

COVID-19: leave and pay entitlements

COVID-19 (also known as coronavirus, novel coronavirus, CORVID-19, or, by the name of the virus causing the disease, SARS-CoV2) is a new disease that emerged in mainland China in 2019. As at the time of writing, the WHO has declared the outbreak of COVID-19 a pandemic, and there are emergency measures in place around Europe.

Employers are putting in place contingency plans to cope with office closures, the closure of public transport, and large-scale employee absences. A key consideration for employers is how to support their workforce during this time, while protecting the business against the inevitable economic impact of the pandemic. It is therefore clearly important to be aware of employees' leave and pay entitlements throughout.

We have prepared the table below to give a summary of the leave and pay implications in certain circumstances linked to COVID-19 that employers will be preparing for in the **Republic of Ireland**.

Please note that the situation is fast moving and further legislative changes as the situation develops cannot be ruled out. We have sign-posted any changes that have been announced, but we recommend keeping the situation under close review.

Accurate as at 26 March 2020

Reason for absence	Detail	Pay implications
Employee is unwell.	Employee has notified the employer that they are not able to work because they are unwell.	<p>Many employers pay sick pay pursuant to the terms of an employee's contract, established custom and practice, on a discretionary basis or pursuant to a sick leave policy. Where sick pay is not provided by the employer, employees who are ill may be entitled to Illness Benefit from the Department of Employment Affairs and Social Protection subject to the employee satisfying certain PRSI conditions. No payment is made for the first 6 days of illness, which are known as waiting days.</p> <p>Separate to the normal Illness Benefit, the Government have introduced the to the COVID-19 illness benefit which applies in respect of absences related to COVID-19, i.e. if an employee is on sick leave for a reason unrelated to COVID-19, the usual illness benefit rules will apply. This payment is €350 per week and is available for the first day of illness. It will be paid for a maximum of 12 weeks where a person is self-isolating but will be paid for the duration of a person's absence from work if they have been diagnosed with COVID-19.</p>
Employee is refusing to work.	Employee has notified the employer that they will not be attending work on the grounds that they do not want to expose themselves to the risk of contracting Covid-19 (for example, by taking public transport).	While an employer does have a duty of care to provide a safe place to work, a refusal to work by an employee without a valid reason, could lead to withdrawal of pay or disciplinary measures. Employers should listen to concerns of employees and explore all reasonable and practical solutions. Employers may be able to offer flexible working arrangements or agree with employees that they take annual leave or unpaid leave.
<p>Employee is well, but is self-isolating or in quarantine.</p> <p>Employee is able to work remotely.</p>	<p>Certain head office roles may be capable of being carried out in whole or in part remotely.</p> <p>Employees should be made aware of any remote working guidance, and any specific guidance put in place for employees self-isolating due to COVID-19.</p>	<p>Employee will be entitled to full pay and benefits in the ordinary course.</p> <p>Where employees are only able to carry out some of their duties from home, and self-isolation will continue for some time, employers may wish to negotiate a reduced rate of pay during this period. We recommend that employers consider any such measures on a case by case basis and seek legal advice where necessary.</p>
<p>Employee is well, but is self-isolating or in quarantine.</p> <p>Employee is not able to work remotely.</p>	Employee is self-isolating on own initiative.	<p>Where the employee is self-isolating without reference to medical advice or public health guidance, the first consideration for an employer is whether they can or should require the employee to attend work (and pursue disciplinary sanctions if they fail to follow any instructions to do so). We advise employers to exercise caution and to listen carefully to employees' concerns. Where employees are in a high risk category, or are in regular contact with members of a high risk group in their households, it is unlikely to be reasonable to force them to risk exposure.</p> <p>Where the employee is self-isolating on their own initiative, the starting point is that they will not be entitled to pay during this period.</p> <p>However, employers should consider what support can be offered to employees in high risk groups in these circumstances without disproportionately impacting the business. These may include encouraging employees to use paid holiday entitlement to cover a temporary period of absence, or offering a loan or small support allowance where appropriate.</p>

	Employee is self-isolating on medical advice, or in response to guidance published by the government or public health authorities.	See "Employee is unwell" section above.
Employer has instructed employee to stay away from the workplace for a certain period Employee is able to work remotely	This situation is likely to have become less usual as the outbreak has worsened. It may still apply where the employee has been travelling to an area not identified by governmental guidance as high risk, but the employer is implementing a general policy of asking employees to stay away from the workplace after any international travel.	Employee will be entitled to full pay and benefits in the ordinary course.
Employer has instructed employee to stay away from the workplace for a certain period / Workplace Closure Employee is not able to work remotely	See above.	<p>As a starting point, an employee will be entitled to full pay while excluded from the office by the employer. However, employers may seek to apply exceptions to this general rule in certain circumstances:</p> <ul style="list-style-type: none"> - COVID-19 Temporary Wage Subsidy Scheme: Where a workplace is forced to close or employees are sent home and it is not feasible to maintain individuals on full pay, employers who can demonstrate a 25% downturn in turnover as well as inability to pay wages and disruption due to COVID-19, can now avail of the new COVID-19 Temporary Wage Subsidy Scheme to ensure that employees still receive at least 70% of their wage, up to the salary cap, which amounts to a maximum of €410 per week. See further information here. For those who are not eligible, lay-off provisions may be relevant. - Lay-Off: A lay-off situation arises where there is a temporary suspension in work. Where there are lay-off provisions in the contract, the employer may rely on these to exclude an employee from the workplace and withhold pay for any period that the employee is not at work. If an employee has been laid off for (i) 4 or more consecutive weeks, or (ii) 6 or more weeks within a 13-week period of which not more than 3 are consecutive, the employee may notify their employer in writing of intention to claim a statutory redundancy payment assuming they satisfy the qualifying criteria, for example, having at least 2 year's continuous service. The notice must be given at the latest within 4 weeks after the lay-off has ended. Within 7 days of the employee's notice, the employer can give counter notice contesting liability to pay a redundancy payment. This applies if it is reasonably to be expected that within 4 weeks of the employee's notice the employee will be permitted to work for at least 13 weeks without being laid off or placed on short-time for any week.. If an employee is placed on temporary lay-off, they can apply for the COVID-19 Pandemic Unemployment Payment which is paid at a flat rate of €350 per week and which will continue for the duration of the pandemic, or they can apply for Jobseeker's Benefit or Jobseeker's Allowance. See our separate article here on the benefits available to employees who are placed on lay-off or who have lost their job. - Short-Time: A short-time situation arises where, due to a reduction in the amount of work to be done, an employee's weekly pay is less than half their normal weekly pay or their hours worked are reduced to less than half the normal weekly working hours. If an employee has been laid off or on short-time for (i) 4 or more consecutive weeks, or (ii) 6 or more weeks within a 13-week period of which not more than 3 are consecutive, the employee may notify their employer in writing of intention to claim a statutory redundancy payment assuming they satisfy the qualifying criteria, for example, having at least 2 year's continuous service. The notice must be given at the latest within 4 weeks after the lay-off or short-time has ended. Within 7 days of the employee's notice, the employer can give counter notice contesting liability to pay a redundancy payment. This applies if it is reasonably to be

		<p>expected that within 4 weeks of the employee's notice the employee will be permitted to work for at least 13 weeks without being laid off or placed on short-time for any week. In relation to compensation, if the employee's hours are reduced to 3 days or less per week from normal full-time hours, they can apply to the Department of Social Protection for a payment called Short Time Work Support.</p> <ul style="list-style-type: none"> - Annual Leave: As to whether an employer can insist that an employee takes annual leave, there is no clear answer on this from an Irish law perspective - it's very much untested/unchartered territory. Technically speaking, our legislation provides that the employer can determine when annual leave is taken having regard to work requirements. However, in doing so, the employer must take into account the need for employees' to reconcile work and any family responsibilities and their opportunities for rest and recreation. The difficulty with forcing employees to take annual leave is that annual leave is very much a health and safety matter and there may be health and safety implications to directing employees to exhaust their holiday entitlement early in the year, limiting employees' ability to take rest at later points in the year. However, commercially speaking, many employers will have no choice but to ask employees (and employees may be happy to agree given what's happening in Ireland in terms of job losses) to take leave to ensure the survival of the business or to avoid redundancies, lay-off or short-time. It could perhaps be offered as an alternative to unpaid leave.
Employee is not able to work because they are caring for somebody suffering from COVID-19 symptoms.	In many European countries, individuals will only be hospitalised with COVID-19 if they are suffering life-threatening symptoms. Other individuals, who may nonetheless be very unwell, will be asked to self-isolate from home under their families' care and seek medical attention only if critical.	<p>Employees are not entitled to paid leave in this situation per se. However, the following types of statutory leave may be requested:</p> <ul style="list-style-type: none"> • Force majeure leave (this is paid leave) • Parental leave if an employee is looking after a child up to the age of 12 (or 16 if the child has a disability) • Parent's leave if an employee is caring for a child up to the age 1 who was born after 1 November 2019
Employee is not able to work because they have additional caring responsibilities indirectly triggered by the COVID-19 pandemic.	Across Europe, a number of countries have closed schools and childcare facilities. Large numbers of employees are likely to be affected by the loss of childcare provision.	<p>Employees are entitled to take reasonable (unpaid) time off to deal with the unexpected disruption of arrangements for the care of a dependent. While there is no statutory entitlement to pay during these circumstances, an employee could apply for Force Majeure Leave. This arises where, for urgent family reasons, the immediate presence of the employee is indispensable owing to an injury or illness of a close family member. While it does not necessarily apply in these circumstances, many employers will provide it. The leave is paid by the employer. The maximum amount of leave is 3 days in any 12-month period or 5 days in a 36-month period.</p> <p>Employers should consider what support they may be able to offer to employees affected by long-term disruption to their childcare arrangements. Solutions might include:</p> <ul style="list-style-type: none"> - Facilitating support groups among employees with young children, which may allow employees may to share childcare commitments with reduced hours; and/or - Allowing employees to use their holiday entitlement to cover short-term absences (though note that there may be health & safety implications if employees are permitted to use up their full holiday entitlement early in the year, leaving them with no means to take paid rest periods later in the year).
Workplace closure Employee is able to work remotely	Employers may need to close workplaces on a short-term basis in the event that a member of their workforce receives a confirmed diagnosis of COVID-19. Generally, in these circumstances, workplaces will	Employee will be entitled to full pay and benefits in the ordinary course.

	<p>close on a temporary basis for deep cleaning and will then re-open within a day or two. However, employers are also planning for a situation where a longer-term closure may be necessary, either because of national quarantine measures or because of serious disruption to the employer's business. Certain head office functions may be able to be continued remotely.</p>	
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