

# Coronavirus update for the education sector

Wednesday 25 March 2020 v.3

This guidance looks at some of the most frequently asked questions from members in the education sector. REC will continue to review and update this document.

## 1. Latest on jobs: coronavirus job retention scheme

### 1.1 What is the scheme and how will it help employers?

The Coronavirus Job Retention Scheme allows employers to access [support to continue paying part of their employees' salaries](#) for those employees that would otherwise be laid off during the pandemic.

If you are accessing the scheme you should discuss the matter with your employees informing them that they will be classified as a 'furloughed' worker. This means that they will be kept on your payroll, rather than being laid off. Employees must agree to the classification; however, agreement is likely in the circumstances as the alternative would be layoffs and/or redundancies. Information on how to access the scheme is available [here](#).

The scheme allows employers to claim a grant of up to 80% of employees' wages for all employment costs, up to a cap of £2,500 per month. Unlike the Statutory Sick Pay (SSP) measures that have been announced, the scheme is not restricted to employers with less than 250 employees, however more information is awaited on whether 'atypical workers' will be covered; including agency workers; by the scheme.

### 1.2 What about the other 20% of employees' wages?

You can choose to fund the differences between this payment and the employee's salary, but you do not have to.

Workers whose salary is reduced as a result of these changes may be [eligible for support through the welfare system](#), including Universal Credit.

## 2. Agency workers regulations

[Under the Agency Workers Regulations 2010 \(AWR\), when schools close due to the Coronavirus outbreak but the school's own staff are paid during the closure - should agency workers \(who have completed the 12-week qualifying period\) be entitled to be paid too?](#)

When schools close due to the Coronavirus outbreak, agency workers will not be entitled to receive payment for those days. There are no provisions in the legislation or within the Government's guidance on AWR that states that an agency worker who qualifies for equal treatment should be paid when the hirer shuts down. The only reference to a shutdown is in regulation 7 (8) when calculating the qualifying clock which pauses if there is a temporary cessation in work ordered by the hirer.

If the agency worker is engaged under a Swedish derogation/pay between assignments contract, there is an obligation for the temporary work agency (umbrella company or employment business) to pay them for a minimum of 4 weeks before they terminate the contract. If the agency worker is available for work but there is no work available, the employer will likely have to pay them the minimum agreed rate. The obligation to pay between assignments is applicable until 6<sup>th</sup> April 2020 unless the pay between assignment clause is contractual. Our [guidance](#) has more information on Swedish derogation contracts.

Please bear in mind that if the assignment or contract is terminated as a result of the shutdown, you must adhere to any notice period that is stipulated in the worker's contract.

### 3. Has the REC produced Coronavirus guidance?

The REC has produced [Coronavirus guidance](#) that includes links to governments guidance, healthcare-specific guidance and education-specific guidance. The guidance also deals with issues around SSP, information requirements and general advice on dealing with the virus.

### 4. Right to work checks

The rules have not changed but the REC is aware of the practical issues that this is now causing for members and all businesses. The REC policy team is raising all of these issues with government.

The current guidance is available via the [Home Office](#).

**With regards to the face to face requirement in REC Audited Education, REC fully recognises that the requirement needs to be reviewed at this time and we are presently engaging with relevant stakeholders with a view to reaching a satisfactory and safe solution to this issue as a matter of urgency.**

### 5. Can education agencies now conduct video interviews?

With regards to the face to face requirement in REC Audited Education, REC fully recognises that the requirement needs to be reviewed at this time and we are presently engaging with relevant stakeholders with a view to reaching a satisfactory and safe solution to this issue as a matter of urgency.

### 6. Government guidance on DBS ID checks

#### 6.1 What has changed?

On Thursday 19 March 2020, the government announced that the DBS basic, standard and enhanced ID checking guidance will be changed for a temporary period.

The change will allow:

- ID documents to be viewed over video link

- Scanned images to be used in advance of the DBS check being submitted

The applicant will have to present the original versions of these documents when they first attend their employment or volunteering role. Please see [here](#) for more information.

The changes are effective from Tuesday 24 March 2020.

## 8. REC correspondence with unions

In light of correspondence members have received from unions, we have created a template response which deals with supply teachers and SSP. Please use this link to access the document: [Education sector guide](#) – please note, when you click on the template, it opens in the bottom left of your screen as a Word document.

## 8. Statutory sick pay

### 8.1 What measures have the government announced to support businesses with SSP?

Workers that meet the qualifying criteria will be able to claim SSP (for Coronavirus sick leave) from day one. The SSP will be backdated to Friday 13 March 2020.

The government has announced that all employers with 250 or less employees can recover SSP for absences related to the Coronavirus. The refund will be limited to two weeks per employee.

Many of our members will be small businesses in terms of internal staff (recruitment consultants etc.) but will have large numbers of temporary workers on their books which means that they will be over this threshold. At present this means that the SSP refund provisions will not apply to many agencies, therefore the current SSP provisions present a huge financial risk to these agencies. We are awaiting confirmation on what the government will define as an ‘employee’.

A more detailed note on the changes to SSP can be found in our [Coronavirus guidance](#) which we are updating as changes are announced.

## 9. Holiday pay

### 9.1 How do we calculate holiday for temporary workers and what changes are happening to the way it is calculated?

The entitlement to statutory holiday comes from the Working Time Regulations 1998 (WTR). Under these provisions all workers are entitled to 5.6 weeks / 28 days (12.07%) paid annual leave.

There are different methods of calculating leave entitlements depending on whether or not a worker has normal working hours. For workers whose pay or hours vary, you may find [our holiday pay calculator useful](#).

### 9.1.1 If the worker has normal working hours and the pay doesn't vary dependent on time worked:

A week's pay is the amount which is payable under the contract as if the worker were working a normal week. For example, if the worker gets £250 per week for a 5-day week and takes a week off, the worker should be paid £250 for the time off, and if the worker only takes one day off s/he should get paid £50 for that day.

### 9.1.2 If the worker has normal working hours and pay varies according to time worked or hours worked:

If the individual's pay varies depending on hours worked or time worked then you must look back at the earnings from the previous 12 weeks and average the earnings out over that period (total pay for previous 12 weeks divided by 12 weeks) to determine what a week's pay would be for a week off. (Note, the 12-week period will increase to 52 weeks from 6 April 2020).

### 9.1.3 If the worker has no normal working hours:

In this case a week's pay is calculated using an average of the employee's pay over the previous 12 weeks, disregarding any weeks in which no remuneration was received and going back further than 12 weeks if necessary until you have 12 weeks of pay to work with. You should include all pay received for work done including commission, bonuses, overtime and any other payment made in connection with the individual's work. (See note

## 9.2 Changes coming into force from April:

Regarding 9.1.2 and 9.1.3, on 6th April 2020 the 12-week reference period will change to 52 weeks. So, when calculating holiday pay that will be due after 6<sup>th</sup> April 2020 use the same calculations but instead of going back 12 weeks to average out the earnings, go back 52 weeks. The 52 weeks must be weeks where the worker was actually paid subject to a cap of 104 weeks (i.e. you cannot go back more than 104 weeks to get 52 weeks of work).

You may find the [REC's holiday pay calculator](#) useful. You can see the [REC's guide on holiday leave and pay for employees](#) and the [REC's guide to holiday leave and pay for temporary workers](#) for more information. Please also see the [government's holiday pay guidance for workers without fixed hours or pay](#).

## 10. Key Information Document

### 10.1 Should pension automatic enrolment deductions be shown in the representative example statement section of the Key Information Document (KID) and if so, where?

Pensions deductions should be shown on the representative example of the KID, and where the deduction is statutory, i.e. automatic enrolment pension, then it should be shown at 'deductions required by law'.

If there are additional contractual pension deductions, such as for an enhanced pension then this should be shown at 'other deductions / costs from your wage'.

### 10.2 Should the KID be reissued if the information changes?

If the information on the KID changes after it is initially given to the work seeker, i.e. a new deduction is to be added, then the KID should be updated and the finalised KID sent to the work seeker before the assignment starts. If the information changes after the terms and conditions (as per regulation 14 of the [Conduct of Employment Agencies and Employment Businesses Regulations 2003 \(Conduct Regulations\)](#)) are agreed or the assignment has started, the changed KID needs to be sent within five working days. A copy kept on file for inspection.

### 10.3 Should I give a work seeker multiple KIDs?

If you offer multiple engagement options for a temporary worker you need to provide a K.I.D for each one. So, one for PAYE, one for each umbrella, one for a PSC engagement. This encourages transparency and allows the worker to make an informed decision about what engagement method they want to work through. However, there is no statutory requirement under the regulation to provide different documents, so long as the worker does receive a K.I.D. that is reflective of the payment method they are going to be contracted through that should suffice.

### 10.4 A candidate that we are going to register is already signed up to an umbrella company that they intend to work through, do we still need to issue a KID to them?

Even where a worker is already signed up to an umbrella company it is recommended that you provide them with a K.I.D for this arrangement, and also a standard PAYE arrangement (if you offer it) so that the worker can make a comparison between the options available to them before signing terms. However, there is no statutory obligation to provide a worker with more than one K.I.D. provided they worker receives at least the K.I.D. that corresponds to the way they are actually engaged.

### 10.5 What are the consequences of not providing a KID?

Failure to provide a KID will be a breach of the Conduct Regulations and enforcement will be in the usual way, although EASI have confirmed that they will follow a low-key compliance route for the first 6-12 months - unless an employment business knowingly withholds a KID in which case it will be more serious.

Breach of the Conduct Regulations is a criminal offence. Sanctions, on prosecution, range from fines of up to £5000 to unlimited fines if action is taken in the Crown Court and banning orders which prevent individuals from running an employment agency for up to a maximum of ten years.