Covid-19 Pandemic
Bargaining over sickness absence
UNISON will seek to update this guidance as developments relating to the Covid-19 pandemic unfold across the UK. If negotiators have any comments on this guidance or any experience of the scheme that could be usefully incorporated in the guidance, please contact Bargaining Support at bsg@unison.co.uk

Covid-19 Pandemic

Bargaining over sickness absence

Introduction

This short guide is intended to assist negotiators to bargain for arrangements in dealing with sick staff that offer the maximum protections to the health, pay, terms and conditions of affected workers during the Covid-19 pandemic.

The guidance is structured as follows:

Giving clarity to staff over the medical procedure.......................................................... 3
Delivering on staff pay during sickness or enforced self isolation................................. 4
Adjusting staff absence procedures.................................................................................. 6
Checklist of bargaining steps............................................................................................ 7
Giving clarity to staff over the medical procedure

The procedure issued by employers for staff to follow in the event of experiencing Covid-19 symptoms should be in line with the latest NHS advice, which is regularly updated on this link - https://www.nhs.uk/conditions/coronavirus-covid-19/

It should be highlighted to staff that the characteristic symptoms of Covid-19 are:

- **a high temperature** – meaning hot to touch on the chest or back;
- **a new, continuous cough** – meaning a cough that lasts a lot for more than an hour, or three or more coughing episodes in 24 hours.
- **Loss or change to sense of smell or taste**

If a member of staff develops these symptoms while at work, they should be sent home immediately.

Any member of staff experiencing these symptoms should self-isolate at home for seven days. Any advice needed should be obtained through NHS 111 and not through visiting a GP surgery, pharmacy or hospital. Those experiencing symptoms should seek to arrange a test through the government testing service.

Self-isolation means:

- Not going to work or public places;
- Not going on public transport or using taxis;
- Not going out to get food and medicine;
- Not having visitors to the home, including friends and family from outside the home;
- Not going out to exercise.

The NHS advises that self-isolation can end after seven days if either:

- Symptoms have gone;
- Only a cough or changes to sense of smell or taste remains, since these symptoms can last for several weeks after the infection has gone.

However, the NHS advises continued self-isolation if any of the following symptoms remain:

- A high temperature or feeling hot and shivery;
- A runny nose or sneezing;
- Feeling or being sick;
- Diarrhoea;
- Loss of appetite.

However, if staff have any concerns or their condition deteriorates, they should contact NHS 111 for advice. In the event that deterioration appears life threatening, staff should of course revert to calling 999.

If a member of staff is living in the same household as someone who develops symptoms of Covid-19, the government states that they should self-isolate at home for 14 days. If more than one person at home has symptoms, the self-isolation should last for 14 days from the day the first person started having symptoms.
If a member of staff in this situation develops symptoms themselves during that time, a seven-day period of self-isolation should apply from the first day they develop symptoms, even if that means self-isolating for longer than 14 days.

Where staff experiencing symptoms live with someone designated as a vulnerable person (i.e. aged 70 or over, with a long-term health condition, pregnant or with a weakened immune system) they are advised to try to arrange for that person to stay with friends or family for 14 days, but if that is not possible to observe strict social distancing rules.

If the NHS Test and Trace Service contacts someone to inform them that they have been in contact with a person who has contracted Covid-19 they will need to self-isolate for 14 days from the day they were last in contact with that person.

Self-isolation for a period of 14 days is also required for anyone returning to the UK from travel abroad.

**Delivering on staff pay during sickness or enforced self-isolation**

An option to explore as a first choice for categorising time off during self-isolation is what is sometimes termed medical exclusion from the workplace. This results in staff continuing to receive their standard pay for the period they are not in work. An employer applies medical exclusion to prevent infection to the rest of their workforce where it is believed an employee may carry a particularly high threat of being contagious. In effect, the employer is instructing its workers not to attend the workplace, on the basis of a government demand, and therefore the employer must continue with full payment.

Medical exclusion clauses are sometimes established elements of collective agreements, most commonly in NHS trusts, given the extra dangers of transmitting an illness to patients. However, in light of the unprecedented threat of Covid-19 an argument can be made that such exclusions should apply more widely and the general duties under the Health and Safety Act¹ to protect staff should be interpreted in this way.

Further pressure can be brought to bear on employers by highlighting that agreements have been reached for local government staff on NJC terms and conditions and NHS staff on Agenda for Change terms and conditions to receive full pay during any period of self-isolation that has been entered into on the basis of government advice. Similar agreements have been established in Scotland for local government and NHS staff.

The NHS agreement includes bank workers and sub-contractors who have to be physically present at an NHS facility to carry out their duties. Full pay is interpreted as “paying what the staff member would have otherwise earned if they were not in isolation, which would include any pay enhancements.”

Medical exclusion is a case that can be made to an employer, but the government has only gone as far as stating that self-isolating staff should be treated as being on sickness absence.

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¹ Health and Safety Order 1978 in Northern Ireland
In the public sector, most staff will be part of an occupational sick pay scheme, which will entitle them to payment from the first day of sickness and follow a pre-set pattern of full pay and then half pay.

For an outline of terms for the main schemes see the UNISON sickness absence guide - https://www.unison.org.uk/content/uploads/2020/03/25815_revised03_20.pdf

However, particularly among private contractors delivering public services and voluntary sector employers, entitlement may be nothing more than the statutory sick pay provision.

Emergency legislation has been introduced as a result of the Covid-19 pandemic to allow staff to receive Statutory Sick Pay (SSP) from the first day of isolation, rather than having to wait three days to become eligible, as remains the case for any other form of sickness than that relating to Covid-19. To be eligible, staff must self-isolate for at least four days.

From April 6, the SSP rate has been raised to £95.85 per week.

To qualify, workers have to receive income of £120 per week. To surpass that threshold, a worker’s wage is considered in total, i.e. if they have more than one job, the income from each job is aggregated.

However, this threshold can clearly create a problem for staff on forms of contract that are vulnerable to dips in income below the weekly figure, such as zero-hours workers. If such staff do not qualify, the only recourse is to seek support through Universal Credit or Contributory Employment and Support Allowance. [UNISON members can also be directed to advice through UNISON’s There For You service]

The inadequacy of SSP should be used as an argument for keeping staff on full pay under medical exclusion, since it should be apparent to employers that SSP encourages staff to attend work out of financial necessity, thereby putting other staff at risk and endangering the organisation’s entire operations.

Guidance on the government’s Job Retention Scheme is set out in a separate guide. However, it should be noted that staff who are sick or self-isolating (unless they are in the particularly vulnerable category that need to be shielded) cannot be placed on furlough leave and receive the pay rate accordingly. They can only be considered for furlough leave on their return from sickness absence or self-isolation.

In the case of staff self-isolating because they are returning from travel abroad, HM Revenue & Customs has indicated that they will not be entitled to Statutory Sick Pay during this period. However, negotiators may make the case that, over the 14-day quarantine period, every effort should be made to allow staff to work from home on full pay. Where this is not possible, consideration may be given to allowing use of special leave days before staff have to eat into their annual leave entitlement. In addition, exceptions should be made for staff who booked holiday before the lockdown began and could not cancel without financial penalty, staff who are travelling because of an emergency, such as for the funeral of a close relative.

The precedent of the local government NJC agreement, which is broadly in line with these arrangements, can be used to support this position.
Adjusting staff absence procedures

Sickness absence agreements will normally specify already established procedures for the acceptable form of notification, the person to be notified and the timescale for notification.

During the Covid-19 pandemic, it will be reasonable for those procedures to apply to the start of any period of self-isolation.

Under normal circumstances, an employer would require proof of continued illness after seven days of absence through a GP’s fit note.

However, given the requirement for continued self-isolation if symptoms remain after seven days, any proof required should be limited to the isolation notes that can be obtained from NHS 111 on this link:

https://111.nhs.uk/isolation-note/

A member of staff who is self-isolating because someone in their household is experiencing symptoms may be able to work from home. In that case, no proof should be required. However, if working from home is not possible, isolation notes from NHS 111 should provide any proof required.

In order to maintain appropriate contact with staff during self-isolation or in the event of a member of staff contracting Covid-19, it is important that an employer is pressed to update emergency contact numbers for staff and their specified family / friends, provide clarity to staff about who they should be notifying and offer an alternative if their specified contact (usually the line manager) falls ill or is unavailable for any other reason.

A further adjustment of established procedure in recognition of the unprecedented scale of the Covid-19 pandemic should be made by discounting any related absence from triggers for action specified in any attendance management, disciplinary, redundancy or capability policy.

To assist in making this case to the employer, it can be highlighted that a precedent for waiving such absence for trigger purposes has been set by agreement for local government NJC and NHS Agenda for Change staff.
Checklist of bargaining steps

The previous pages have set out the background to the following key steps in achieving agreements that support our members experiencing sickness or enforced self-isolation during the Covid-19 pandemic by establishing:

➢ Clarity of self-isolation procedures for staff based on NHS guidance;
➢ Continued full payment on the basis of medical exclusion from the workplace if possible, at least observance of occupational or statutory sick pay if not;
➢ A review of notification procedures and acceptance of isolation notes as the only form of proof for continued absence;
➢ Omitting of Covid-19 related absence from any triggers for management action in disciplinary, capability, attendance management or redundancy policies.

All these bargaining targets are included as clauses in UNISON’s model workforce policy during the Covid-19 pandemic on this link https://www.unison.org.uk/bargaining-guides/

The link also carries bargaining guidance on other key issues during the pandemic.

Bargaining guidance specific to service groups can be accessed through the Coronavirus Rights at Work page on this link

https://www.unison.org.uk/coronavirus-rights-work/