

## “Social distancing” | Employment law guidance on pregnant and older workers

Many employers are asking what to do following recent guidance relating to so-called high-risk groups (for example, the over 70s and pregnant employees). There are many questions around whether those employees should be sent home and, if so, what pay they will be entitled to.

Unfortunately, the latest government guidance is not particularly clear. For ease of reference, the full guidance can be found [here](#). It states that people falling into the groups at most risk should be “particularly stringent” in following the social distancing advice. Specifically, it says:

### ***“What is social distancing?”***

*Social distancing measures are steps you can take to reduce the social interaction between people. This will help reduce the transmission of coronavirus (COVID-19).*

*They are:*

- *Avoid contact with someone who is displaying symptoms of coronavirus (COVID-19). These symptoms include high temperature and/or new and continuous cough.*
- *Avoid non-essential use of public transport, varying your travel times to avoid rush hour, when possible.*
- *Work from home where possible. Your employer should support you to do this. Please refer to employer guidance for more information.*
- *Avoid large gatherings, and gatherings in smaller public spaces such as pubs, cinemas, restaurants, theatres, bars, clubs.*
- *Avoid gatherings with friends and family. Keep in touch using remote technology such as phone, internet, and social media.*
- *Use telephone or online services to contact your GP or other essential services.*

*Everyone should be trying to follow these measures as much as is pragmatic.*

*For those who are over 70, have an underlying health condition or are pregnant, we strongly advise you to follow the above measures as much as you can, and to significantly limit your face-to-face interaction with friends and family if possible.*

*This advice is likely to be in place for some weeks.”*

The above advice leaves a great deal of interpretation and discretion around the phrase “as much as you can”.

Our view is that if an employee decides to self-isolate based on the above advice on social distancing, they can be treated as sick for statutory sick pay (SSP) purposes.

Whether they are entitled to contractual sick pay for this time off would depend on the exact wording of their contract, so please check that in the first instance. If contractual sick pay requires the employee to be unable to attend work because of sickness or injury, or words to that effect, then the above situation may not fall within the contractual sick pay scheme. However, you may wish to exercise your discretion to pay in those circumstances.

However, the situation may be different if the employee attends work and the employer feels obliged to send them home. In our view, the government advice is not as categorical as saying “you must stay at home if you are high risk”. As a result, if a high-risk category employee attends work without any symptoms, and does not live with someone who has symptoms (see [here](#)), they will be entitled to full pay if the employer sends them home.

Of course, the employer can ask the employee to work at home if feasible or agree with the employee that they will take annual leave, but in the absence of that sort of alternative, this will be a period of paid leave for the employee.

If the employer decides to send someone home, they should ensure that they have clear reasons for doing so, for example, having undertaken a risk assessment. Just sending someone home because they fall within one of those categories of vulnerable adult when they have no symptoms or live with someone with symptoms could give rise to a discrimination claim, as could sending them home without pay when they would be entitled to pay.

As always throughout this period, it’s important to check the government’s website regularly to ensure you are following the latest guidance, which is changing constantly.