

# Coronavirus – Workplace Scenarios

## Quick reference guide for labour providers

# ALP

Association of Labour Providers

Coronavirus has created a new set of situations that labour providers need to respond correctly to. This quick reference guide will help your teams find what you need, when you need it.

Written in accordance with the information and guidance available on 4<sup>th</sup> November. This document will be updated and amended as new guidance becomes available.

SCENARIO	GUIDANCE
<b>Social distancing and hygiene</b>	
Can labour providers open their branch offices?	<p>Everyone who can work effectively from home must do so. Where people cannot do so they should continue to travel to their workplace.</p> <p>Labour provider branches are not on the list of businesses that must close during this period, but if you do stay open, you must ensure premises are COVID secure.</p> <p><a href="#">ALP Office and Branches Risk Control Checklist</a> collates the actions that government COVID-19 secure guidelines and <a href="#">workplace guidance documents</a> require businesses to put in place to ensure that workplaces are safe. It is a practical tool to support employers to ensure their own workplaces are safe, and acts as an audit prompt for labour providers to ensure their clients are compliant.</p> <p>ALP has published guidance on <a href="#">remote and safer interviewing</a>, which is available from the <a href="#">ALP Coronavirus Support Page</a>.</p>
Transporting workers safely	<p><a href="#">ALP Vehicle Working Risk Control Checklist</a> – from government guidance for <a href="#">Vehicles</a> collates government guidance on the measures that businesses should put in place to ensure that transport services are safe.</p> <p>ALP has also produced <a href="#">Providing safer transport to workers</a> giving guidance on how to ensure social distancing and appropriate hygiene for people traveling on employer provided buses and mini-buses and for people traveling in private cars.</p>
Responsibility for hygiene and social distancing on client premises	<p>Labour providers must ensure that their clients have undertaken risk assessments relating to coronavirus and have mitigated any risk by following the appropriate available guidance such as the <a href="#">general and sector specific guidance</a> for employers and the general guidance on <a href="#">social distancing</a>.</p> <p>ALP Risk Control Checklists for employers and labour providers collate the actions that government require businesses to put in place to ensure that workplaces are safe, covering:</p> <ul style="list-style-type: none"> <li>■ <a href="#">Offices and Branches</a></li> <li>■ <a href="#">Factories, plants and warehouses</a></li> <li>■ <a href="#">Outdoor Work</a></li> <li>■ <a href="#">Vehicle working</a></li> </ul> <p>For more information, please see ALP Member Brief 213, <a href="#">Managing the Health and Safety of Agency Workers</a></p>
Workers coming from different cities in the UK or different	<p>If workers cannot be housed individually, or in families, then they should be housed in 'cohorts' – groups of workers who live, travel and work together - to minimise contact between different groups.</p>



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countries to share houses.	<p>Employers should follow the <a href="#">general guidance</a> for employers, the general guidance on <a href="#">social distancing</a>, the <a href="#">sector specific guidance</a> applicable to their sector and the <a href="#">COVID-19 advice for accommodation providers</a> when allocating accommodation.</p> <p>Useful guidance is available from Agriculture and Horticulture Development Board (AHDB), who with help from ALP and other stakeholders have published '<a href="#">Best practices to avoid the spread of coronavirus for seasonal workers on fruit and vegetable farms</a>'.</p>
Worker wants PPE to protect against infection.	<p>Government guidance states '<i>Workplaces should not encourage the precautionary use of extra PPE to protect against COVID-19 outside clinical settings or when responding to a suspected or confirmed case of COVID-19</i>'.</p> <p>Where labour users own risk assessments require that PPE is provided, then it must be provided for agency workers in the same way as it is for directly employed workers.</p>
Worker wants to wear a face covering at work.	<p>Face coverings are mandatory on public transport and in indoor places where social distancing is not always possible and where you may come into contact with people you would not normally meet. This definition would apply to labour provider branches open to the public.</p> <p>In other workplaces, whether or not face-coverings must be worn will depend on the risk assessment for the business.</p> <p>If the wearing of a face covering is not precluded by hygiene requirements (such as in a food factory) then employers should support workers who wish to wear them.</p> <p>Slightly different rules for wearing face coverings apply in <a href="#">England</a>, <a href="#">Northern Ireland</a>, <a href="#">Scotland</a> and <a href="#">Wales</a></p>
<h3>Symptoms, sickness and statutory sick pay</h3>	
SSP for workers who are self-isolating or sick though COVID-19	<p>When workers are eligible for SSP because of coronavirus, they must be paid SSP from the first day of absence.</p> <p>For more information read ALP Member Brief 208, <a href="#">Statutory Sick Pay for Agency Workers</a> and <a href="#">SSP for agency workers with coronavirus</a>.</p>
Worker who has claimed SSP for multiple periods of self-isolation.	<p>There is no limit to the number of times a worker may claim SSP for self-isolation, subject to the normal cap on SSP payments. Workers with symptoms may take a test to determine whether or not they have coronavirus and may return to work if the result is negative.</p> <p>For more information read ALP Member Brief 208, <a href="#">Statutory Sick Pay for Agency Workers</a> and <a href="#">SSP for agency workers with coronavirus</a></p>
Reclaiming SSP	<p>Labour providers with fewer than 250 workers, may <a href="#">claim back</a> the cost of the first two weeks of each SSP claim which is due to coronavirus.</p>



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Workers without a Fit Note	Isolation notes provide workers with evidence that they have been advised to self-isolate due to coronavirus, either because they have symptoms or they live with someone who has symptoms, and so cannot work. The notes can be accessed through the <a href="#">NHS website</a> and NHS 111 online.
Workers with symptoms who refuse to self- isolate	In order to comply with <a href="#">government guidance</a> and safeguard the health of the rest of your workforce the worker must be sent home and commence a period of self-isolation during which they would be paid either SSP or furlough depending on their qualification, the needs of the business and the date.
Worker self-isolating after travel.	For eligibility for SSP, isolation due to coronavirus is defined as a person who has symptoms of coronavirus or lives with someone who has symptoms of coronavirus.  Therefore, people self-isolating due to a requirement to quarantine after arrival in the UK are not eligible for SSP, unless they also have symptoms of coronavirus, or live with someone who has symptoms of coronavirus.
Assignment ends due to a coronavirus outbreak at the client site.	If the worker has been required to self-isolate by Test and Trace (or equivalent in the devolved administrations) because they have come into contact with someone with coronavirus, then they are eligible for SSP.  Otherwise, since the worker is not sick or self-isolating, there is no requirement to self-isolate and they may be assigned elsewhere.

### Self-isolation and Quarantine

Seasonal Agricultural Workers and the requirement to quarantine	<p>Whilst some agricultural workers are able to work whilst quarantining on the farm they are living on, this <a href="#">exemption</a> applies only to seasonal agricultural workers, undertaking specific activities in edible horticulture on a specified farm, and only on entry to the UK. This means that other seasonal workers such as Christmas poultry workers, must self-isolate for 2 weeks on entering the UK, even if they are living on the farm on which they are working.</p> <p>For the purposes of the exemption:</p> <ul style="list-style-type: none"> <li>■ 'seasonal work' is employment which fluctuates or is restricted due to the season or time of the year,</li> <li>■ 'edible horticulture' means growing protected vegetables grown in glasshouse systems, field vegetables grown outdoors, including vegetables, herbs, leafy salads and potatoes, soft fruit grown outdoors or under cover, trees that bear fruit, vines and bines or mushrooms,</li> <li>■ 'specified farm' means the farm named in that person's passenger information,</li> <li>■ 'specified activities' means crop maintenance, crop harvesting, tunnel construction and dismantling, irrigation installation and maintaining, crop husbandry, packing and processing of crops on employers premises, preparing and dismantling growing areas and media, general primary production work in edible horticulture, activities relating to supervising teams of horticulture workers</li> </ul>
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Workers who are self-isolating working from home	If workers are able to work from home, and they are not too ill to do so, they can work from home whilst self-isolating.
Working from home where 'home' is the farm.	Apart from the exception above, for some types of seasonal agricultural workers entering the UK, self-isolation requires people to stay indoors (apart from a list of limited exceptions) and avoid other people. This would preclude workers self-isolating on a farm from working during their period of self-isolation.
<b>Managing workers</b>	
Worker too frightened to work	Agency workers have a choice as to whether or not they accept an assignment. If they refuse work, there is no entitlement to pay (subject to contract), but employers should not subject workers to detriment, because they refuse work due to feeling unsafe. See <a href="#">ALP Brief: Potential Coronavirus Health and Safety Claims</a> .
Keeping people more at risk from coronavirus workers safe.	<p>People over 60 or those defined as clinically vulnerable, could be at higher risk of severe illness from coronavirus. They should be especially careful to follow the rules and minimise contact with others and should continue to wash their hands carefully and more frequently than usual and maintain thorough cleaning of frequently touched areas in their home and/or workspace</p> <p>Clinically vulnerable people are those who are pregnant, aged 70 or over (regardless of medical conditions) and aged under 70 with an underlying health condition which means they are instructed to get a flu jab each year on medical grounds</p> <p>Vulnerable workers have the same entitlements to furlough or sick pay as anyone else.</p>
Pregnant worker does not want to work because she feels at risk.	<p>As with the worker who is too frightened to work, assuming the environment does not pose any particular risks to the workers, then they have a choice whether or not to accept an assignment, and if they refuse work, there is no entitlement to pay (subject to contract). Since the worker is not sick or self-isolating, there is no entitlement to SSP.</p> <p>Employers should not subject workers to detriment, because they refuse work due to feeling unsafe. <a href="#">ALP Brief: Potential Coronavirus Health and Safety Claims</a> describes the risks of this scenario.</p>
Risk assessment confirms that the environment is not safe for pregnant workers.	If a pregnant worker cannot be kept safe at work, then the labour provider may need to find alternative work or pay the worker until the end of her assignment or until she commences maternity leave (dependent upon her contract). For more information, please read ALP Member Brief 204 - <a href="#">Pregnancy, Maternity and New Mothers</a> .
Clinically extremely vulnerable people at work	People who are defined as <a href="#">clinically extremely vulnerable</a> are at very high risk of severe illness from COVID-19. People in this category will have received a formal shielding notification with additional measures that they should adhere to for the month of November.



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	<p>During November, people who are defined as clinically extremely vulnerable are strongly advised to work from home. If they cannot work from home, they should not attend work for this period of restrictions.</p> <p>If they cannot attend work for this reason, they may be eligible for Statutory Sick Pay (SSP), Employment Support Allowance (ESA) or Universal Credit.</p> <p>They can also be furloughed under the Coronavirus Job Retention Scheme.</p>
Worker insists they are entitled to furlough.	The decision whether or not to furlough a worker lies entirely with the employer – no worker has an entitlement to furlough. For more information see <a href="#">ALP Brief 223</a> - Coronavirus Job Retention Scheme and agency workers.
Worker who has to stay home to look after children requesting furlough.	The decision whether or not to furlough a worker lies entirely with the employer – no worker has an entitlement to furlough. However, workers who are unable to work because they have caring responsibilities resulting from coronavirus can be furloughed. For example, workers that need to look after children can be furloughed.
Worker on long term sick leave requesting furlough.	The decision whether or not to furlough a worker lies entirely with the employer – no worker has an entitlement to furlough. However, if employers want to furlough workers for business reasons and they are currently off sick, they are eligible to do so. In these cases, the worker should no longer receive sick pay and would be classified as a furloughed employee.
Furloughed worker who becomes sick.	Furloughed workers who become ill must be paid at least Statutory Sick Pay. It is up to employers to decide whether to move these employees onto Statutory Sick Pay or to keep them on furlough, at their furloughed rate.

### Working with clients

Client refusing work to vulnerable workers	<p>If a person is refused work because of protected characteristics such as pregnancy, age or disability, they may have grounds for a claim of discrimination under the <a href="#">Equality Act 2010</a>.</p> <p>For more information, please read ALP Member Brief 229, <a href="#">Preventing Discrimination in Labour Provision</a>.</p>
Client insists that workers are furloughed	<p>The choice as to whether or not to furlough agency workers lies with the labour provider.</p> <p>There is a cost to furloughing workers. For the month of November, this is the employers NIC, holiday accrual, statutory pension costs and apprenticeship levy, as well as the cost of administering the programme.</p> <p>Dependent upon the reasons for the labour provider not using the furlough scheme, the client may wish to cover any direct cost of furlough, or indemnify the labour provider against any future cost, for example if a future HMRC audit determines that grant money has to be repaid.</p>



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<p>Client <b>cannot</b> comply with social distancing guidance</p>	<p>Where the <a href="#">guidance</a> cannot be followed in full in relation to a particular activity, businesses should consider whether that activity needs to continue for the business to operate, and, if so, take all the mitigating actions possible to reduce the risk of transmission between their staff. Potential mitigating actions are set out in the ALP Risk Control Checklists, available from the <a href="#">Coronavirus Support Page</a> on our website, and in <a href="#">government guidance</a>.</p>
<p>Client <b>does not</b> comply with social distancing guidance.</p>	<p>The Health and Safety Executive states in its guidance on '<a href="#">Health and safety for agency/temporary workers</a>': <i>'The employment business should not send the temporary worker to a job unless they are satisfied their health and safety will be protected.'</i></p> <p>For more information, please see <a href="#">ALP Brief 213</a> – Managing the Health and Safety of Agency Workers on Assignment.</p>
<p>Client uses workers from another labour provider, who are not self-isolating when they should be.</p>	<p>Labour providers should talk to their client to ensure that they are aware of the issue – it is their responsibility to provide a safe working environment.</p> <p>Labour providers should ensure that their workers are taking the appropriate actions in terms of social distancing and hygiene requirements so that they do not come into contact with people who may not be compliant.</p> <p>Review the clients relevant risk assessments and measures taken to control risk and if you are not satisfied that the measures are appropriate, or if they are not being complied with, then see scenario above. HSE is clear that labour providers should not send workers to a job unless they are satisfied their health and safety will be protected.</p> <p>See ALP Risk Control Checklists from the <a href="#">Coronavirus Support Page</a>, and ALP Brief 213 – <a href="#">Managing the Health and Safety of Agency Workers</a>.</p>

**If you have comments or further scenarios to add, please contact the ALP as per below.**

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