

COVID-19



Supporting
nannies and their employers
through this period of uncertainty

As an employer of a nanny, you will probably have a lot of questions at this current time of crisis. Similarly, nannies will also be worried for their jobs and the children that they are looking after.

To help allay your concerns and guide you as to the current legal situation, we have responded to the main queries we are receiving:

What are my obligations as a small employer?

All employers have a duty of care to their employee(s) to ensure that their place of work is safe to work in. This would include providing tissues and hand sanitisers for your employee(s) to use, keeping the place clean and making sure that 'high risk' individuals such as older people, those with underlying medical conditions and pregnant women are given priority with regards safety issues.

What are my obligations regarding sick pay during this period?

The current ACAS guidance says:

- normal sick pay policies apply if an employee has the virus;
- if an employee is not sick and you tell them not to come into work – for example, if they have recently travelled to an affected country or come into contact with someone who has been confirmed as having the virus – then they should receive their usual pay; and
- if an employee is not sick but cannot work because they have been told by a doctor to self-isolate or have been quarantined, it is good practice for an employer to treat this situation as sick leave or to offer the employee the option to take the period as annual leave.

What is statutory sick pay, and will my nanny be eligible to receive it?

To qualify for Statutory Sick Pay (SSP) normally a nanny must:

- be classed as an employee and have done some work for their employer
- have been ill for at least four days in a row (including non-working days)
- earn an average of at least £118 per week; and
- tell their employer they are sick before their deadline - or within seven days if they do not have one.

Statutory sick pay is currently £94.25 per week, regardless of the number of hours or days an employee normally works.

What is the position now regarding SSP?

On 11 March 2020, the Government announced the introduction of emergency legislation temporarily amending the eligibility requirements for SSP, allowing the statutory payments to be made from the first day of absence due to sickness. This will apply to all eligible employees, not just those with Covid-19. Businesses with 250 employees or fewer will be refunded for the first 14 days of sickness if they are forced to pay sick pay due to coronavirus.

If you have any queries on how sick pay currently works with regards payroll, please contact our team at info@parentalchoice.co.uk or call on **020 8979 6453**.

How does self-isolation work?

Public Health England is advising people to self-isolate only under very specific circumstances. These include anyone waiting for coronavirus test results, anyone who has come into contact with a confirmed infected person, and anyone returning from a country significantly disrupted by the virus. In addition, pregnant women, those over 70 and those with underlying health conditions are also being advised to self-isolate.

The UK Government's latest advice to employers is that any period of necessary self-isolation under its guidelines would be treated as sickness absence, and that a doctor's note would not be necessary to entitle that employee to statutory sick pay.

What happens if my employee is fit and healthy, but a member of the family is ill?

If an employee is otherwise fit to work, but the employer is insisting on a period of self-isolation then the employee should still receive their usual pay during that period.

You can offer for your employee to take annual leave for some of the time, or alternatively you can mutually agree a period a lay-off period, or a period of short-time working. A lay-off is where there is no work for employees and no pay provided; short-time working is defined as being where less than have the normal week's pay is earned. During such time, the nanny may be entitled to receive guaranteed pay up to a maximum of £145 during any three-month period.

Some contracts pay contain these provisions but if they don't then an employer can not unilaterally decide to lay off an employee. It must be mutually agreed. If not, it will count as a dismissal and an employee may have a claim for wrongful or unfair dismissal.

As a rule, short-time working is a temporary measure which can help avoid redundancy situations. However, if the lay-off lasts for a continuous period of up to four weeks, or for six or more weeks in a 13-week period, then the nanny can claim a redundancy payment.

What if my nanny is living in and she develops symptoms?

However, it is unclear under law whether any period of self-isolation when asymptomatic should be treated as sickness absence, especially if an employee remains fit, ready, willing and able to work but is effectively placed on medical suspension as a precautionary measure for health and safety reasons.

In this situation and where practical an employer can request an employee to work from home during the 14 days' quarantine period and the employee would continue to be paid as normal.

If it isn't practical for an employee to work from home, and they are otherwise fit to work, but the employer is insisting on a period of self-isolation then the employee should still receive their usual pay during that period. If an employee then developed symptoms during the period of self-isolation, or becomes unwell in any event, then they are no longer fit to work and therefore their absence would be treated as sickness absence as normal and they would be entitled to statutory sickness pay only.

Can my nanny choose to self-isolate if they haven't got any symptoms, have not travelled back from a high-risk area or at not within an at-risk group?

An employee cannot choose to self-isolate simply because they are worried about becoming infected. There is a lot of concern and hysteria surrounding the spread of the coronavirus and whilst employers should be sensitive to the concerns and should discuss these with their employee(s), ultimately if an employee refuses to work then they could face disciplinary action.

What happens if my employee's school or nursery closes?

All employees have the right to time off during working hours to deal with unforeseen matters and emergencies where a dependant is concerned. A dependant is defined as a spouse, partner, child, parent, or someone who depends on an employee for care, an elderly relative for example.

Your employee must tell you as soon as possible why they will be absent and for how long. The amount of time off an employee takes to look after someone must be reasonable for the situation (usually 1- 2 days).

There is, however, no statutory right to pay for this time off, so it will be up to the employer to decide whether the employee will be paid during that time off or not. If an employee needs a longer period, an employee can request up to 13 weeks as unpaid parental leave, provided that the employee has been continuously employed for one year. Each employee is entitled to up to 18 weeks' leave for each child and adopted child, up to their 5th birthday - or 18th if the child has a disability. Unpaid parental leave is limited to four weeks which must be taken as weeks in their entirety.

Can an employee use their annual leave?

An employee cannot be forced to use their annual leave if they are sick. In addition, if an employee falls ill whilst on annual leave, that time is then reclassified as sick leave, subject to provision of a doctor's note and the employee is entitled to have those leave days reinstated.

However, an employer can ask an employee in certain circumstance to take annual leave if they provide adequate notice; twice the amount of the days an employee is being asked to take. For example, to ask an employee to use 5 days' holiday, an employer would have to give 10 days' notice.

What if my nanny is pregnant?

The Government has stated that pregnant women should self-isolate as far as possible. The guidance, issued on Monday 16 March, asks pregnant women to minimise social contact for up to 12 weeks from this weekend.

The Government's guidance states that pregnant women should avoid non-essential use of public transport, varying their travel times to avoid rush hour, when possible. They are also being advised to work from home, where possible. Clearly nannies will not be able to work from home. If an employer has told their pregnant nanny, that she should go home then he or she should pay her.

However, should she have to self-isolate, then guidance has been sent to UK employers and said self-isolation should be considered "sickness for employment purposes". Please note that should you look to lay-off your pregnant nanny during this period, it may affect her right to receive statutory maternity pay. It is vital if she is to receive statutory maternity pay that she has been working for you continuously for at least 26 weeks continuing into the 'qualifying week' - the 15th week before the expected week of childbirth.

Can an employer make their nanny redundant becomes of the coronavirus?

No, an employee can not be made redundant just because of Covid-19. An employee is dismissed for redundancy, and may qualify for redundancy pay, if the following conditions are satisfied:

- the employer has ceased, or intends to cease continuing the business, or
- the requirements for employees to perform work of a specific type or to conduct it at the location in which they are employed has ceased or diminished.

So, if the role is no longer available and there is no work for the nanny to do, then their role can be made redundant, but they are still entitled to receive their notice and pay during that time. Plus, if they have worked for more than 2 years, they will legally be entitled to redundancy pay.

This factsheet is not intended to be relied upon as legal advice but is intended to assist you at this uncertain time for everyone.

ACAS

Guidance for employers and employees from ACAS, the Advisory, Conciliation and Arbitration Service, an independent body funded by the Government, is available here: <https://www.acas.org.uk/coronavirus>

NHS

Health-related guidance from the National Health Service is available here: <https://www.nhs.uk/conditions/coronavirus-covid-19/>

Public Health Guidance:

Public Health England

Including specific guidance for employers, educational and health-related organisations, and an option to receive updates directly is available.

<https://www.gov.uk/government/organisations/public-health-england>

Public Health Wales: <https://phw.nhs.wales/topics/latest-information-on-novel-coronavirus-covid-19/>

Health Protection Scotland:

<https://www.hps.scot.nhs.uk/a-to-z-of-topics/wuhan-novel-coronavirus/>

Public Health Agency in Northern Ireland:

<https://www.publichealth.hscni.net/news/covid-19-coronavirus>

Should you have any further queries with regards your employment rights as regards the coronavirus and how this situation will affect your employees, please contact us:

020 8979 6453 | info@parentalchoice.co.uk

