the Scheme will operate in two phases.

In Phase 1, the transitional phase, the subsidy will build on the previous Employer Refund Scheme it replaces and increase the refund of €203 to a maximum of €410 per week in respect of all employees for whom the employer operates the Subsidy Scheme regardless of whether employers make additional payments to employee's pay or not. Therefore, employers will receive €410 subsidy per week for each employee that they have made a submission for, regardless of the amount of subsidy actually paid to the employee. In many cases, this amount will exceed the subsidy that the employee is entitled to receive for that week and in those cases, the employer is obliged to hold the excess of the subsidy payment received over the amount of subsidy actually paid to each employee.

In Phase 2, the subsidy will be based on each individual employee's average net weekly wage subject to the maximum weekly tax free amounts. The current government guidelines are that from the 4 May 2020 the subsidies available will be calculated as follows:

- For employees who earn up to €412 net per week (approx. €24,400 gross per year): maximum subsidy of 85% of the employee's net weekly wage (capped at €350 per week);
- For employees who earn between €410 - €500 net per week (approx. €24,440 - €31,000 gross per year): maximum subsidy of 70% of the employee's net weekly wage (capped at €350 per week);
- For employees who earn between €500 - €586 net per week (approx. €31,000 - €38,000 gross per year): maximum subsidy of 70% of the employee's net weekly wage (capped at a maximum of €410 per week); and

- For employees who earn between €586 - €960 net per week (approx. €38,000 - €76,000 gross per year): a tiered arrangement will apply and the maximum subsidy payable will be €350 per week. The tiered arrangement takes into account both the amount normally paid by the employer and the level of reduction in pay borne by that employee as follows:

Gross salary after reduction	Subsidy
Up to 60% of employee's previous average net weekly pay	Up to €350 per week
Between 60% and 80% of employee's previous average net weekly pay	Up to €205 per week
Over 80% of employee's previous average net weekly pay	No subsidy payable

- For employees who earn in excess of €960 net per week (approx. €76,000 gross per year), no subsidy is available, unless their gross post-COVID-19 income has fallen below €960 per week. In those cases, the tiered arrangement applicable to incomes in excess of €586 per week (approx. €38,000 gross per year) will apply. Accordingly, if an employee's earnings have been reduced to below €960 net pay a week, and the reduction is more than 20% of their normal pay, a subsidy of up to €205 is available. If the reduction was more than 40%, a subsidy of up to €350 is available. To calculate the level of subsidy payable, current gross pay will be compared with previous average net weekly pay for January/February 2020.

Tapering of subsidies will be applied to cases where the gross pay paid by the employer and the subsidy exceed the employee's previous average net weekly pay. If the employer topped up payments by more than the permitted amount, the subsidy will be tapered – for every €1 extra paid, €1 will be taken from the subsidy. This is to ensure that no employee will be better off under the Wage Subsidy Scheme.

During the operational phase of the scheme, tapering will not be applied to subsidies paid to employees whose earnings are less than €412 net per week (approx. €24,400 gross per year), where an employer wishes to pay a greater level of top-up to bring an employee's pay up to a maximum of €350 net per week.

Revenue are currently making arrangements to implement these changes and move into the operational phase of the Wage Subsidy Scheme on 4 May 2020. These will include a reconciliation exercise in respect of any overpayments made during the transitional phase of the scheme. Where an employer receives a subsidy in excess of the cap to which they are entitled during the operational phase of the scheme for any relevant employee, they may decide (or be instructed by Revenue) to repay some or all of the subsidy refund payment. Revenue has provided information on how refunds can be processed in its [Frequently Asked Questions](#).

The subsidy is liable to income tax and USC however these are not payable during the period of the Subsidy Scheme. Instead employees will be taxable on the subsidy amount paid to them by review at the end of the year. No employee PRSI is payable on the subsidy and the Employer PRSI on any top up payment made to employees in addition to the subsidy will be reduced from 11.5% to 0.5%. Any employers who have already registered for the Employer Covid-19 Refund Scheme will not need to apply for the Wage Subsidy Scheme as Revenue will contact those employers directly to confirm they meet the conditions for the Wage Subsidy Scheme. The Wage Subsidy Scheme is expected to run for 12 weeks commencing on 26 March 2020. In order to qualify, employers will need to complete a self-declaration to Revenue that they have experienced significant negative economic disruption due to Covid-19 and show, to the satisfaction of Revenue that this disruption has led – to a minimum of 25% decline in their actual or predicted turnover, to an inability to pay normal wages and outgoings and, to other circumstances as set out in soon to be published Revenue Guidelines. The Wage Subsidy Scheme can apply to employers who don't top up their employee's wages but employers are encouraged to use their best efforts to continue to pay employees a significant portion, or 100%, of their income, for the period of the Wage Subsidy Scheme. Where employers avail of the Wage Subsidy Scheme to pay employees, the employees will not be entitled to claim the Covid-19

Pandemic Unemployment Payment, Job-seeker's payment or Short Time Work Support (in the case of reduced hours). Revenue have issued initial guidelines and [FAQs](#) but further details are to be published soon. Before applying, we recommend that employers review the Revenue guidance on [employer eligibility and support proofs](#) to determine if they qualify for the Wage Subsidy Scheme.

10. Do we have to pay employees if we had advised them not to travel but they did anyway?

If an employee becomes unwell after travelling, they will be entitled to the employer's usual sick leave and pay provisions.

The employer's advice not to travel should not usually make any difference to what the employee is paid if they are later quarantined or are asked not to attend work. The employee's decision to travel is unlikely to be conduct which would justify the disciplinary sanction of withholding pay.

In light of current government [guidance](#) that individuals who return to Ireland from any other country should restrict their movements for 14 days, employees whose attendance in work is necessary but who have returned from travel abroad should not come to work for restriction period. If the employee was specifically warned that they would not be paid if they chose to travel to a destination where it was known that a restriction period would apply on their return, it may be reasonable for the employer to withhold pay if they are unable to work remotely.

11. Do we have to pay employees due back at work who are stuck abroad?

If the employee is able to work remotely from their location abroad, they will be entitled to their usual pay.

If the employee is not able to work remotely, there is no legal entitlement to pay – unless the employment contract or policy gives a right to pay in these circumstances. The employee is not able and willing to work if they are abroad and unable to do their job remotely.

It would be good practice for the employer to talk to the employee and discuss the options, including whether it is possible for them to take extra paid holiday. If not, the employer is not obliged to pay the employee.

If the employer had required the employee to travel for work and they are now stuck abroad, it would be advisable to continue paying usual pay. The employer should check if this is required by the relevant contract or work travel policy. Even if this is not legally required, the employee will have a reasonable expectation of payment and is likely to feel very aggrieved if they are in this situation due to work and then have their pay stopped.

12. Do we have to pay employees who just refuse to come into work because they're scared?

The current government [guidance](#) is that individuals should stay and work from home. This means employees should only attend the workplace where their work is an [essential service](#) and they cannot work from home. If an employee's work is an essential service which cannot be carried out from home and they refuse to come to work due to genuine concerns that the employer has been unable to resolve, the employer could agree for the employee to take time off as holiday. The employee would then be paid as usual. If this is not agreed and the employer requires the employee to come to work, there is no obligation to pay the employee.

See [section on vulnerable employees](#) who may have specific reasons for not wanting to come to work.

13. Do we have to pay employees if we decide to close the workplace?

If an employer decides to close the workplace for a temporary period, they will usually need to keep paying their employees full pay. In many cases employees may be able to continue working remotely. If not, employees who are unable to work would still be entitled to full pay, as they are able and willing to work but the employer is not providing them with work. Without an express contractual right, it would be a breach of contract to send employees home indefinitely (even if you pay them) but

employers would almost certainly be able to do so for a limited period provided they pay them in full.

The exception to this is lay-off. Laying off employees means providing them with no work or pay for a period of time. Unless the employer has a clear express or implied contractual right to lay-off or the clear consent of employees could be obtained (which is unlikely), an employer imposing a lay-off would face potential claims for unlawful deduction from wages, breach of contract and constructive dismissal.

Even where an employer has a contractual right to lay off without pay, this is subject to the implied term of trust and confidence. This means, for example, the employer should consult with employees first and give reasonable notice of any lay off to avoid being in breach of contract. Under the Redundancy Payments legislation, employers seeking to impose either lay-off or short time, must provide advice notice to employees of the lay-off or short time and this notice must outline that the employer's reasonable belief that the lay-off or short time will be temporary in nature.

The [government guidance](#) outlines that employees who are laid off temporarily due to reduction in business activity related to the Coronavirus may apply for Covid-19 Pandemic Unemployment Payment or Jobseeker payment. [Covid-19 Pandemic Unemployment Payment](#) is an emergency government funded payment available for all employees whose employers are unable to pay them and who have lost employment due to the Coronavirus outbreak. This is a payment of €350 per week and is paid directly to the employee by the Department of Employment Affairs and Social Protection.

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In Phase 1, the transitional phase, the subsidy will build on the previous Employer Refund Scheme it replaces and increase the refund of €203 to a maximum of €410 per week in respect of all employees for whom the employer operates the Subsidy Scheme regardless of whether employers make additional payments to employee's pay or not. Therefore, employers will receive €410 subsidy per week for each employee that they have made a submission for, regardless of the amount of subsidy actually paid to the employee. In many cases, this amount will exceed the subsidy that the employee is entitled to received for that week and in those cases, the employer is obliged to hold the excess of the subsidy payment received over the amount of subsidy actually paid to each employee.

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Tapering of subsidies will be applied to cases where the gross pay paid by the employer and the subsidy exceed the employee's previous average net weekly pay. If the employer topped up payments by more than the permitted amount, the subsidy will be tapered – for every €1 extra paid, €1 will be taken from the subsidy. This is to ensure that no employee will be better off under the Wage Subsidy Scheme.

During the operational phase of the scheme, tapering will not be applied to subsidies paid to employees whose earnings are less than €412 net per week (approx. €24,400 gross per year), where an employer wishes to pay a greater level of top-up to bring an employee's pay up to a maximum of €350 net per week.

Revenue are currently making arrangements to implement these changes and move into the operational phase of the Wage Subsidy Scheme on 4 May 2020. These will include a reconciliation exercise in respect of any overpayments made during the transitional phase of the scheme. Where an employer receives a subsidy in excess of the cap to which they are entitled during the operational phase of the scheme for any relevant employee, they may decide (or be instructed by Revenue) to repay some or all of the subsidy refund payment. Revenue has provided information on how refunds can be processed in its [Frequently Asked Questions](#).

The subsidy is liable to income tax and USC however these are not payable during the period of the Subsidy Scheme. Instead employees will be taxable on the subsidy amount paid to them by review at the end of the year. No employee PRSI is payable on the subsidy and the Employer PRSI on any top up payment made to employees in addition to the subsidy will be reduced from 11.5% to 0.5%. Any employers who have already registered for the Employer Covid-19 Refund Scheme will not need to apply for the Wage Subsidy Scheme as Revenue will contact those employers directly to confirm they meet the conditions for the Wage Subsidy Scheme. The Wage Subsidy Scheme is expected to run for 12 weeks commencing on 26 March 2020. In order to qualify, employers will need to complete a self-declaration to Revenue that they have experienced significant negative economic disruption due to Covid-19 and show, to the satisfaction of Revenue that this disruption has led – to a minimum of 25% decline in their actual or predicted turnover, to an inability to pay normal wages and outgoings and, to other circumstances as set out in soon to be published Revenue Guidelines. The Wage Subsidy Scheme can apply to employers who don't top up their employee's wages but employers are encouraged to use their best efforts to continue to pay employees a significant portion, or 100%, of their income, for the period of the Wage Subsidy Scheme. Where employers avail of the Wage Subsidy Scheme to pay employees, the employees will not be entitled to claim the Covid-19 Pandemic Unemployment Payment, Job-seeker's payment or Short Time Work Support (in the case of reduced hours). Revenue have issued initial guidelines and [FAQs](#) but further details are to be published soon. Before applying, we recommend that employers review the Revenue guidance on [employer eligibility and support proofs](#) to determine if they qualify for the Wage Subsidy Scheme.

In normal circumstances, under the Redundancy Payments Acts, where an employee has two years' service or more, they may also be able to claim statutory redundancy from their employer if they have

been laid off or placed on short time for four or more consecutive weeks or six weeks in any 13-week period. The scheme also requires employees to resign to receive their redundancy payment which employees might be very unwilling to do in the current climate. In light of the uncertain duration of the current crisis, emergency legislation has been proposed which would, amongst other things, disapply this redundancy entitlement for the “emergency period” from 13 March 2020 – 31 May 2020 where an employee has been laid off (or kept on short-time) due to the effects of measures required to be taken by their employer in order to comply with, or as a consequence of, government policy to slow the spread of the virus. The draft legislation gives the Government the power to extend this emergency period having regard to certain considerations. If enacted, this means that, in certain situations, employees would not be able to seek redundancy pay from their employers if they have been laid off or put on short time for more than four consecutive weeks (or six weeks out of the last 13) during this “emergency period”.

14. Do we have to pay employees if it is illegal to come to work due to compulsory quarantine?

The Health Act 1947 and associated infectious disease regulations allows the chief medical officer to make an order to compulsorily quarantine individuals in certain circumstances. These powers have been significantly extended in light of the Coronavirus outbreak by the Health (Preservation and Protection and other Emergency Measures in the Public Interest) Act 2020. This legislation, which was signed into law on Friday 20 March 2020, amongst other things, extends the powers of the Minister for Health to make orders to prohibit certain events and access to certain premises as well as give him the power to designate certain areas as an area of infection for the Coronavirus (e.g. implement a widespread compulsory quarantine). It will also provide for enforcement measures and will extend the powers of medical officers to order the detention of persons who are suspected to be potential sources of infection. It is a criminal offence not to comply – meaning it would be illegal for an employee to come to work if they are compulsorily detained, restricted or in isolation.

We are not currently aware of these powers having been used but it may be the case as the outbreak develops.

If these powers are used, the affected employee may be entitled to state funded social welfare supports in the form of enhanced Illness Benefit. A person’s entitlement to contractual sick pay in this situation will depend on the wording of the relevant contract or sick pay policy although employers should bear in mind the government’s recommendation to continue to pay employees in such circumstances.

Working from home

15. Do we have to allow employees to work from home (or take holiday)?

Yes, the public health authority [advice](#) is that individuals should stay and work from home. This means employees should only attend the workplace where their work is an [essential service](#) . This means employees should stay and work from home except in the following situations:

- to travel to and from work where the work is considered an essential service. The full list of essential services is available [here](#)
- working in an essential shop, bank or post office. The full list of essential shops, post offices and banks is available [here](#)
- to attend medical appointments and collect medicines and other health products
- for vital family reasons including caring for children, elderly or vulnerable people but excluding social family visits
- to exercise within two kilometres of their house.

This means some employers will have to close their workplace and other employees should only attend for work where their work is considered an essential service which cannot be carried out from home.

Employers whose workplace can remain open should assess the health and safety risk regularly, and make sure they check the latest government guidance. Where attendance at the workplace is essential, employers should consider their staffing requirements and how many people they need on their premises. Depending on the job, it may be possible to allow employees to work from home or stagger staffing numbers to reduce the numbers in the workplace. The Health and Safety Authority (HSA) has published an [FAQs](#) for employers and employees in relation to temporary home working arrangements in response to the Coronavirus outbreak.

Where the work is considered an essential service, employers should be mindful of the fact that they might need to require people to come into work if others fall sick and there is insufficient cover. Employers who permit remote working or holiday should consider whether they need to reserve the right to require workplace attendance on short notice. If employers reserve this right, they should make it clear that they may take disciplinary action if employees unreasonably refuse to attend work provided this does not breach government advices.

Before any disciplinary action is commenced, the situation should be discussed with the individual, because it may be possible to allay their concerns. For example, if their real fear is the risk of infection on public transport, it might be possible to adjust their hours to enable them to travel outside rush hour.

If the individual refusing to come into work is pregnant or otherwise at high risk, you should tread carefully and may have to be more flexible (see below).

Refusing to allow employees to stay at home, or disciplining them for not attending work, could potentially lead to legal claims (particularly where the government is encouraging employers to allow employees work remotely where this is possible). For example, an employee might try to claim constructive unfair dismissal if there is a genuine health and safety risk from being required to attend work. Or they might try to bring a claim of penalisation under the Safety, Health and Welfare of Work Act 2005. This Act provides that employees have a right not to be subjected to penalisation or dismissal in circumstances of danger, which they reasonably believe to be serious and imminent or which they could not reasonably have been expected to avoid, if they refuse to return to their workplace or take appropriate steps to protect themselves.

However, provided employers do not act unreasonably, follow relevant government guidance and do not require employees to attend the workplace unless it is essential and where they are required to attend, such employees are not placed at undue risk, such claims would be unlikely to succeed.

Treat employees consistently. It is alright to give special consideration to [vulnerable individuals](#) provided you are consistent as between individuals of a particular class and fair and transparent about the grounds on which you are acting.

16. Do we have to enforce home working or close the workplace?

The public health authority [advice](#) is that individuals should stay and work from home in all circumstances. There are exceptions for some workers where their work is considered an [essential service](#) or they are working in an [essential shop, bank or post office](#).

Employers whose workplace can remain open should assess the health and safety risk regularly, and make sure they check the latest government guidance. Where the work is considered an essential service or the workplace is an essential shop, bank or post office, employers should consider their staffing requirements and how many people they need on their premises. Depending on the job, it may be possible to allow employees to work from home or stagger staffing numbers to reduce the numbers in the workplace. The Health and Safety Authority (HSA) has published an [FAQs](#) for employers and employees in relation to temporary home working arrangements in response to the Coronavirus outbreak.

Where the work is considered an essential service or the workplace is an essential shop, bank or post office, employers should be mindful of the fact that they might need to require people to come into work if others fall sick and there is insufficient cover. Employers who permit remote working or holiday should consider whether they need to reserve the right to require workplace attendance on short

notice. If employers reserve this right, they should make it clear that they may take disciplinary action if employees unreasonably refuse to attend work provided this does not breach government advices.

Before any disciplinary action is commenced, the situation should be discussed with the individual, because it may be possible to allay their concerns. For example, if their real fear is the risk of infection on public transport, it might be possible to adjust their hours to enable them to travel outside rush hour.

Refusing to allow employees to stay at home, or disciplining them for not attending work, could potentially lead to legal claims (particularly where the government is encouraging employers to allow employees work remotely where this is possible). For example, an employee might try to claim constructive unfair dismissal if there is a genuine health and safety risk from being required to attend work. Or they might try to bring a claim of penalisation under the Safety, Health and Welfare of Work Act 2005 ([see question 15](#)). However, provided employers do not act unreasonably, follow relevant government guidance and do not require employees to attend the workplace unless it is essential and where they are required to attend, such employees are not placed at undue risk, such claims would be unlikely to succeed.

Treat employees consistently. It is alright to give special consideration to [vulnerable individuals](#) provided you are consistent as between individuals of a particular class and fair and transparent about the grounds on which you are acting.

17. Can grievances and disciplinaries be dealt with remotely?

Yes, if the grievance or disciplinary process can be handled remotely then it does not need to be paused just because the people involved are now working from home. The Code of Practice on Grievance and Disciplinary Procedures does not deal with the possibility of holding meetings remotely.

However, a fair process generally requires that issues should be dealt with promptly and without unreasonable delay. In our view, it is possible to organise a fair process remotely and this may be better than delay. If, therefore, an employee insists on a disciplinary process being postponed because of the Coronavirus outbreak, then employers should not automatically agree to this.

However, there are some important issues to consider:

- Can the employer carry out a full investigation remotely?
- How will any formal meetings be dealt with? Some kind of video option (rather than audio only) is almost always going to be preferable.
- How will the employee's companion take part, and how will they be able to confer with the employee during the meeting?
- How will witnesses attend and how will everyone view the relevant documents and materials?
- Consider how to ensure confidentiality – it is usual to deal with this at the start of face-to-face meetings and it will be important to address this where the employee is participating from home.
- Conduct a test of the equipment in advance to avoid any unnecessary reasons to postpone the meeting.

Holidays

18. Can we make employees take their holiday allowance?

Yes, this may be possible. This might be a solution for a number of problems, for example when an employee does a role which cannot be done from home. Employers should first check what the

contract of employment and any applicable holiday leave policy says.

Under the Organisation of Working Time Act (the “OWTA”), employers can determine when employees use their statutory holiday entitlement but must give due consideration to the employee's need to reconcile work and family responsibilities as well as the opportunities for rest and recreation available to the employee. Employers must also consult with the employees no later than one month in advance of requiring them to take the leave. In the current exceptional circumstances, employees may be willing to waive the one month notice and agree to use their holiday allowance in the way requested by employers. Employers should act reasonably in making employees take their holiday entitlement during the current outbreak. For example, forcing employees without their agreement to use their entire holiday entitlement on piece meal basis (e.g. one or two days a week as an alternative to reducing hours) may not be reasonable in the circumstances if it leaves the employee with no opportunity for rest and recreation in the remainder of the leave year when hopefully the crisis is over. It is also important to note that under the OWTA, employees with over 8 months service are entitled to two weeks continuous unbroken holiday entitlement in any year but employees can agree not to use their entitlement in this way. There is nothing to stop employers agreeing with employees to break up and use their annual leave in a particular way during the current crisis.

19. Can employees cancel their pre-approved holiday requests?

Generally, not unless the employer allows them to do so. Employers should first check what the contract of employment and any applicable holiday leave policy says.

This question is beginning to come up because many employees are finding themselves unable to travel to their chosen holiday destinations. With their travel plans cancelled, some employees want to work rather than taking their holiday allowance.

In many situations, employers will be happy to let the employee cancel their holiday request. In fact, in some situations, employers are considering pro-actively withdrawing their approval. However, in other situations the employer will want the employee to use their holiday allowance even if they can't travel as planned. In those circumstances, the employer does not have to let the employee cancel their holiday request unless the contract allows the employee to cancel holiday requests after approval has been given. If the contract does allow the employee to cancel approved holiday requests, employers can consider requiring employees to take their annual leave at a particular time as set out in [question 18](#).

Resourcing

20. Can we change an employee's duties/hours to cover the duties of other sick employees?

It depends on the contract.

Many contracts of employment give employers express powers to vary duties and hours. Such a contractual right would be subject to the implied term of trust and confidence (this term is implied into all contracts of employment and is that the employer must not, without reasonable and proper cause, conduct itself in a manner calculated and likely to destroy or seriously damage the relationship of trust and confidence between employer and employee).

Employers probably have a limited right to make small changes to hours and duties as part of the employees' implied duty to obey lawful and reasonable instructions. It is very difficult to say how far this implied right would extend, and for that reason employers should be wary of relying on it.

Before changing hours or duties employers should consult with the employees affected, in case there are particular circumstances which would make it difficult for them to comply. For example, some employees could not change their hours because they must collect children from school. Such employees might have an indirect discrimination claim if the employer unilaterally changes their hours.

If there is not a contractual right, employers could still change employees' hours and duties with their agreement and ensure they provide notice of working hours at least 24 hours before the working week in which the change in normal working hours will commence.

21. Can we lay off employees or put them on short-time working if demand decreases in the following situations?

- (a) Employees with a contractual right to a particular number of hours

Lay off means providing employees with no work and no pay for a period whilst retaining them as employees. Short-time working means providing employees with less work for a period and with correspondingly less pay. Neither could be done unilaterally without a clear express or implied contractual right to do so or without employee consent. So, unless there is a contractual right to place employees on a lay-off or short time working or the employees consented to lay-off or short-time working, an employer attempting to impose lay-off or short-time working unilaterally would face potential claims for breach of contract, constructive dismissal and unlawful deduction from wages.

Even where an employer has a contractual right to lay off without pay, this is subject to the implied term of trust and confidence. There are also statutory provisions which require employers to have a reasonable belief that lay-off or short-time will be temporary in nature and give notice to employees to that effect before lay-off or short-time are implemented. Employers should therefore consult with employees first and give reasonable notice of any lay off or short-time to employees to avoid being in breach of contract and/or the relevant statutory provisions.

The [government guidance](#) outlines that employees who are laid off or placed on short term working temporarily due to reduction in business activity related to the Coronavirus may apply for Covid-19 Pandemic Unemployment Payment (for lay-off), Jobseeker payment (for lay-off) or Short Time Work Support (for short time working). [Covid-19 Pandemic Unemployment Payment](#) is an emergency government funded payment available for all employees whose employers are unable to pay them and who have lost employment due to the Coronavirus outbreak. This is a payment of €350 per week and is paid directly to the employee by the Department of Employment Affairs and Social Protection.

[Short Time Work Support](#) is available for employees whose hours are reduced from full time to part time so that they are working three days or week or less having previously worked a five-day working week. The Short Time Work Support allows employees to receive payment from the government for the working days they are no longer working for up to a maximum 234 days. The rate of pay will depend on the employee's average weekly earnings and the change in their working pattern.

The government is encouraging employers to retain staff on payroll where possible and, on 24 March 2020, announced a new [Temporary Covid-19 Wage Subsidy Scheme](#) (the "**Wage Subsidy Scheme**"). The Wage Subsidy Scheme replaces the Employer Covid-19 Refund Scheme. The Wage Subsidy Scheme will allow employers to continue to keep an employee on payroll and claim a refund from the Department of Employment Affairs and Social Protection. It is intended that the Scheme will operate in two phases.

In Phase 1, the transitional phase, the subsidy will build on the previous Employer Refund Scheme it replaces and increase the refund of €203 to a maximum of €410 per week in respect of all employees for whom the employer operates the Subsidy Scheme regardless of whether employers make additional payments to employee's pay or not. Therefore, employers will receive €410 subsidy per week for each employee that they have made a submission for, regardless of the amount of subsidy actually paid to the employee. In many cases, this amount will exceed the subsidy that the employee is entitled to received for that week and in those cases, the employer is obliged to hold the excess of the subsidy payment received over the amount of subsidy actually paid to each employee.

In Phase 2, the subsidy will be based on each individual employee's average net weekly wage subject to the maximum weekly tax free amounts. The current government guidelines are that from the 4 May 2020 the subsidies available will be calculated as follows:

- For employees who earn up to €412 net per week (approx. €24,400 gross per year): maximum subsidy of 85% of the employee's net weekly wage (capped at €350 per week);
- For employees who earn between €410 - €500 net per week (approx. €24,440 - €31,000 gross per year): maximum subsidy of 70% of the employee's net weekly wage (capped at €350 per week);

- For employees who earn between €500 - €586 net per week (approx. €31,000 - €38,000 gross per year): maximum subsidy of 70% of the employee's net weekly wage (capped at a maximum of €410 per week); and
- For employees who earn between €586 - €960 net per week (approx. €38,000 - €76,000 gross per year): a tiered arrangement will apply and the maximum subsidy payable will be €350 per week. The tiered arrangement takes into account both the amount normally paid by the employer and the level of reduction in pay borne by that employee as follows:

Gross salary after reduction	Subsidy
Up to 60% of employee's previous average net weekly pay	Up to €350 per week
Between 60% and 80% of employee's previous average net weekly pay	Up to €205 per week
Over 80% of employee's previous average net weekly pay	No subsidy payable

- For employees who earn in excess of €960 net per week (approx. €76,000 gross per year), no subsidy is available, unless their gross post-COVID-19 income has fallen below €960 per week. In those cases, the tiered arrangement applicable to incomes in excess of €586 per week (approx. €38,000 gross per year) will apply. Accordingly, if an employee's earnings have been reduced to below €960 net pay a week, and the reduction is more than 20% of their normal pay, a subsidy of up to €205 is available. If the reduction was more than 40%, a subsidy of up to €350 is available. To calculate the level of subsidy payable, current gross pay will be compared with previous average net weekly pay for January/February 2020.

Tapering of subsidies will be applied to cases where the gross pay paid by the employer and the subsidy exceed the employee's previous average net weekly pay. If the employer topped up payments by more than the permitted amount, the subsidy will be tapered – for every €1 extra paid, €1 will be taken from the subsidy. This is to ensure that no employee will be better off under the Wage Subsidy Scheme.

During the operational phase of the scheme, tapering will not be applied to subsidies paid to employees whose earnings are less than €412 net per week (approx. €24,400 gross per year), where an employer wishes to pay a greater level of top-up to bring an employee's pay up to a maximum of €350 net per week.

Revenue are currently making arrangements to implement these changes and move into the operational phase of the Wage Subsidy Scheme on 4 May 2020. These will include a reconciliation exercise in respect of any overpayments made during the transitional phase of the scheme. Where an employer receives a subsidy in excess of the cap to which they are entitled during the operational phase of the scheme for any relevant employee, they may decide (or be instructed by Revenue) to repay some or all of the subsidy refund payment. Revenue has provided information on how refunds can be processed in its [Frequently Asked Questions](#).

The subsidy is liable to income tax and USC however these are not payable during the period of the Subsidy Scheme. Instead employees will be taxable on the subsidy amount paid to them by review at the end of the year. No employee PRSI is payable on the subsidy and the Employer PRSI on any top up payment made to employees in addition to the subsidy will be reduced from 11.5% to 0.5%. Any employers who have already registered for the Employer Covid-19 Refund Scheme will not need to apply for the Wage Subsidy Scheme as Revenue will contact those employers directly to confirm they meet the conditions for the Wage Subsidy Scheme. The Wage Subsidy Scheme is expected to run for 12 weeks commencing on 26 March 2020. In order to qualify, employers will need to complete a self-declaration to Revenue that they have experienced significant negative economic disruption due to Covid-19 and show, to the satisfaction of Revenue that this disruption has lead – to a minimum of 25% decline in their actual or predicted turnover, to an inability to pay normal wages and outgoings and, to other circumstances as set out in soon to be published Revenue Guidelines. The Wage

Subsidy Scheme can apply to employers who don't top up their employee's wages but employers are encouraged to use their best efforts to continue to pay employees a significant portion, or 100%, of their income, for the period of the Wage Subsidy Scheme. Where employers avail of the Wage Subsidy Scheme to pay employees, the employees will not be entitled to claim the Covid-19 Pandemic Unemployment Payment, Job-seeker's payment or Short Time Work Support (in the case of reduced hours). Revenue have issued initial guidelines and [FAQs](#) but further details are to be published soon. Before applying, we recommend that employers review the Revenue guidance on [employer eligibility and support proofs](#) to determine if they qualify for the Wage Subsidy Scheme.

In normal circumstances, under the Redundancy Payments Acts, where an employee has two years' service or more, they may also be able to claim statutory redundancy from their employer if they have been laid off or placed on short time for four or more consecutive weeks or six weeks in any 13-week period. The scheme also requires employees to resign to receive their redundancy payment which employees might be very unwilling to do in the current climate. In light of the uncertain duration of the current crisis, emergency legislation has been proposed which would, amongst other things, disapply this redundancy entitlement for the "emergency period" from 13 March 2020 – 31 May 2020 where an employee has been laid off (or kept on short-time) due to the effects of measures required to be taken by their employer in order to comply with, or as a consequence of, government policy to slow the spread of the virus. The draft legislation gives the Government the power to extend this emergency period having regard to certain considerations. If enacted, this means that, in certain situations, employees would not be able to seek redundancy pay from their employers if they have been laid off or put on short time for more than four consecutive weeks (or six weeks out of the last 13) during this "emergency period".

(b) Employees without a contractual right to a particular number of hours

Employers could reduce hours for those employees who do not have a contractual right to any particular level of work (e.g. those on zero-hours contracts). The use of zero-hour contracts has been significantly restricted in Ireland and is only allowed in the following circumstances:

- work of casual nature;
- work done in emergency situations; and
- short-term relief to cover routine absence.

As such, zero-hours contracts will not apply to the vast majority of employment situations in Ireland.

22. What can we do if we have new joiners and it is now difficult for them to start work?

There may be practical issues with inducting a new joiner if most or all people are working from home, but employers can consider altering the usual process to allow for remote onboarding using technology. It is also possible to conduct right to work checks without meeting an individual face-to-face (see [question 40](#) for more information). Although it is not ideal to parachute new joiners into a remote working scenario, communications can be put in place to help with making them feel included as much as possible.

If circumstances have changed and the new joiner is no longer needed at the current time, the employer could agree with the new joiner that their start date will be postponed. Although the new joiner may have a contractual right to start on a specific date, these are unprecedented circumstances and individuals may be willing to accommodate this. If the new joiner agrees, the employer can then confirm a revised start date in writing.

If the individual does not agree to a revised start date, or if this is not possible, it may be

necessary to withdraw a job offer or terminate the contract. If a potential new joiner has not yet accepted the offer, it can be withdrawn because no contract is in place yet. If the new joiner has accepted an offer, the employer should check the offer letter and/or contract with the new joiner, and in particular what notice period has been agreed. The employer can terminate the contract before the new joiner was due to start by making a payment

in lieu of notice. Failing to pay notice in this situation would give the individual a potential breach of contract claim. Individuals who are asked to postpone their start date, have offers of employment withdrawn or have their contracts terminated may try to allege that the reason for this is unlawful, for example because it was unlawful discrimination. It is advisable for employers to document carefully their thinking behind taking any of these steps.

Caring responsibilities

23. Do we have to let employees have time off to care for children because of the school/creche closures or to care for a dependant who is sick?

- (a) Do employees have a right to have time off to care for children because of the school/creche closures?

Employees may wish to use statutory unpaid parental leave to cover the school closure period or parent's leave for creche closures. Employees must give at least six weeks' notice to take parental leave and four weeks' notice to take parent's leave although employers can agree to waive this notice period. Employers do not have a right to refuse requests for parental leave or parent's leave unless employees are not entitled to take it, but employers can postpone parental leave for up to six months and parent's leave for up to 12 weeks on a number of grounds, including lack of cover. Outside of this, unless there is a contractual right or policy which provides for time off in the event of school closures, there is no legal obligation on employers to allow employees have time off (paid or unpaid) to look after their children because of the school/creche closures. A right might have become contractual through custom and practice. For example, if employers always pay for time off in such circumstances and employees have a reasonable expectation of being paid. Strictly speaking, where an employee is available for work but refuses to work due to childcare commitments, they could be in breach of their contract of employment.

The Coronavirus poses completely novel situation for employees and employers alike and, as such, while there is no strict legal obligation to facilitate employees in this situation, employers should consider what flexible arrangements can be put in place to allow employees continue working or use paid or unpaid leave to stay at home for childcare purposes during the school/creche closure period. This would be in line with the general government recommendations that employers should support employees and public health initiatives in place to deal with the outbreak. Examples of flexible arrangements include allowing employees:

- work remotely;
- use annual leave to cover the school closure period;
- use parental leave or parent's leave;
- take special unpaid leave; or
- work up time spent at home at a future date.

Employers should try to be consistent between employees because of the risk of indirect discrimination claims if they treat employees differently without good reason.

- (b) Do employees have a right to take time off to care for dependant who is sick?

The current government guidance is that anyone who has been in close contact with someone diagnosed with Coronavirus should self-isolate. As such, if an employee is caring for a dependant who is sick with Coronavirus, they will most likely be required by the public health authorities to self-isolate and as such should be granted time off for that period (see [question 5\(c\)](#)).

If an employee requests time off to care for a dependant who is sick, but not diagnosed with the Coronavirus, they may have a statutory (and limited) right to paid time off where, for urgent family reasons, the immediate presence of the employee is indispensable owing to injury or illness of a close family member. A close family member means child, spouse/partner, parent, grandparent, brother or

sister, person to whom they have a duty of care, or person in a relationship of domestic dependency with the employee. This type of leave is known as force majeure leave. The maximum amount of force majeure leave is three days in any 12-month period or five days in a three-year period. This right is subject to certain conditions. Employees may also be able to take statutory (unpaid) parental leave or parent's leave if the dependant is their child. This right is also subject to certain conditions.

Employers should also check their existing contracts and policies to confirm whether their employees may have any further leave entitlements in addition to their statutory rights outlined above.

24. Do we have to allow employees to work from home if a dependant needs care?

Employers should consider if the employee cannot realistically work from home because of carer commitments. Young children need constant supervision and an employee will not be able to do any work if they are caring for a small child. Older children might be able to entertain themselves with minimal oversight, in which case an employee could do some work from home whilst being there just in case anything occurred. An employer may be able to agree more flexible hours on a temporary basis to allow the employee to share childcare with their partner.

Employers could also consider allowing people to use parental leave, parent's leave, holiday leave or giving them unpaid leave if their job cannot be done from home (subject to the employer's staffing needs).

Vulnerable employees

25. Should pregnant employees be working from home now?

Yes, in light of the updated [public health authority guidance](#) all employees, including pregnant employees should work from home where possible unless the work is considered an essential service or the workplace is an essential shop, bank or post office. It is currently unclear whether Coronavirus poses a greater risk for pregnant individuals as compared to the general population. For the moment, even where attendance at work is absolutely essential, employers should assume that pregnant employees may be particularly vulnerable and ensure they conduct a risk assessment.

Where it is not possible to avoid exposure to risks by other means, pregnant employees must be offered suitable alternative employment on a temporary basis or, if a suitable alternative cannot be identified and the risk cannot be removed, the pregnant employee should be placed on health and safety leave. Under health and safety leave, the employer will pay the employee their normal salary for three weeks after which time the employee is eligible to receive health and safety benefit from the government. Health and safety leave can last up until the risk is removed or the employee commences maternity leave (whichever comes sooner).

If health and safety leave is not applicable, employers should be flexible and consider allowing the such employees to take holidays or unpaid leave.

26. What other steps (besides working from home) do we have to take for pregnant employees?

All employers have a general duty to carry out a risk assessment for pregnant employees which must take into account current circumstances, and this risk assessment must be reviewed if the circumstances change. Employers should therefore conduct a risk assessment with each pregnant employee in light of Coronavirus, whether or not they have travelled to a high-risk location or have come into contact with someone who may be infected.

Where it is not possible to avoid exposure to risks by other means, pregnant employees must be offered suitable alternative employment on a temporary basis or, if a suitable alternative cannot be identified and the risk cannot be removed, the pregnant employee should be placed on health and safety leave. Under health and safety leave, the employer will pay the employee their normal salary for three weeks after which time the employee is eligible to receive health and safety benefit from the government. Health and safety leave can last up until the risk is removed or the employee commences maternity leave (whichever comes sooner).

27. What obligations do we have towards older people and people with respiratory conditions?

In light of the updated [public health authority guidance](#) all employees should stay and work in all circumstances unless their work is considered an [essential service](#) or they are working in an [essential shop, bank or post office](#). Employers have a duty to protect the health and safety of their staff, which includes taking additional care with employees who are known to be vulnerable. Employees should be asked to let their employer know if they fall into one of the vulnerable categories for Coronavirus. The employer should then have a discussion with each of these individuals to carry out a risk assessment and talk about how this should be managed in the workplace if the work really cannot be done from home. Although current government advice around working remotely unless attendance in work is essential is the same for everyone, employers should try to accommodate the wishes of vulnerable people who are concerned about attending work (even where their work is considered an essential service or an essential shop, bank or post office) due to the risk of infection. It may be reasonable for an employer to allow these individuals time off while refusing similar requests from employees who are not in a vulnerable category. It is important to hold a discussion with each vulnerable employee rather than making assumptions about what is appropriate. For example, it is likely to be age and disability discrimination to simply send home all employees over a certain age and those who have particular medical conditions. In some cases, it may be appropriate to obtain medical advice as well.

28. What are our obligations if an employee lives with or cares for a vulnerable person (e.g. an older person, someone with a long-term condition, someone having chemotherapy)?

The employer's duty to protect the health and safety of their staff does not extend to the health and safety of an employee's relatives or friends. However, employers should be sympathetic to concerns expressed by employees in this situation.

If work is considered an [essential service](#) or they are working in an [essential shop, bank or post office](#), consider other options such as altering working hours so it is not necessary to travel on public transport during rush hour. If an employee refuses to come to work for this reason, it may be reasonable for the employer to allow this while refusing similar requests from other employees who do not have a direct link with a vulnerable person.

Health and Safety

29. What steps do we have to take to meet health and safety duties in workplace?

Employers have a duty to ensure, so far as reasonably practicable, the health, safety and welfare of all their employees, including those who are particularly at risk for any reason. Employees also have a duty to take reasonable care of their own health and safety and that of people they work with. They must cooperate with their employer to enable it to comply with its duties under health and safety legislation. Employees who refuse to cooperate, or who recklessly risk their own health or that of colleagues or customers, could be disciplined.

Employers should take simple precautions to protect their staff's health and safety, such as:

- Require all employees to work remotely unless attendance in the workplace is absolutely essential;
- For employees who do have to come to work, implement working arrangements to ensure people stay at least two metres apart;
- Limit all work travel to what is absolutely essential and avoid face to face meetings and use telephone or video conferencing where possible instead;
- Educate staff without causing panic. For example, send emails or display posters outlining the current situation and any government advice;
- Provide tissues and hand-sanitisers, encouraging their regular use. Encourage staff to wash their hands or use hand-sanitiser on arriving in the building after using public transport and after coughing or sneezing;

- Stagger break times and working hours between staff to reduce unnecessary face to face interaction in work and enable employees travelling on public transport to avoid rush hour;
- Consider displaying posters on social distancing, “cough etiquette”, hand and respiratory hygiene and safe food practices;
- Regularly clean frequently-touched communal areas, including door handles, kitchens, toilets, showers, and hot desk keyboards, phones and desks;
- Ensure that anyone with Coronavirus symptoms (cough, sore throat, fever, breathing difficulties, chest pain) or anyone who is a close contact of a confirmed case does not come into work until it is safe to do so in accordance with medical advice;
- Ensure that staff who have travelled recently restrict their movement in accordance with government guidance whether or not they have any symptoms;
- Carry out a risk assessment to gauge whether the working environment of high-risk individuals presents a risk of infection (e.g. because they will be exposed to individuals who are infected with the virus);
- Consider allowing high-risk individuals stay away from the workplace even if they cannot work from home, particularly if cases are confirmed near the workplace, or consider whether they should be moved to another location. Consult with them before taking any action (see section on [vulnerable employees](#)); and
- Keep the situation and government [guidance](#) under review.

30. What advice should we give suppliers/contractors?

Contact any suppliers or contractors who will be visiting your premises to confirm your rules and policies. Advise them that in light of your duty to ensure the health and safety of your employees and any visitors to your premises, you will not allow access to your premises to anyone who should be self-isolating pursuant to current government guidelines (or who has been diagnosed with Coronavirus). Also advise that they must comply with this policy and inform any of their staff/contractors who might be attending the premises and ensure they comply.

31. Can we require visitors to our premises to inform us about whether they've been to a high-risk area in the last 14 days or been in contact with someone who has?

Yes. In order to comply with your health and safety duties to all employees and visitors to your premises, the Data Protection Commission [guidance](#) states that employers would have justification to ask any visitors to inform you if they have been to an affected area or have been in contact with someone who has been infected. Abide by the latest government guidance on affected areas and quarantine periods.

If someone has been potentially exposed to the virus, ask them not to attend your premises and offer to postpone any meetings until after the quarantine period or to hold them by telephone or video conference.

32. Do employees have a right to be notified if a colleague has contracted Coronavirus?

No, there is no specific right. Employers owe employees a duty of confidentiality which would normally apply to health matters, but they also have a duty to protect the health of all employees so far as they reasonably can. The Data Protection Commission [guidance](#) advises that employers would be justified in informing staff of a suspected case but employers should avoid disclosing the affected employee's identity in the interests of maintaining the confidentiality of the employee's special category personal data. The disclosure may be required by the public health authorities in order to carry out their functions and in such circumstances the disclosure should come from the authorities and not the employer.

Employers should contact the health authorities if they suspect an employee has been infected with Coronavirus so that the public health authorities can undertake the necessary contact tracing (to include employees within the organisation).

33. Can we insist on taking the temperature of anyone entering our premises (employees, contractors or visitors)?

While it is reasonable to ask individuals if they have travelled outside the country recently, have any symptoms of Coronavirus or been in touch with any confirmed cases, it is unlikely that the taking of an individual's temperature in this way would be a proportionate processing of special category data under data protection legislation. Employers should consider whether it is necessary to take temperatures to meet their duty of care to protect health and safety of staff and visitors and whether any less invasive measures would be sufficient.

34. Should we insist that employees wear facemasks?

No.

The government is not currently advising people to wear facemasks (except in certain circumstances in healthcare situations or if they have been infected to prevent them spreading the infection). The current advice is that proper handwashing is more effective in stopping the spread of the virus than wearing a face mask.

If employees wish to wear facemasks you could choose to permit this. You do not have to do so if they are working at front-of-house or otherwise are ambassadors for your brand and it might reflect badly on your organisation. But give due consideration to requests from vulnerable individuals (see section on [vulnerable employees](#).)

35. What steps do we have to take to meet health and safety duties for people who are working from home?

Employers have a duty to protect the health and safety of their staff and this duty extends to employee's workspace when working from home. The health safety authority (HSA) has produced an [FAQ document for employers](#) to outline the duties that apply to employers (as well as employees) when employees are asked to work remotely on a temporary basis in response to the outbreak. These key duties include:

- managing and conducting all work activities to ensure, as far as reasonably practicable, the safety, health and welfare of employees;
- providing safe systems of work that are planned, organised, and maintained;
- assessing risks and implementing appropriate control measures;
- providing safe equipment including personal protective equipment, where necessary;
- providing information, instruction, training and supervision regarding safety and health to employees, and
- having plans in place for emergencies.

The guidance further outlines that employers need to consult with their employees to assure that:

- the employee is aware of any specific risks regarding working from home;
- the work activity and the temporary workspace are suitable;
- they provide suitable equipment to enable the work to be done (this can be equipment already in use in the workplace); and

- there is a pre-arranged means of contact.

The HSA guidance outlines that employers must determine if the home workspace is suitable for work provides examples of questions to ask the employee to make that determination:

- Does the employee have a suitable space to work from temporarily?
- Can they access the workspace easily and safely?
- Is there adequate light, ventilation and heat to allow the employee to work comfortably?
- Is there enough space to allow the employee to work without twisting, bending or sitting/standing awkwardly?
- Is there enough workspace to accommodate the equipment or other materials needed for the activity?
- Is the floor clear and dry, e.g., kept clear of electrical cables or anything else the employee could trip over / slip on?
- Is the workspace free of clutter?
- Are electrical sockets, plugs and cords in good condition e.g. no charring, exposed wiring or frayed cables?

It also advises that particular consideration be given to vulnerable workers such as pregnant, night workers and shift workers and those with disabilities.

Medical testing

36. Can we require staff to undergo tests for Coronavirus – either routinely or for those with symptoms only?

No, employers cannot require employees to undergo tests for Coronavirus, either routinely or if someone has symptoms.

An employer can instruct an employee with symptoms to stay at home for the recommended period in line with public health authority guidance. An employer can also encourage someone in this situation to seek medical advice and say that if they are not tested, they will need to remain away from work for the full recommended quarantine period as a precaution even if their symptoms improve and they believe they are fit to work.

Racial harassment

37. Are we liable for racial harassment of employees who are nationals from badly-affected areas, or are assumed to be from such areas?

If done by another employee, yes, probably.

Employers can be vicariously liable if their employees racially harass colleagues, even if the employer does not know and would disapprove of such behaviour.

Employers will only avoid liability if they can show that they took “all reasonably practicable steps” to prevent employees behaving in such a manner. Taking reasonably practicable steps might mean having well-publicised diversity and harassment policies and training all staff on the issue. Managers in particular must be trained about their responsibility to identify and prevent discriminatory behaviour.

If the harassment is done by a third-party (such as a customer or visitor), the employer might not be liable for race discrimination, but the employee may have other claims.

Employers will be liable if they fail to protect employees from harassment by third parties and the employer's failure is itself due to discriminatory reasons. Furthermore, in keeping with their duty to ensure the health, safety and welfare of all employees, employers should seek to protect staff from harassment and may be liable under health and safety legislation if they fail to take such steps as are reasonably practicable to protect employees from harassment by third parties. Consistently failing to do so may also amount to a breach of the implied duty of trust and confidence and it may give the employee grounds to resign and claim constructive unfair dismissal.

Immigration

38. How do we conduct right to work (RTW) checks if we can't verify the employee's original documents?

In these exceptional circumstances, employers can consider conducting the RTW checks by asking individuals to courier their original passport and IRP and then checking its validity in the usual way but via a video call. The person conducting the check must see the original document to verify it against the video call of the person. Care should be taken to ensure that only secure and recorded methods of delivery are used given the personal nature of the documents being transported.

39. What do we do if an employee's right to work is expiring and they get an appointment with to renew their immigration permission due the Coronavirus?

The Irish Naturalisation and Immigration Service (INIS) have closed their offices due to the current outbreak. As a result, INIS have announced that anyone who has an immigration permission which is due to expire between 20 March 2020 and 20 May 2020 will have their permission automatically renewed for a two-month period. In such circumstances, INIS have advised that in the absence of an updated Irish Residence Permit (IRP) and a formal decision letter from INIS renewing the permission, the employee can provide evidence of their last permission (i.e. the last formal decision or IRP) together with a copy of the INIS [Notice](#) regarding automatic renewals and this will be sufficient evidence for employers of the ongoing permission to remain in the State while the outbreak is ongoing.

40. What if we have a candidate employee who is the process of applying for an employment permit or an employee who is seeking to renew their employment permit?

Employment permits are still being processed by the Department of Business Enterprise and Innovation's (DBEI) online system. The DBEI has implemented [contingency arrangements](#) to ensure the employment permits system will continue to operate in all scenarios.

The contingency arrangements have implemented the following measures:

- electronic (PDF) copy of permit will issue by e-mail;
- employment permits section will facilitate the changing of start dates to applications that have been received but yet to be processed;
- 100% refund if applications are withdrawn, before they are processed, if withdrawal is as a result of the crisis;
- applications for Stamp 4 Letters of Support can be submitted electronically;
- applications to review a decision of an employment permit can be submitted electronically; and
- applications & renewals for Trusted Partner Status will be accepted electronically and do not require Hard copy to be submitted within a ten-day period.

Although the permit system is still operating, INIS have closed the visa application process due to the current outbreak. The only applications that INIS are still processing under the visa scheme are for:

- Emergency visas (e.g. Healthcare professionals, health researchers, and elderly care professionals);
- Immediate family members of Irish citizens;
- Persons legally resident in the State;
- Persons entitled to avail of the provision of the EU Free Movement Directive;
- Transport personnel engaged in haulage of goods and other transport staff to the extent necessary; and
- Diplomats, staff of international organisations, military personnel and humanitarian aid workers in the exercise of their functions.

Applications for other Irish visas can still be made online, but the process cannot be completed until the visa scheme reopens. As a result, individuals from visa required countries, including those who have a valid employment permit, will be unable to travel to Ireland if they haven't already been granted a visa.

41. What if an employment permit holder has been temporarily laid off or is working reduced hours during the period of the permit?

The DBEI have advised that it should ideally be informed in advance of any temporary lay-off or reduced working hours so that it can be noted on the employment permit holder's file. At renewal stage, the salary and working hours as per the conditions of the permit may not be achieved. However, DBEI have advised that it will be cognisant that this is likely related to the measures introduced to deal with Coronavirus and will take this into account when considering applications for renewal.

Where an employment permit holder has been temporarily laid off or is working reduced hours, they can apply for the Covid-19 Pandemic Unemployment Benefit or Short Time Working Support. Alternatively, the employer may seek to participate in the Wage Subsidy Scheme (see [question 13](#) above).

42. What if an employment permit holder's position has been made redundant during the period of the permit?

If an employment permit holder has been made redundant, the DBEI should be informed within four weeks. The individual may seek employment in any eligible occupation and apply for a permit within six months of being made redundant. If an employment permit holder's position has been made redundant, they can apply for the Covid-19 Pandemic Unemployment Benefit.

This publication provides general guidance only: expert advice should be sought in relation to particular circumstance