

<https://www2.hse.ie/conditions/coronavirus/coronavirus.html>

<https://www.pinsentmasons.com/out-law/guides/coronavirus-employers-hr-ireland>

https://www.workplacerelations.ie/wrc/en/news-media/workplace_relations_notices/covid-19-guidance-notice-for-employers-and-employees-.html

Coronavirus: advice for employers and HR in Ireland

With cases of the coronavirus now confirmed in Ireland, many employers are now asking what precautions they should take to protect their workforce and what entitlements employees have in relation to leave and sick pay.

The risk of catching the coronavirus, officially Covid-19, remains low to moderate in Ireland as of 4 March, according to the Health Service Executive (HSE). However, employers should monitor the situation as it develops and prepare their businesses by reviewing their policies and procedures and ensuring that they have a contingency plan in place.

[The HSE](#) and [Irish government](#) have published guidance on protecting yourself from coronavirus and minimising the spread of infection. This is being updated regularly.

What duties do Irish employers have to protect their employees?

Employers have a legal obligation to ensure the safety, health and welfare at work of their employees under the Safety, Health and Welfare Act (the 2005 Act). Employers should carry out a risk assessment to identify the risks of a coronavirus outbreak at work, and implement steps to minimise that risk.

Whether an employee is entitled to sick pay from their employer will depend on the employer's sick pay policy and whether the employee has symptoms.

We recommend that employers create a plan setting out the steps that they are taking to try to protect against an outbreak at work and what steps should be followed if there is an outbreak.

Basic measures employers may implement include:

- carrying out a risk assessment, ensuring good hygiene practices in the workplace and training employees on recognising coronavirus symptoms and the steps they should take if they suspect they may have come into contact with someone who is infected;
- providing alcohol-based hand sanitiser and tissues in the office;
- keeping up to date with local government advice as well as World Health Organisation (WHO) updates and communicating these to employees;
- updating any policies and procedures which may be affected by an outbreak of coronavirus, including sickness, absence and agile working policies;
- reducing non-essential business travel or conducting meetings via video link; and
- asking employees to report to HR if they have been to a high-risk destination or if they have been in contact with someone who has been to a high-risk destination regardless of whether they are exhibiting symptoms.

What duties do Irish employees have?

Under the 2005 Act an employee, while at work, must notify their employer or the employer's nominated registered practitioner if they become aware that they are suffering from any disease or physical or mental impairment which affects their performance of

work activities that could give rise to risks to the safety, health and welfare of others at work. The duty is on the employee to protect themselves and others.

When must employees self-isolate or work from home?

The HSE has advised self-isolation where an employee has been in a place where there is a spread of coronavirus, has been in contact with a confirmed case of coronavirus or has developed symptoms of coronavirus in the last 14 days. Self-isolation means staying indoors and avoiding contact with other people.

An employee who has developed symptoms should be on sick leave, and therefore not working.

If the employee is asymptomatic, it may be possible for the employer to ask the employee to work from home.

Employers may want to start thinking about whether they need to take any steps to facilitate home working, and consider whether they want to encourage employees to ensure that they have the correct set-up at home to be able to work there is required to do so. This may include ensuring that all employees have a way of logging on to secure systems from home.

Are symptomatic employees entitled to sick pay?

Whether an employee is entitled to sick pay from their employer will depend on the employer's sick pay policy and whether the employee has symptoms.

If the employee has symptoms they will be on sick leave, and whether they will be entitled to pay will depend on the employer's sick pay policy. In Ireland, there is no legal obligation for an employer to pay an employee while on sick leave, unless the employer has agreed to do so in a contract or policy. If sick pay is paid, it tends to be paid for a capped period of time and net of any

benefit receivable from the Department of Employment Affairs and Social Protection.

Many sick pay policies include a requirement for the employee to obtain a sick note from a doctor. However, an employee who has flu-like symptoms may not be able to obtain a sick note, as current HSE guidance is to avoid contact with people by self-isolating and to phone your GP or emergency department who will advise you of next steps. Employers may therefore need to consider making exceptions to their usual sick leave or pay policies for employees who have symptoms.

An employee may qualify for illness benefit from the Department of Employment Affairs and Social Protection after six consecutive days of absence due to illness if they satisfy the relevant PRSI contributions and are under pensionable age, currently 66. However, the department will need a certificate of incapacity for work from the employee's family doctor.

An employee who self-isolates in accordance with the latest HSE guidance and is unable to obtain a doctor's certificate may apply for income support in the form of Supplementary Welfare Allowance from the Department of Employment Affairs and Social Protection. There is no six-day qualifying period for the Supplementary Welfare Allowance, but the employee must satisfy a number of conditions including a means test.

What about asymptomatic employees?

If an employer requires an asymptomatic employee to stay at home and the employee is unable to do so, the employer is unlikely to be able to require the employee to take holiday for any period of self-isolation in the absence of a contractual right to do so.

Specific legal advice should be sought where necessary in relation to the coronavirus and leave entitlements, as the situation is changing daily.

As these employees are not "sick", it is unlikely that they will be eligible for sick leave. Instead, the employee is likely to be on a period of leave, assuming that they have been advised to self-isolate by HSE guidance. This leave is likely to need to be paid at full pay by the employer, unless the employer has a contractual right to place the employee on a period of unpaid leave - such as a contractual lay off provision – or some other arrangement is agreed with the employee. Any such period should therefore be kept to a minimum - i.e. no longer than the recommended two week period of self-isolation. Note that if the employee becomes symptomatic during or after that period the above provisions should apply.

Where an employee voluntarily self-isolates without discussing this with the employer there may be more scope for considering such leave to be unpaid, although this will depend on the circumstances. The employee may also be eligible for a Supplementary Welfare Allowance from the Department of Employment Affairs and Social Protection, as above.

Can an employer require an employee to undergo medical examination?

The right to have employees medically examined will depend on the particular contract or policy that the employer has in place. Where such a provision is in place, and where an examination is justified taking into account all of the circumstances, the employee cannot reasonably refuse to be medically examined.

Where no such contractual or policy provision exists, and the employer believes that there is a need to medically examine the employee in light of the status of the risk, then this should be conveyed to the employee and explained that it is in the best interests of the employee - and their colleagues - to agree to a medical examination to assess whether they are symptomatic.

Information gathered about the health of an employee will be classified as "special category data" under the General Data Protection Regulation (GDPR) and Data Protection Acts 1988-2018. It should be handled as such, and kept strictly confidential.

Employers must be careful not to single out certain employees based on their nationality, racial or ethnic origin as this could lead to a risk of discrimination. Further, any communication confirming that an employee has coronavirus should not identify the employee.

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Research by Jason McMenamain of Pinsent Masons, the law firm behind Out-Law.