

COVID-19 BALI FAQ (updated 30/03/2020)

Working environment

Q: Following government advice I have sent office staff home to work. What are my responsibilities as an employer?

As an employer, you have the same responsibilities for home workers as any other type of worker. This responsibility includes staff who are working from home on a temporary basis, as well as those for whom it is a regular occurrence.

You should consider:

- How you will communicate with them
- What work they will be doing, and whether this can be done safely
- Whether additional measures are required to protect staff

Lone workers must be contacted on a regular basis to ensure their safety and health. Staff not working from home may feel isolated and unsupported, particularly if they are undertaking tasks that they are unfamiliar with. This may affect their mental health, and it is essential to maintain good levels of contact to monitor this.

Whilst the Health and Safety Executive (HSE) warns of the risks associated with long-term home workers, and of the need for home workstation assessments, the HSE does not foresee the same risks associated with temporary home workers. Employers are not required to carry out workstation assessments for temporary home workers. Nevertheless, the HSE does provide information for those employees wishing to share it with their colleagues:

<https://www.hse.gov.uk/pubns/ck1.pdf>

The HSE advises employers should try to meet the needs of those employees who have specialised DSE equipment needs and suggests, where possible, equipment is taken home by employees.

Q: I have operatives out on remote or client sites who, because of client measures, are no longer permitted to access client washing or toilet facilities. What can I do?

Under The Workplace (Health, Safety and Welfare) Regulations 1992, an employer is responsible for providing (or access to) sanitary conveniences, washing facilities and drinking water as far as is reasonably practicable.

For teams who travel between sites, it would be illogical and unreasonable to expect an employer, or a client, to provide alternative portable facilities during the coronavirus pandemic. There are however plenty of alternatives which would be regarded as reasonable alternatives:

The website <https://www.toiletmap.org.uk/> lists the locations of all public toilets in the UK and is backed-up by several Android/Apple apps that perform a similar role. A solution would be to issue a map with public toilets to your operatives or download an application on their phone so they are aware of the nearest toilet location throughout their working day.

Operatives can be issued with equipment including water, soap, hand sanitizer which they can use throughout the day

Q: I receive material from other depots/overseas on a regular basis; to what extent does this material pose a risk to my employees from catching Coronavirus?

Research suggests coronaviruses are principally spread from person-to-person through respiratory droplets. Coronaviruses have a poor level of survivability on surfaces, although the extent to which Covid-19 can survive on materials varies.

There is a low chance of the virus surviving on a product or plant as droplets from an infected person, even before being transported over a period of days at ambient or refrigerated temperatures, before being touched by a person and transferring the virus to their mouth, nose or eyes. Nevertheless, enhanced hygiene procedures are essential to remove all risks.

Contractual obligations

Q: I am due to start a new project in the next few weeks but am running behind schedule due to staff absence. Am I liable for breach of contract and what should I do?

If you have issued or signed terms and conditions, check the small print. Most contracts will refer to specific events which affect the performance of a contract and highlight what steps are required from you or your counterparty as a result of this event. It is important these steps are followed.

Contracts (such as the BALI domestic contract) may require the contractor to notify the client as soon as possible, and include clauses which suspend obligations or performance for the duration of the 'event'.

It is worth noting some contracts include a clause which allows the client to cancel the contract, providing the event outside the contractors control lasts longer than a stated period.

Q: There is a force majeure clause in the contract I have used/signed; could this be triggered as a result of the recent COVID-19 pandemic?

Possibly. The term force majeure literally means 'superior force' and may include examples such as natural disasters (e.g. earthquakes or tsunamis) as well as industrial action or war.

It is unlikely that any force majeure clauses would identify 'Coronavirus outbreak' specifically, and in order to rely on the clause, it may be necessary to review the other events included under the clause e.g. epidemics, action by government or work stoppages. Most importantly, the party relying on the clause will need to prove the event is 'beyond the reasonable control' of the party seeking relief.

As with the BALI domestic contract, if one of the events listed in a force majeure occurs, the clause will generally prescribe what action is expected from each party. A common action is for the party claiming force majeure will have to notify the counterparty and take reasonable steps to ensure the event does not result in a significant impact.

Government business support: Loans and grants for small, medium and large businesses

On 23rd March the government launched a series of support packages to help businesses affected by the coronavirus.

Two loan schemes are being offered by the government:

- Coronavirus Business Interruption Loan Scheme (CBILS)

Suitable for any small/medium business with a turnover of up to £45 million

- Government-backed finance of up to £5 million

Interest payments and any lender-levied fees for businesses will be covered by the government for an initial period of up to twelve months

Scheme available through more than 40 accredited lenders, listed on the British Business Bank website:

<https://www.british-business-bank.co.uk/ourpartners/coronavirus-business-interruption-loan-scheme-cbils/accredited-lenders/>

Apply to this scheme at the following link:

<https://www.british-business-bank.co.uk/ourpartners/coronavirus-business-interruption-loan-scheme-cbils/for-businesses-and-advisors/>

- Bank of England Covid Corporate Financing Facility

Suitable for larger firms with a turnover of over £45 million

Allows businesses to purchase short-term corporate debt – known as commercial paper – allows companies who are experiencing severe disruption to cash flows to quickly raise working capital

Scheme available through the following banks:

<https://www.ukfinance.org.uk/covid-19-corporate-financing-facilities>

The Small Business Grant Fund is available to small businesses and businesses in the retail, hospitality and leisure sectors. Under this grant, all businesses in receipt of Small Business Rates Relief (SBRR) and Rural Rates Relief (RRR) will be eligible for a payment of up to £10,000.

More details available from here:

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/874772/small-business-grant-fund-and-retail-guidance.pdf

Q: How will I pay my employees if I am forced to temporarily close my business?

The government has setup the Coronavirus Job Retention Scheme, which will allow businesses to access financial support to continue paying part of their employees' salary for employees who would otherwise have been laid off as a result of the coronavirus pandemic. All UK businesses are eligible to access this scheme, providing they had a PAYE scheme in place on 28th February 2020.

Employers wishing to use this scheme will be required to designate affected workers as 'furloughed workers' and submit information for Her Majesty's Revenue and Customs (HMRC) through an online portal, due to be launched in April 2020. The repayments will be backdated to 1st March and reimburse 80% of furloughed workers wage costs with a cap of £2,500 per month. An employer may wish to top employees fees up to 80%, but does not have to (subject to employment law and any contractual entitlements).

To be eligible for this scheme, the employee must have been on the payroll on 28th February 2020. If they were hired later, they are not eligible. However, anyone who was on the payroll on 28th February and has since been made redundant can be rehired and put on the scheme.

Furloughing must be taken in minimum blocks of three weeks to be eligible for funding, but there is nothing stopping an employer from rotating furlough leave amongst employees. Of course, whilst furloughed the employee must not work at all.

Employees on sick-pay or self-isolating cannot be furloughed but can be furloughed afterwards. Employees who are shielding can be placed on furlough. Women on maternity leave can return to work early and then become furloughed, or elect to change to shared parental leave and then be furloughed.

Please note: Changing the status of employees to 'furloughed workers' is subject to employment law, and you are required to notify your employees of

this change. Depending on the employment contract some negotiation may also be required.

HMRC are currently setting up the system to enable this scheme; the intention is for it to be completed by the end of April 2020. More information is available from here: <https://www.businesssupport.gov.uk/coronavirus-job-retention-scheme/>

A template letter and additional guidance is available to members who wish to furlough workers. Please see the BALI website for more details.

Q: Clients are now refusing to allow my employees access to their property or site, despite the government advising site-based works can continue. What should I do?

Consider furloughing workers for whom there is no work, or where works cannot continue in accordance with governments social distancing guidance.

A similar situation may also arise where businesses cannot source materials due to suppliers being closed. In this scenario you may also wish to furlough workers for whom work is not possible.

BALI has produced a template document and additional guidance for members wishing to furlough workers. Please see the BALI website for more details.

Q: Do businesses get support from the government for statutory sick pay paid out as a result of COVID-19?

The government are currently bringing forward legislation to ensure small and medium-sized businesses can reclaim statutory sick pay (SSP) paid out for employee absence as a result of COVID-19.

The refund will cover up to 2 weeks SSP for each employee who has been off work because of the virus and is eligible to all employers with fewer than 250 employees.

Employers are required to maintain records of staff absences and payments of SSP, but employees are not required to provide a doctors note. If evidence is required by an employer, any employee with symptoms can get a note from NHS 111 online <https://111.nhs.uk/covid-19>.

Details of how this system will work, and how the repayment mechanism will operate have not yet been released by the government, but details are likely in the next few weeks.

Q: Will VAT and Income Tax payments be deferred?

Yes. All UK businesses are automatically eligible (no applications are required for this) to defer Value Added Tax (VAT) payments for the period 20th March 2020 until 30th June 2020 (3 months) and pay any liabilities that have accumulated at the end of the 2020 – 2021 tax year.

All UK businesses are also automatically eligible (no applications required for this) to defer Income Tax Self-Assessment payments due on 31st July 2020 until 31st January 2021. No penalties or interest for late payment will be charged in the deferral period.

Q: I am self-employed; what can I do?

On Thursday 26th March the government launched the Self-employment Income Support Scheme.

This scheme allows claimants to claim a taxable grant worth 80% of their trading profits up to a maximum of £2,500 per month for the next 3 months.

Any self-employed individual or member of a partnership can apply for this scheme, providing they have submitted their Income Tax Self-Assessment tax return for the tax year 2018-2019, have traded in the tax year 2019-2020 are currently trading (or would be except for COVID-19) and intend to continue trading in the tax year 2020-2021.

Anyone applying for this scheme must have profits of less than £50,000. Self-employed people with profits of more than £50,000 will not benefit from this scheme but are entitled to pursue other schemes listed below.

HMRC will contact anyone eligible for this scheme as soon as it is available, and the grant will be paid in one instalment at the beginning of June 2020.

The following additional measures have been put in place for self-employed workers by the government:

The government has suspended the minimum income floor for the self-employed, meaning self-employed people can now access, in full, Universal Credit at a rate equivalent to Statutory Sick Pay for employees.

A helpline (0800 0159 559) has been setup by the government for self-employed people who cannot pay their tax due to coronavirus. Options include agreeing an instalment arrangement, cancelling penalties and interest. More information is available on the following site:

<https://www.gov.uk/government/news/tax-helpline-to-support-businesses-affected-by-coronavirus-covid-19>

Contact your insurer for advice on whether your business interruption policy can be used in relation to COVID-19.