



## The end of mandatory self-isolation Next steps for employers

As formally announced earlier this week the legal requirement to test as a close contact, or even self-isolate if you have Covid-19, will end from Thursday 24 February 2022, along with the self-isolation support payments for those on low income. The changes introduced to the statutory sick pay scheme as a result of the pandemic will also end on the 24 March. From 1 April access to free LF and PCR testing is expected to be withdrawn, although will remain available for certain at-risk groups (further details to be provided). Further, the “Working Safely During Coronavirus” guidance is due to be replaced with updated guidance (not yet released).

Guidance will remain that individuals testing positive or with Covid symptoms should stay at home if they can and avoid contact with people, taking LFTs on days 5 and 6, with negative results, before returning to their normal routine. However, it will no longer be a criminal offence to attend the workplace after testing positive, nor will there be an obligation on your workforce to tell you of any positive test, should individuals continue testing.

Many employees, especially those only entitled to SSP, with limited contractual sick pay or those with an active warning on their HR file for high absence levels, may simply keep quiet and attend work, especially if they are asymptomatic or have mild symptoms. We just need to think back

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to pre-Covid times where it was not uncommon for people to attend work even if suffering with a common cold or mild flu like symptoms. Indeed the “Living with Covid” plan makes it clear that as a society we will need to learn to live with Covid in much the same way we live with other viruses circulating such as the flu. With the removal of free testing, it will also be inevitable that fewer individuals will continue to carry out any form of regular testing and this will inevitably cause some of your workforce concern.

### **What this means for employers**

Your health and safety obligations clearly remain important. Despite the relaxation in rules risk assessments should continue to be carried out in compliance with your health and safety obligations, following any current issued Government guidance, until updated guidance follows.

Just because certain protective measures introduced are no longer mandatory does not mean employers cannot leave them in place if the risk assessments continue to support this or there is a particular demand amongst your workforce for them. However, remember to be careful to avoid any form of discrimination when imposing such measures. For example, a blanket insistence that all staff wear face coverings including those who struggle to wear them for medical reasons, is likely to be discriminatory. The importance and benefits of consulting your staff over the keeping or removal of current measures in place should not be overlooked.

Both you and your workforce will also want to be clear on what is required moving forward, for example:

- Will you be expecting your workforce to follow the guidance and self-isolate if they have symptoms or have tested positive on a LFT?
- If so, and they cannot work from home, what impact will this have on their pay if they are otherwise well enough to work?

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- If you allow them to come into work, how will other members of your workforce feel about that?
- Will you subsidise testing kits for your staff?
- Will you insist on someone with symptoms undertaking a LFT?
- Will you (indeed can you) inform other members of staff if they have been in contact with a colleague who has contracted Covid?
- Do you want to continue to, or now want to, ask your staff about their vaccination or antibody test status and, if so, why?
- Will you continue to protect vulnerable members of staff? How?

Clearly this will require some careful consideration, as well as GDPR considerations (particularly if you wish to collect vaccination/antibody data which is 'special category' data), with any requirements set out in a policy your workforce can readily refer to and understand. Having a clear policy in place will also assist should you find yourself having need to enforce it. If you want to introduce an ability to insist on your workforce continuing to carry out some form of minimum testing, even if only on displaying symptoms, ACAS has issued guidance on workplace testing which should also be considered, if not already: [ACAS Guidance on Workplace Testing](#).

Any policy introduced should then be kept regularly under review, especially in light of any further guidance that may yet be issued by the Government. The pandemic is not over, and further guidance or measures have not been completely ruled out.

For any members of your workforce voicing particular concerns, look to discuss with them at an early stage so that you can better understand the nature of their concerns and explore together how these can best be addressed. Such concerns may differ between individuals and may also help shape any policy you seek to introduce. You should consider all concerns on a case-by-case basis.

## **What are the risks of not following the Government's guidance or not keeping some restrictions in place?**

The risks depend on the culture of your organisation, views and demographic of your workforce, and specific working environment. Not including any Covid restrictions or putting any policy in place could leave you open to claims that you are failing to provide a safe place to work and risk staff refusing to attend the workplace.

In addition, treating an employee or worker less favourably or even dismissing them for raising health and safety concerns leaves you open to potential claims through the Employment Tribunal, even if they have only worked with you for a short period of time. We reported on a case that recently decided on this issue in [Issue 7 of our Employment Law Newsletter](#).

Not having a clear policy in place as to what is expected now the rules are being relaxed may also impede your ability to proceed with disciplinary action should a particular individual refuse to co-operate and abide by any measures you seek to introduce.

The above is in addition to the general cost to business from sickness absence should someone bring Covid into the workplace, similar to a flu virus, and pass it on to the rest of their team! Further, an anxious workforce will have a negative impact on morale and productivity.

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## Conclusion

It is highly likely that there will be future Employment Tribunal cases that will help create more certainty for employers in this regard but, in the meantime, we recommend you err on the side of caution and retain proportionate measures to mitigate the spread of Covid in the workplace and put in place written policies to document your position.

**If you need advice please contact us:**

Please feel free to contact us, without obligation, if you found this article useful and require further assistance. Our employment law team can help with a variety of employment law needs.

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