

Coronavirus and Travel: Quarantine FAQ's

On Saturday 25th July 2020 the Government announced that anyone returning from Spain, including the Balearics and Canaries, must self-isolate on their return to the UK for 14 days. There have been a number of flare-ups of COVID-19 across the world in the past week and the government will likely impose further restrictions at short notice on holidaymakers.

What is becoming clear is that foreign travel is under constant review with the government being highly responsive and implementing new rules at very short notice.

How does quarantine impact Employers? Below are the answers to some important questions posed by Employers...

1. Do our employees have to tell us if they are quarantining?

Anyone who is asked to quarantine must comply unless they are exempted from the rules. This means they must return to their home immediately after entering the UK and remain there for 14 days. They cannot go to work, shop for food or go outside for exercise. Anyone who doesn't report for work must follow their employer's absence reporting procedure. Employers are encouraged to remind employees what their absence notification and certification (if returning home sick) are so that they are notified of the absence according to their own rules. It is not normally acceptable that employees assume that employers know that they are quarantining.

2. Can we ask staff to continue to work during quarantine?

That will depend on whether they can work from home and you are happy for them to do so – this is the employers decision based on a case by case basis. If they can't work from home, you must not ask them to return to their workplace and must immediately send them home if they turn up. Pay implications are covered in the next question. Anyone who doesn't self-isolate will commit a criminal offence and can be fined £1,000.

3. Do we have to pay staff who are self-isolating?

In most cases, if someone cannot return to work and they can't work from home, they are **not** entitled to be paid. However, if you've sent someone abroad for business purposes, they will be aggrieved (and could resign and claim constructive unfair dismissal) if you don't pay them - even if they can't work properly from home when they get back. Anyone who self-quarantines and does not have coronavirus symptoms is **not** entitled to statutory sick pay (SSP). With or without SSP, this will leave many employees out of pocket so one option is to relax your holiday policy and allow them to take any remaining holiday on their return, even if they can't give you the normal period of notice you'd expect.

4. Can we tell staff not to go abroad on holiday?

You can't normally dictate what your employees do in their own time, much less tell them where they can go on holiday. But, you can discourage them from going on holiday abroad by making it clear they will have to follow any quarantine advice in place and won't be paid during this time. Bear in mind though, that some people will have booked their holidays pre-lockdown and may decide to go if they can, even if they have to quarantine afterwards.

5. Can we cancel holiday leave we've already authorised to prevent staff travelling abroad?

In most cases, yes - but there are some risks attached. If the contract of employment or your holiday policy sets out how to cancel holiday, you must follow that. If there are no express provisions, the Working Time Regulations provide a mechanism for employers to cancel leave. Under Regulation 15(2)(b) you must give as much notice as the leave you want to cancel. Therefore, if you want to cancel two weeks' leave you have to give two weeks' written notice. You'll need to explain to your staff why you have cancelled their holiday and tell them when and how they can re-book. Cancelling holiday at short notice is likely to be unpopular. If employees have made travel or other plans they may ask you to compensate them for any cancellation charges they incur. They could also argue that you are acting unreasonably and may claim that you are acting in breach of the implied term of mutual trust and confidence, which gives rise to them resigning and claiming constructive dismissal (however, in most cases, they need two years' service to make this type of claim).

6. What do we need to tell staff in advance of them going on holiday?

It's helpful to set out your expectations in a policy or employee update so that your staff understand what might happen if they holiday abroad and are asked to self-isolate afterwards. This should cover: notifying you if they have travelled abroad, reporting their absence (and how it will be recorded on their records), whether they will be paid during quarantine and, if not, whether they can take outstanding paid holiday.

7. Can we dismiss someone if they can't return to work because they are in quarantine?

Employees don't have specific protection from being dismissed in these circumstances, but if they have two years' service, they may be able to claim unfair dismissal. You'd have to show you had a fair reason for dismissal and went through a fair procedure - including allowing an appeal.

Not turning up for work is, potentially, a fair reason but most employment judges are going to be sympathetic to anyone who has returned to the UK to find that quarantine rules were imposed during their holiday and they have remained at home in line with government advice. This is why it's really important to communicate your expectations as a direct breach of this will strengthen your case for a fair dismissal.

The situation may be different if an employee chooses to holiday in a country which already has quarantine rules imposed - but you'd still have to show the reason for your dismissal was within the "reasonable range of responses". That will depend on the individual circumstances.

If you are contemplating dismissal, please speak to our People Team to ensure that you are following a fair procedure and that you have a fair reason for dismissal as defending and losing an employment tribunal claim may be costly from a time, reputational and financial point of view.