



British  
Association  
of Landscape  
Industries

## **COVID-19 BALI FAQ – Workforce Guidelines**

**Updated 19 May 2020**

BALI members are advised to watch a webinar presented by BALI Registered Affiliate member Oracle Solicitors on Friday 3 April 2020. During this webinar, a HR professional discussed the implications of the COVID-19 pandemic with a specific focus on the landscape industry. A link to this webinar is below:

<https://bit.ly/2TIGBMr>

**Please note: The questions on the following pages were generated by BALI members during a webinar on Friday 3 April 2020. The guidance and answers in this document are intended as a guide only and members should seek professional advice for specific questions.**

Oracle Solicitors specialise in all aspects of law for commercial, corporate and individual clients. They can be contacted at <https://oraclesolicitors.co.uk/>

***Q: What are my legal responsibilities as an employer during the COVID-19 pandemic?***

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.

Businesses who continue to operate during the pandemic have a legal duty to ensure that, despite the effects of the pandemic on their operations, a safe environment is provided for their employees through the provision of increased training, welfare and hygiene. This includes teaching employees' ways of working safely during the COVID-19 pandemic and providing PPE and equipment necessary to maintain a high level of hygiene.

Where employees visit sites such as depots, yards or offices as part of their working day, it is necessary for an employer to ensure high traffic areas are identified and provision made to ensure these are regularly sanitised. Examples of high traffic areas include gates, office doors, intercom buttons, fuel bowsers and garage doors. Similarly, company vehicles and site transportation must be considered in terms of hygiene and social distancing. More information on this subject is covered in the BALI document titled [Landscape site operating procedures – protecting your workforce](#), available from the [COVID-19 portal](#) on the BALI website.

Employers are required to communicate their procedures and policies concerning COVID-19 to their employees as part of any other health and safety training. This is in addition to providing employees with the adequate\* protective equipment and skills to carry out their duties.

It is appreciated that the speed in which COVID-19 escalated meant many businesses did not *initially* have time to adequately consult with employees and issue guidance on how to work during the COVID-19 pandemic. Businesses must now ensure they make every effort to communicate with employees and educate them on how their role must now be done differently to mitigate the risks associated with working during this pandemic.

Once additional training or guidance has been given, the employee must indicate they have understood the training. A record of this must be held by the employer, just like any other training.

Employers are vicariously liable for the actions (and therefore negligence) of their employees. This means that, if an employee does not abide by guidance given to them by their employer and a third party is infected with COVID-19, they may be held liable.

Bear in mind employees who are under additional pressure as a result of covering for absent colleagues, are suffering from exhaustion as a result of working additional shifts or are using new equipment for the first time pose a hazard to themselves, their colleagues and third parties, for which the employer is responsible.

*\* = whilst the word 'adequate' is subjective, ask yourself questions such as: is there enough soap in the dispensers in the toilets? Do all my employees have enough PPE for each person (sharing PPE is not appropriate), are premises cleaned more frequently, is cleaning equipment available for site-based employees or those employees who travel in vehicles frequently?*

***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 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: Do workers who have been furloughed continue to accrue statutory holiday entitlement?***

Furloughed workers continue to accrue statutory holiday entitlements as well as any additional holiday provided under their employment contract. Workers on furlough are entitled to take holiday without disrupting their furlough.

Holiday pay during furlough must be the correct holiday pay in accordance with current legislation, which is based on normal remuneration. Where holiday pay is above the furlough rate of pay, the employer will have to pay the difference but will still be able to claim up to 80% (or £2,500 per month) under the governments Coronavirus Job Retention Scheme.

The government has produced holiday entitlement calculator, here: <https://www.gov.uk/calculate-your-holiday-entitlement>

***Q: Do we have to let employees roll annual leave into next year and 2022, or can we make them take the annual leave for 2020 in 2020, maybe by giving them 1 week notice to then take 1 weeks leave?***

A: New regulations have come into force which allow a worker to carry over up to 4 weeks annual leave over the next 2 leave years if that leave could not reasonably be taken due to the effects of Coronavirus. Please see the link below for more information:

<https://www.gov.uk/government/news/rules-on-carrying-over-annual-leave-to-be-relaxed-to-support-key-industries-during-covid-19>

You can require employees to take annual leave within the current year. While legally you are able as an employer to require employees to take leave when you need it to be taken, this right should still be exercised 'reasonably' and also in accordance with any contractual annual leave policy you may have.

***Q: Can we refuse to cancel annual leave that is booked from now until our year end in Dec?***

A: Employers can refuse to cancel annual leave, but to reduce the risk of complaint the employer should provide its reasons and give sufficient notice to the worker before requiring them to do so.

Employers are also permitted to both cancel holiday and require workers to take holiday, but should consider whether any restriction the worker is under, such as the need to socially distance or self-isolate, would prevent the worker from resting, relaxing and enjoying leisure time, which is the fundamental purpose of a holiday.

The required notice periods for cancelling holiday or requiring workers to take holiday are:

- double the length of the holiday if the employer wishes to require a worker to take holiday on specific days
- the length of the planned holiday if the employer wishes to cancel a worker's holiday or require the worker not to take holiday on specific dates

Employers can ask workers to take or cancel holiday with less notice than indicated above, but to do this require a worker's agreement.

***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?***

For teams who travel between sites throughout the day, it would be illogical and unreasonable to expect an employer, or a client, to provide alternative portable facilities during the coronavirus pandemic.

Nevertheless, the employer has a duty of care to their employee and, assuming the employee wishes to continue fulfilling contractual responsibilities they have with their client, they may consider alternative options which would be regarded as a reasonable, short-term solution:

1. 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 mobile phone so they are aware of the nearest toilet location throughout their working day.
2. Hire of welfare vehicles
3. Operatives can be issued with equipment including water, soap, hand sanitizer which they can use throughout the day

***Q: An employee in self isolation has requested if they can take it as annual leave so they get full pay instead of SSP, is this ok?***

A: There is nothing in law preventing an employee from taking annual leave while on sick leave, so the answer is, generally, yes.

***Q: Are those persons that wish to stay at home because they live with someone who is extremely vulnerable entitled to SSP?***

A: No, not if the person they live with is not displaying symptoms.

***Q: If an employee comes into work displaying COVID-19 symptoms and we send them home as a precaution, are they then entitled to full pay because we have sent them home, or because they haven't followed government guidelines in the first place do we pay them SSP?***

A: Where the employee is able to continue to work from home (even if self-isolating) then, subject to any contractual provision to the contrary, they will continue to be entitled to their normal rate of pay. If they cannot work from home, then they could be treated as being on sick leave and receive SSP. You should also review your sickness absence policy to determine whether there is any right to additional contractual sick pay. They would not be entitled to additional salary on top of this. Of course, the employment contract should also be reviewed to ensure there is no specific contractual provision that applies in these circumstances.

***Q: If we stop a furlough period at the end of the first 3 week period, and expect all staff to come back to work, can you confirm that there is no requirement to pay them at all if they decide not to return to work due to fears surrounding COVID 19, or whether employees are able to claim SSP during this time.***

A: In this situation, employees would not be able to claim SSP at the end of the furlough period, unless they are ill or self-isolating in accordance with official government guidance. Fears about coronavirus do not equate to eligibility for SSP. You would not be required to pay employees where their absence from work is unauthorised.

*Q: We have an employee who has been in self isolation for 14 statutory sick pay days due to a family member having COVID symptoms. He's due to return on Monday however he is saying that another family member now has symptoms and he (the employee) was advised by NHS 111 to self-isolate for a further 14 days - even though he has no symptoms. This is in direct contradiction to the government advice on ending self-isolation.*

*I have sent him all the relevant information and said that based on this, I do expect to see him at work on Monday unless he has specific concerns in which case, he needs to call me to discuss further. We can't furlough him as there is currently no need but if he comes back to say he doesn't want to come to work, can we either make him take this as paid holiday or as unpaid leave?*

*To note, we have adjusted working practices like ensuring only one employee per vehicle, providing antibacterial wipes and extra gloves, giving social distancing advice to ensure the safety of all employees.*

A: If your employee was advised to self-isolate for a further 14 days by NHS 111, I consider that you can assert that he must provide a fit note (or perhaps more appropriately an isolation note) confirming that he has been medically advised to self-isolate, otherwise you expect his to return to work. If he refuses, his absence could be treated as unauthorised. If he does obtain an isolation note covering the period, he would most likely be entitled to SSP. You should also review your sickness absence policy for any additional relevant provisions.

*Q: The employee concerned (please see question above) has asthma; is this relevant?*

A: This may be relevant if the severity of the asthma moves the employee into the 'high risk' category (please see guidance: <https://www.gov.uk/government/publications/covid-19-guidance-on-social-distancing-and-for-vulnerable-people/guidance-on-social->

[distancing-for-everyone-in-the-uk-and-protecting-older-people-and-vulnerable-adults](#)). This may have an impact on the likelihood of him being issued with a medical/isolation note.