

20 March 2020

## LGA Workforce Team

### COVID-19: closure of schools

The purpose of this guidance is to support schools and councils to make decisions and manage the workforce implications for both teachers and school support staff as a result of the closure of their schools by the end of the school day today (20 March) for the foreseeable future for everyone apart from the children of [critical workers](#) and the most vulnerable children.

To be clear this guidance is about pay and terms and conditions. Specifically the difference in terms and conditions between teachers on [Burgundy Book](#) and school support staff on [NJC Green Book](#) terms and conditions, alongside guidance on agency workers' pay. This is clearly a fast-moving situation and we will issue additional guidance as necessary.

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, we don't know how long these measures will remain in place.

You will see from the link above to information on critical workers that, 'if workers think they fall within the critical categories above they should confirm with their employer that, based on their business continuity arrangements, their specific role is necessary for the continuation of this essential public service'. We suggest that you advise employees who may be covered by the definition as follows:

- check with their line manager and confirm that they are a critical worker, and
- confirm that school place(s) is needed and that it would not be possible for the child/children to be kept safely at home.

[Q&A's](#) published by the Government provide information for parents and carers of children at registered childcare providers (including nurseries and childminders), primary and secondary schools and further education colleges. This is for both state-funded and independent schools.

You might also find it helpful to contact the Department for Education's (DfE's) COVID-19 helpline, which is available to answer questions relating to education and children's social care. Staff, parents and pupils can contact this helpline on 0800 046 8687 from 8am to 6pm, Monday to Friday, and 10am to 4pm, Saturday

and Sunday - if you work in a school, please have your unique reference number (URN or UK PRN) available when calling the hotline. Alternatively, you can email [DfE.coronavirushelpline@education.gov.uk](mailto:DfE.coronavirushelpline@education.gov.uk)

The information below sets out what we can provide at this stage, to support you on workforce issues.

Don't forget the government guidance on when to self-isolate still stands, and continues to apply to all critical workers.

## **Pay**

Employees 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, in many cases employers will have no option other than to accept that some employees can neither work at home nor be redeployed / seconded etc and will **therefore be staying at home on full pay for the duration of this emergency.**

This does not include staff who were already on sick pay for non-COVID-19 related issues, although we recognise there may be challenges in managing cases going forward and are encouraging schools and councils to take a sympathetic and flexible approach wherever possible. Teachers conditions are clear on this point in the [Burgundy Book](#) paragraph 7.2 (which is copied below).

## **Operational issues**

It's too early to comment at this stage about how schools are going to be able to operate under these new conditions, but we anticipate that teachers may be asked to provide school work and guidance for pupils via other virtual means, in order to minimise the impact on children during the closures. Obviously, some roles will genuinely be able to be carried out from home, but we recognise this isn't possible for all roles.

## **Schools and councils 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 the vast majority of the population.

### **Additional LGA advice for staff that are working from home**

Employees should ensure that they are taking steps to look after their wellbeing during the period of school closures if they are working from home. 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,
- 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 programme if they need support, for example, in relation to heightened feelings of anxiety.

### **Redeployment**

Custom and practice may need to be disregarded and usual ways of working and existing policies and protocols may need to be suspended. Wherever possible, unless there are urgent, mitigating reasons, such suspensions should be agreed beforehand with local trade unions. Employees should not suffer any detriment in pay and conditions for the period of any temporary changes that are introduced.

Where staff are asked to work flexibly to cover other jobs (for example through redeployment, and potentially redeployment to another school) volunteers should be sought in the first instance.

New roles must be clearly explained, and employees should receive appropriate training. If they are asked to work in roles which have increased risks, a health and safety risk assessment must be carried out before they start and the appropriate personal protective equipment provided.

### **Relevant terms and conditions**

Teachers' terms and conditions are covered by the [Burgundy Book](#), support staff are covered by the [NJC Green Book](#). This becomes relevant in relation to infectious diseases with Paragraph 10 of the [Burgundy Book](#)– as the paragraphs below explains.

## **The impact of COVID-19 on employees' sick pay**

School leaders should be aware of the provisions set out in the ['Burgundy Book'](#) which applies to teachers'.

We have issued this previously but for completeness and convenience, we have reproduced our summary of provisions on sickness absence, Section 4 Sick Pay Scheme at Paragraph 10 'Contact with infectious diseases', and Paragraph 10.1 and 10.3 as follows:

*10.1 'When the approved medical practitioner attests that there is evidence to show a reasonable probability that an absence was due to an infectious or contagious illness contracted directly in the course of the teacher's employment full pay shall be allowed for such period of absence as may be authorised by the approved medical practitioner as being due to the illness, and such absence **shall not** be reckoned against the teacher's entitlement to sick leave under paragraph 2 above, though such absences are reckonable for entitlement to Statutory Sick Pay.'*

*10.3 'A teacher residing in a house in which some other person is suffering from an infectious disease shall at once notify the employer and the teacher shall, if required, take such precautions as may be prescribed, provided that if in the opinion of the approved medical practitioner it is considered inadvisable, notwithstanding such precautions, for such teacher to attend duty, full pay shall be allowed during any enforced absence from duty, such pay being sick pay for the purpose of paragraphs 3 to 7.5 above.'*

***This provision will also apply where, in the opinion of an approved medical practitioner, it is inadvisable for a teacher to attend duty for precautionary reasons due to infectious disease in the workplace. The period of the absence under this paragraph shall not be reckoned against the teacher's entitlement to sick leave under paragraph 2 above, though such absences are reckonable for entitlements to Statutory Sick Pay.'***

As you will be familiar with from our other [NJC circulars](#) for Green Book employees the relevant part is Part 2 Para 10.9 of the [NJC Green Book](#)– just to remind you of the wording in that circular “if an employee is fit for work but decides, or is instructed, to self-isolate, their absence should not be recorded as sickness absence. We would expect all options for home or remote working to be explored with the employee. As they are ‘well’ at this stage they should stay on normal full pay for the duration of the self-isolation period until such time as they are confirmed to have contracted the virus, at which point they transfer to sickness absence leave and the usual provisions of the sickness scheme will apply.”

We also remind you of the provision set out in the [Burgundy Book](#) at Section 4 Sick Pay Scheme at Paragraph 7 which is relevant to school closure periods, detailed

below and again remind schools and councils to take a flexible approach where appropriate:

**School closure periods – [Burgundy Book](#)**

- 7.1 *For the purpose of 2.1 above, two half school days shall be deemed to be equivalent to one working day. Whilst sickness during closure periods will not affect the period of a teacher's entitlements to sick leave under 2.1 above, it will be relevant so far as deduction of benefit is concerned. Thus the same deductions applicable to a teacher in respect of sickness on working days will be applicable in respect of sickness during a closure period.*
- 7.2 *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:*
- ③ *he/she is on full sick pay*
    - *he/she shall continue on full sick pay, but the closure period is not counted against his/her entitlement under 2.1 above;*
  - ③ *he/she is on half sick pay*
    - *he/she shall continue on half sick pay, but the closure period is not counted against his/her entitlement*
  - ③ *he/she has exhausted his/her sick pay entitlement and is not receiving any pay - he/she shall continue to receive no pay.*
- 7.3 *Where a teacher is either on half pay or is not receiving pay he/she may be put back on full (ordinary) pay by the procedure in 7.4 below.*
- 7.4 *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.*

7.5 *If, during the period of closure of a school a teacher falls ill and becomes entitled to Statutory Sick Pay or becomes or would become (but for election to be excepted from liability to pay contributions) entitled to claim any of the benefits referred to in sub-paragraph 5.1 above, it shall be his/her duty to notify the employer thereof (in accordance with sub-paragraph 8.1 below as if the days of closure were working days) so that the employer may either pay Statutory Sick Pay (where appropriate) or make the appropriate deductions.*

### **Agency workers**

Below we have provided some guidance on the question of agency workers i.e. **In the event of a school closure, does an agency worker remain entitled to be paid if other directly employed employees continue to be paid?**

Whether an agency worker will remain entitled to be paid will depend first of all on whether they are entitled to be paid under the Agency Worker Regulations 2010. Broadly speaking, those Regulations give agency workers the right to equal treatment in terms of "basic working and employment conditions", as if they had been employed directly by the hirer 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 (for details of how that is calculated see [FAQ 9](#)).

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 remain entitled only to be paid until the end of that week. To determine the length of the assignment the first step will be check the agreement between the agency and the school to see whether that sets out its length. In some cases though the length of the assignment may be more difficult to determine, for example if they were covering sick leave on an open ended basis. In such cases schools may want to make an assessment of 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 was 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.

### **Vulnerable groups**

Schools will have employees who are in the vulnerable groups where they could be looking at months of self-isolation and who will be unable to work except remotely if arrangements can be made. This group includes those who are:

- pregnant women
- aged 70 or older (regardless of medical conditions)
- under 70 with an underlying health condition listed below (broadly anyone instructed to get a flu jab each year on medical grounds):
  - chronic (long-term) respiratory diseases, such as [asthma](#), [chronic obstructive pulmonary disease \(COPD\)](#), emphysema or [bronchitis](#)
  - chronic heart disease, such as [heart failure](#)
  - [chronic kidney disease](#)
  - chronic liver disease, such as [hepatitis](#)
  - chronic neurological conditions, such as [Parkinson's disease](#), [motor neurone disease](#), [multiple sclerosis \(MS\)](#), a learning disability or cerebral palsy
  - [diabetes](#)
  - problems with your spleen – for example, [sickle cell](#) disease or if you have had your spleen removed
  - a weakened immune system as the result of conditions such as [HIV and AIDS](#), or medicines such as [steroid tablets](#) or [chemotherapy](#)
  - being seriously overweight (a BMI of 40 or above)

There are some clinical conditions which put people at even higher risk of severe illness from COVID-19. Next week the NHS in England will directly contact people in this category with advice about the more stringent measures that should be taken in order to keep themselves and others safe.

People falling into this group are those who may be at particular risk due to complex health problems such as:

- People who have received an organ transplant and remain on ongoing immunosuppression medication
- People with cancer who are undergoing active chemotherapy or radiotherapy
- People with cancers of the blood or bone marrow such as leukaemia who are at any stage of treatment
- People with severe chest conditions such as cystic fibrosis or severe asthma (requiring hospital admissions or courses of steroid tablets)
- People with severe diseases of body systems, such as severe kidney disease (dialysis)

### **Health and Safety considerations**

The health, safety and welfare of staff and children in schools and any other facilities kept open to care for vulnerable children and children of key workers remains a priority. The way the facilities and schools operate may be very different from a typical school day. If a school is staffed by its own teachers and support staff caring for its own pupils they will be familiar with the school norms and procedures but it will need to clear about how the day will run and who is responsible for what. If a single school or facility is hosting pupils from a number of different schools there may be both staff and children in unfamiliar surroundings and this will require further consideration as to how the school/facility will operate and how this will be communicated. In any scenario the responsible person will need to plan how the school/facility will operate and conduct appropriate risk assessments taking into account factors introduced by these exceptional circumstances. Engaging and consulting with staff will help to highlight issues and address identified concerns.

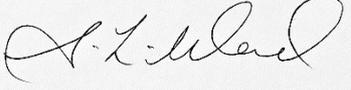
Given that the main reason that these schools/facilities are to remain open at this stage of the current Covid-19 pandemic is to maintain the availability of key workers across the country it will obviously remain essential to maintain high standards of cleanliness and hygiene in order to minimise the possibilities of infecting staff, pupils and their parents.

**In conclusion**

We know that schools and local authorities are thinking urgently about ways to best use people's skills and energy to help communities deal with the crisis and we thank all those in the education workforce for their care and commitment.

We will issue further updates and guidance as and when we can. Please continue to visit the LGA's [Coronavirus: information for councils webpage for all up to date advice.](#)

Yours sincerely,



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