



COVID – 19 School Closures

Schools HR & Payroll

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Strategy



Dear Colleague

COVID-19: Schools Closures

The purpose of this guidance is to help schools manage the workforce implications for all school-based staff as a result of the closure of schools for the foreseeable future for everyone apart from children of critical workers and the most vulnerable children.

The Government has ordered the closure of all schools for the foreseeable future for most children. Clearly, these are unprecedented times, and the situation is changing and moving extremely quickly, and we don't know how long these measures will remain in place

To be clear, this guidance is about pay, and terms and conditions for both teaching and support staff, as detailed in the Burgundy Book for teachers and NJC Green Book for support staff.

Pay

Staff are entitled to continue to receive their full contractual pay as a result of the Government's order to close schools.

While some staff will still need to attend schools, that may not be the same for others. There will be some staff that can neither work from home or be redeployed / seconded etc. and will therefore be staying at home on full pay for the duration of this emergency.

Please note that this does not include staff who were already on sick pay for non-COVID-19 related issues, although there may be some complexities in managing cases going forward, we are encouraging schools to take a sympathetic and flexible approach.

Operational issues

We accept that it might be difficult for some schools to operate under these new conditions. Some of you have already made alternative arrangements such as asking teachers to provide schoolwork and guidance for pupils via virtual means, in order to minimise the impact on children's learning during the closures. Obviously, some roles can be carried out from home, but we recognise this isn't possible for all roles.

The Council and schools will continue to support vulnerable pupils

We expect that these and other relevant critical service demands will need to be managed on a case by case basis with all public services working together to be as flexible as possible within the confines of following the Government's latest advice and with appropriate health and safety risk assessments to ensure the protection of all children, parents and staff involved.

We urge everyone to work together from the outset when considering practical implications of the closure of schools. This is likely to include increased communication with staff, and the relevant Trade Unions/Employee representatives. The country faces an exceptional crisis of the like not experienced by most of the population.

Staff working from home

Staff should ensure that they are taking steps to look after their wellbeing during the period of school closures if they are working from home. Some of these include:

- maintaining regular contact with their manager and colleagues, perhaps to share best practice and keep in touch,
- being clear about methods of communication to, from and between their manager and colleagues,
- the need for security and confidentiality of information/papers that may be taken home (please contact the schools DPO for further advice if needed),
- ensuring their IT systems are as robust and secure as possible,
- avoiding being 'always on' by ensuring that they identify non-working time, and by
- being aware of the things that can cause them poor wellbeing and the activities and resources that can help to address this i.e. contacting support service e.g. any employee assistance helpline if they need support, for example, in relation to heightened feelings of anxiety.

Impact of COVID-19 on staff's sick pay

Teachers and School Support staff should not suffer financially as a result of COVID-19. If an employee is fit for work but decides, or is instructed to self-isolate, their absence should not be recorded as sickness absence. As most staff can work at home during this period and they are classed as being well at this stage, they should stay on their standard full pay for the duration of the self-isolation period. If at any point they are confirmed to have contracted the virus, they would transfer to sickness absence leave and the usual provisions of the schools' sickness absence policy will apply.

The rate of sick pay applicable to a teacher in respect of sickness during the closure of a school is the rate applicable to him/her on the last day before the closure. Where a teacher, therefore, is ill immediately preceding a closure period and:

he/she is on full sick pay

- he/she shall continue full sick pay, but the closure period is

not counted against his/her entitlement under 2.1 above.

he/she is on half sick pay

- he/she shall continue half sick pay, but the closure period is not counted against his/her entitlement

he/she has exhausted his/her sick pay entitlement and is not receiving any pay - he/she shall continue to receive no pay.

When a teacher is ill immediately preceding a closure of the school, and has exhausted his/her sick leave entitlement, or is on less than full pay, and recovers during the period of closure, such teacher shall be deemed, for the purpose of calculating the amount of salary due, to have returned to duty on the day he/she is authorised medically fit to do so by means of a doctor's statement obtained for that purpose, provided he/she actually returns to duty on the first day after the period of closure. Where a teacher in these circumstances does not return to duty on the first day after the period of closure, he/she shall refund such sum as the employer at their discretion may decide.

Agency Workers

Whether an agency worker will remain entitled to be paid will depend first on whether they are entitled to be paid under the Agency Worker Regulations 2010. Broadly speaking, those Regulations provide agency workers the right to equal treatment in terms of "basic working and employment conditions", as if they had been employed directly by the school to do the same job. In many cases this means that agency workers will be entitled to the same rate of pay as a comparable employee, so if a comparable employee is being paid during the school closure period, then the agency worker may be entitled to be paid. However, that right only applies after a 12-week qualifying period. To determine entitlement under the Regulations therefore schools will need to check whether the worker has met that 12-week qualifying period. The details are as follows:

Any period of work (full or part-time) carried out by the agency worker for the hirer in a calendar week will make that week count towards the 12-week qualifying period.

For the purposes of calculating the qualifying period, continuity will normally be broken by a break of six weeks between assignments in the same job, or when an agency worker takes up a new role with the hirer where the whole or main part of the duties in the new role are substantially different from the whole or main part of the duties in the old role.

However, breaks between assignments due to several specified reasons, such as sickness (of up to 28 weeks), jury service or pre-determined closure periods (e.g. school closures during holidays) will not break the qualifying period. Instead the 'clock is paused'. For example, if a worker works for 11 weeks in a school, and the school closes for six weeks, when the agency worker returns their first week back will be week 12 for the purposes of the qualifying period.

The situation is different in the case of absence related to pregnancy, childbirth or maternity during the "protected period", and for pregnancy, maternity, paternity or adoption leave. In such cases the worker is for the purposes of calculating the 12-week period deemed to continue working in their role for the original intended length of the assignment, or likely duration of the assignment, whichever is longer. The "protected period" starts at the beginning of the pregnancy and ends at the end of the 26th week from childbirth, or when the worker returns to work, if earlier.

Please note that this may change as further guidance is issued by the Government

Importantly though, any entitlement under the Regulations will apply only for the length of the assignment. For example, if a worker was brought into cover absence for a week, then they would be entitled only to be paid until the end of that week. To determine the duration of the assignment the first step will be to confirm the agreement between the agency and the school to see whether that sets out the duration of the contract. In some cases the length of the assignment may be difficult to determine. For example if they were covering sick leave on an open-ended basis, schools may want to assess how long the assignment might reasonably be expected to have lasted.

In terms of liability under the Regulations for any non-payment, responsibility for providing rights under the Regulations is primarily with the employment agency. However, if the reason the agency worker was not being paid because the school stopped paying the agency then if a claim was brought by an agency worker then an employment tribunal might well find that the school was responsible for the breach and so it should be liable for the non-payment.

If the worker does not have any entitlement to pay under the Regulations, schools should still check whether there is any contractual obligation with the agency and/or worker which would require them to continue paying for the worker.

Finally, in many cases schools will choose to continue to pay an agency worker for the school closure period, irrespective of whether there is any legal entitlement to pay and it is also entirely possible that the Government will seek to legislate on this issue to deal with the extraordinary situation we are dealing with.

Easter Holidays

Given the current situation and the Government's order that schools are only left open for the most vulnerable pupils and children of critical (key) workers, school staff are being asked to help the country fight this virus. We know that schools will make sensible decisions on staffing and what breaks/holidays will be needed. The Government is asking schools wherever possible to continue to maintain the provision for children of workers critical to the COVID -19 response over the Easter holidays.

We are asking staff to volunteer to work on a rota basis over the Easter holidays and take two weeks' leave at an earlier or later date. It is planned that the majority of schools will remain open in some capacity during this period. To ensure a safe environment and adequate staffing levels are maintained in schools during the Easter period, staff should be asked to take their leave as per the school's staffing requirements. For example some staff may take leave before or after the Easter break. In addition, schools may also consider some staff being off for the first week of the Easter break and then alternating with other staff for the second week. It is planned that school closures will continue after the Easter break. Schools should take into account a rota for staffing levels for at least the next 8 weeks.

We would like to thank all the schools for their support over these last few days. We will continue to update you.

Finally, I would like to remind schools that the Employee Relations Team is on hand to deal with any ongoing HR matters.

Should you have any queries, please do not hesitate to contact the following:

Jacqueline Gentles (Senior Employee Relations Advisor) –
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Kind regards

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