

The impact of Covid-19 on general practices

Some frequently asked questions

Contents

- Can we be forced to open over bank holidays? 2
- Can we cancel booked annual leave? 2
- Can we make staff carry forward annual leave into the next leave year? 2
- Can we force staff to take holiday?..... 2
- What about contractual holiday? 3
- Can we change the work that existing staff do or the way they do it? 3
- What action should you take in relation to pregnant staff who can't work from home? 3
- Are GPs eligible for the new job retention scheme? 4
- Where can I find reliable sources of information about employment issues? 4
- What happens if we can't meet our usual QOF targets or perform our usual range of services due to COVID-19?..... 5
- Will our practice income be affected by COVID-19?..... 5
- Will the new primary care network (PCN) specifications be affected by COVID-19?..... 5
- Can we still make decisions when partners are absent? 6
- What is the effect on obligations to pay rent either by or to the practice under a lease? 7
- Do business rates holidays apply to surgery premises? 7
- How can we execute deeds and documents when partners are in isolation? 7
- Can we enter temporary agreements with NHS bodies and other independent providers? 8
- Can we share confidential patient information with other health organisations? 8

Given the fast pace of change in response to the COVID-19 outbreak, the information in these FAQs is subject to change. These FAQs are informative and should not be relied on as legal advice.

Can we be forced to open over bank holidays?

As a result of GMS/PMS regulations to respond to the COVID-19 outbreak, the definition of "Core Hours" has been temporarily amended in the GMS and PMS Regulations, and APMS Directions so that it may include the May bank holidays. The change of definition applies from 30 March until 30 June 2020.

If employees were not expecting to work on those days and refuse to do so, you would need to check your employment contracts and holiday policies to see whether you could require them to.

Can we cancel booked annual leave?

If you've already approved statutory leave, you can retract approval by giving at least twice the length of notice as the period of leave that has been booked (e.g. ten days' notice for five days' leave). However, you will need to exercise caution and be sensitive to individual circumstances. Normally an employee might ask to be compensated for cancelling travel plans. In the context of COVID-19, they might have made plans to use their leave to take on childcare or other caring duties. Cancelling leave at short notice could be a breach of the implied term of mutual trust and confidence allowing the worker to resign and claim constructive dismissal. Wherever possible, you should avoid doing so without the agreement of the staff members concerned.

Can we make staff carry forward annual leave into the next leave year?

Until 27 March 2020, the rule was that Working Time Directive leave (that's the first four weeks' of statutory entitlement) must be taken in the year it accrues so you couldn't compel (or agree to allow) staff to carry over that portion of leave. However, the government has passed emergency legislation relaxing that restriction with immediate effect. Workers can now carry over any untaken WTD leave where it was not reasonably practicable to take it in the leave year "as a result of the effects of the coronavirus (including on the worker, the employer or the wider economy or society)".

In terms of leave entitlement that accrues under the Working Time Regulations (the remaining 1.6 weeks of statutory entitlement), it's up to employers whether they want to allow staff (by agreement) to carry it over.

Can we force staff to take holiday?

Yes, you can make them take statutory holiday as long as you give notice of at least twice the length of the period of leave that the worker is being ordered to take (e.g. ten days' notice for

five days' leave). In relation to contractual holiday (anything over and above the statutory minimum), you would need to refer to the employment contract and any applicable policies.

What about contractual holiday?

You'll need to check your contracts and policies. In terms of carry over, if staff are entitled to contractual holiday over and above 5.6 weeks' statutory holiday, you could by agreement (either under the contract or by separate express agreement) arrange for it to be carried over.

Can we change the work that existing staff do or the way they do it?

You should first seek to reach agreement to such changes and most staff are demonstrating a great deal of goodwill to enable practices to respond to these challenges. As an employer you do have rights to enforce changes to working practices and ways of working for existing staff. If necessary, you can issue a formal instruction to staff in writing ("a reasonable management instruction") and warn them that failure to comply will be treated as a disciplinary matter. However, the instruction does have to be reasonable in the circumstances and you should obviously have regard to the qualifications, skills and competencies of the staff members concerned.

What action should you take in relation to pregnant staff who can't work from home?

Unfortunately, there is no easy answer to this question. Pregnancy is one of the categories included in the Government's list of vulnerable people, issued on 16 March 2020, which "strongly advises" social distancing and working from home. Given the risk of allowing such an employee to continue working as normal, there are currently at least four possible options:

- The employee signs themselves off work under the new SSP regime and receive SSP or contractual sick pay if applicable. This is likely to be unsatisfactory from the employee's point of view and they might not be willing to do this. It may also amount to indirect pregnancy discrimination.
- Pregnant workers are entitled to a risk assessment and the result will be that it's not safe for them to remain at work. You will then need to suspend the employee on full pay in accordance with regulation 16(3) of the Management of Health and Safety at Work Regulations.
- Depending on how advanced the employee's pregnancy is, she may be able to start her maternity leave early, but you can't force her to do this.
- The final possible option would be to agree to place the employee on furlough leave. Details of the scheme are still emerging, but the latest version of HMRC's guidance was published on 4 April 2020 (click [here](#) for link). If your business is busy and the staff fully occupied during the COVID-19 crisis, it may difficult to argue that furloughing a pregnant member of staff is a genuine alternative to making her redundant. Furloughing vulnerable groups, including pregnant staff, would likely be deemed a proportionate

means of achieving the legitimate aim of protecting the health and safety of vulnerable employees as identified in government guidance.

Are GPs eligible for the new job retention scheme?

While practices are likely to be even more stretched than usual during this period, this does not necessarily mean that they won't need to consider making staffing changes where the type and balance of staff isn't making best use of their staffing budget.

Government guidance released at the end of March (and updated on 4 April – see link below) indicates that GP practices may not be eligible for the new job retention scheme.

The language used in the guidance is a little ambiguous: we can infer that GP practices aren't "expected" to furlough staff, but it's unclear whether sufficient consideration has been given to scenarios where practices have the wrong type/balance of staff. For example, a practice that wants to recruit more medics but reduce administrative staff.

What is clear, is that HMRC intends to audit businesses which receive funding. If employers have effectively been paid twice for the same thing (i.e. their public funding has continued and they have claimed money for the wages of furloughed staff), that could be considered a fraud.

If you are genuinely considering making staff redundant in order to reorganise your workforce, furlough leave may be justifiable. If you are prepared to accept the risk of being rejected for the scheme, or being required to repay the money claimed, you should carefully document your decision-making process so that you can provide evidence later if requested, and you will need to have something to show for the additional money you receive under the scheme.

Where can I find reliable sources of information about employment issues?

[Public Health England and BEIS: COVID-19: guidance for employees, employers and businesses](#) (applicable in England)

[Acas: Coronavirus: advice for employers and employees](#) (relevant to employers throughout the UK).

[HMRC Guidance on Furlough](#)

In these difficult times, separate from the legal points set out above, it's important to take a pragmatic approach to employment issues. If possible, try to agree a consistent and reasonable approach with staff.

We can help you with employment law questions impacting your practice as a result of COVID-19 or generally. Call one of our employment experts or use our free helpline below.

What happens if we can't meet our usual QOF targets or perform our usual range of services due to COVID-19?

Guidance issued by NHS England on 19 March 2020 summarises actions being taken to free up capacity to enable practices to prioritise workload to both prepare for and manage the COVID-19 outbreak. Table 2 of the guidance ([click here](#)) provides a list of the activities that practices may wish to consider suspending if necessary to free up capacity for the COVID-19 response. The commissioners are expected to not take remedial action in such circumstances. In fact, since the letter on 19 March 2020, the GMS and PMS Regulations, and APMS Directions, have been amended to enable NHS England and NHS Improvement to suspend specific terms of the GP contracts to free up capacity. This was confirmed in the letter issued on 14th April 2020.

There are measures in place to protect the QOF activity and income (see below). Click [here](#) to view Hempsons' summary of NHS England and Improvement letters to GP Practices.

Will our practice income be affected by COVID-19?

NHS England have confirmed that the QOF activity for 2019/20 is largely complete and QOF calculations will be made as usual. NHS England will analyse the impact of the COVID-19 outbreak and will make a one-off adjustment for practices who earned less in 2019/20 than 2018/19 as a result of COVID-19 activities.

NHS England have confirmed that QOF income for 2020/21 will be protected as necessary to respond to COVID-19. Current guidance confirms that you will continue to be paid at rates that assume that you would have continued to perform at the same levels from the beginning of the COVID-19 outbreak as you had done previously, including for the purposes of QOF, DES and LES payments.

All GP practices have been asked to consider suspending any private work that they do to help free up capacity. Currently, it is not clear whether loss of income generated by private work will be protected through other government initiatives.

Will the new primary care network (PCN) specifications be affected by COVID-19?

Funding that is attached to the PCN DES in 2020/21 will still be available to any practices that sign up to the DES.

The introduction of the structured medication review (SMR) and medicines optimisation service specification, which fall under the PCN DES, will be postponed, in the first instance, until October 2020.

PCNs have been told to make every possible effort to start work on the early cancer diagnosis as planned, unless work to support the COVID-19 outbreak interferes.

The introduction of an incentive scheme as part of the investment and impact fund (IIF) will be deferred for at least the first half of 2020/21. However, investment for the first two-quarters of 2020/21 (27p per weighted patient) will be recycled and paid to PCNs as support funding.

Given the importance of delivering a coordinated service to care homes, the Enhanced Health in Care Homes service requirements will continue in line with the dates set out in the 2020/21 GP contract deal, and NHS England will ensure alignment with COVID-19 pathways.

The additional workforce under the ARRS will be critical to the COVID-19 response. However, NHS England recognises that PCNs may need more time to consider their workforce needs. The deadlines to submit additional workforce planning templates will be delayed from 30 June to 31 August 2020 and the requirement for CCGs to redistribute unused additional roles funding to other PCNs will also be postponed until the end of September 2020.

PCN clinical directors may also delegate many of their functions to a non-clinician where appropriate to free up capacity for their response to the COVID-19 outbreak. The core PCN funding (£1.50/head) and clinical director funding may both be used to secure additional non-clinical support to the clinical director and to support the COVID-19 response. [The Network Contract DES for 2020/21](#) has now been published to reflect this, with a cover note and guidance.

Can we still make decisions when partners are absent?

If you have partners who are absent because they are self-isolating or ill, there is no legal reason why a meeting cannot take place with partners in several different places via telephone or video link provided that all the participants can hear what the others are saying and be heard themselves. You might also be able to obtain the agreement of partners to certain matters by email. However, you will need to check your partnership agreement as some agreements specify that certain decisions can only be taken in meetings or that meetings can only take place in a specific location or with partners physically present.

Whichever method is used to take decisions, you need to ensure that you meet the requirements for quorum i.e. the minimum of partners that must participate in the decision and that the requisite majority is obtained. This could of course be more challenging if there are a number of partners absent from the practice.

The usual rules of your partnership agreement will apply in relation to giving notice of meetings, the number of votes required to making decisions and the ability to appoint a proxy. Your partnership agreement might allow you to give shorter notice or to take decisions with a smaller number of partners where there is a genuine need to take decisions quickly.

You might wish to consider reviewing and updating the decision-making provisions in your partnership agreement to allow a greater degree of delegation and more flexibility to take urgent decisions during the COVID-19 outbreak or other emergency situations.

What is the effect on obligations to pay rent either by or to the practice under a lease?

The government has announced that commercial tenants who cannot pay their rent because of COVID-19 will be protected from eviction. This protection will last until 30 June 2020 but the government has the option to extend the period if needed. However, the guidance is clear that this is not a rental holiday and all commercial tenants will still be liable for the rent.

Whilst GPs fall within the category of commercial tenants, in most cases their rent will be reimbursed under the premises costs directions and, of course, this funding should only be used for the purposes for which it is provided. In any case given the funding arrangements, it is almost impossible to envisage a situation where a GP could argue that they cannot pay the rent due to COVID-19.

If a practice leases space to someone else (eg a pharmacist or dentist), it is possible that a tenant may seek to delay payment of rents as a result of COVID-19. In particular we are aware that a number of dentists (whose rents are not reimbursed) are struggling financially as a result of the impact of the lockdown. It is important to take legal advice prior to engaging in any communication concerning rent arrears with a tenant. There is always a risk of a landlord inadvertently waiving payment of rents as opposed to allowing delay whilst reserving rights to enforce payment at a later date.

Do business rates holidays apply to surgery premises?

No, the business rates holiday introduced by the government only applies to retail, hospitality and leisure businesses and nurseries. As rates are funded under the Premises Costs Directions this should not be an issue for GPs although may affect some of their tenants.

How can we execute deeds and documents when partners are in isolation?

It is possible that practices will need official documents signed while partners are absent from the practice in isolation.

If a partner is in isolation, electronic signature platforms (such as DocuSign and Adobe Sign) may be an effective and efficient way to get documents signed where a witness isn't needed. Alternatively, the documents could be printed, signed and returned perhaps as a scanned copy by email if the parties agree.

However, if you are executing the document as a deed (such as a partnership deed, declaration of trust, lease or Land Registry transfer deed) where a witness is required, the witness must be physically present when the deed is signed. At the time of writing, it is not possible under English law for deeds to be witnessed via video link or other remote means.

The witness cannot be a party to the deed or document (or a beneficiary of it in the case of a will). Generally, we recommend that witnesses are independent of the signatory in case they are required to independently verify the signature at a future date but there is no strict requirement

for the witness to be otherwise independent as long as they can provide evidence that the deed was properly executed. So, although not ideal, there is no legal reason why spouses or family members cannot be witnesses, provided they are not also party to that deed or a beneficiary (if the document is a will). A partner who is isolating at home could therefore ask a member of their household to witness their signature if it is not possible to have the document witnessed by someone more independent.

Otherwise it is certainly preferable from a legal standpoint to use an independent witness (perhaps a neighbour) if this is possible whilst abiding by social distancing rules. Some creative solutions we have heard include having the signature witnessed through a closed window with the document then posted back and forth through a letterbox to enable the witness to sign also (perhaps using disposable gloves to be on the safe side).

Can we enter temporary agreements with NHS bodies and other independent providers?

The government has passed emergency legislation to allow healthcare providers to enter into arrangements to assist with the COVID-19 outbreak, that would otherwise breach UK legislation. Click [here](#) to read our article on this matter. This covers arrangements in relation to sharing information in relation to capacity, deployment of staff, sharing or loaning your facilities, joint purchasing of goods required for the provision of health services and coordinating certain types of activity either generally or in specific geographical areas.

Can we share confidential patient information with other health organisations?

The Secretary of State for Health and Social Care has issued a legal notice to ask that all healthcare organisations, including GP practices, process and share confidential patient information in line with the Health Service (Control of Patient Information) Regulations 2002 (COPI) to help the COVID-19 response, for example by treating and caring for patients and those at risk, managing the service and identifying patterns and risks.

For patients, this means that their data may be shared with organisations involved in the response to COVID-19, for example, enabling notification to members of the public most at risk and advising them to self-isolate.

These notices will be reviewed on or before 30 September 2020 and may be extended by further notice in writing. If no further notice is sent, they will expire on 30 September 2020.

To ensure staff can focus on the response, NHSX and NHS Digital have also made the decision to extend the compliance deadline for the national data opt-out and the final date for submission of the Data Security and Protection Toolkit to 30 September 2020.