

**Personnel
Advice &
Solutions Ltd**

**COUNCIL NEWSLETTER
JANUARY 2022**

Sick Pay for Unvaccinated Employees

IKEA has recently removed Company Sick Pay from staff who need to self-isolate because of Covid exposure, and also those who produce a positive test.

Wessex Water also introduced cuts to sick pay for such workers from the start of January.

Unvaccinated Employees will still be entitled to Statutory Sick Pay at £96 per week if they earn £120 per week or more, but won't be paid their contractual Company Sick Pay which is paid at their normal rate of pay when on sick leave.

These moves have occurred at a time when many Employers are struggling with staff shortages resulting from the rapid spread of the Omicron variant. Infection rates through out the UK have mushroomed, resulting in large numbers of Employees being forced to stay off work, if required to do so by Test and Trace. However, vaccinated workers no longer have to self-isolate if they can continue to produce negative tests, and can attend work.

Obviously having more vaccinated staff within the workforce would be beneficial to Employers, which is why companies such as IKEA and Wessex Water are "incentivising" their workers to be vaccinated.

This raises questions for Town and Parish Councils who provide Employees with NJC sick pay terms. The "Green Book" provides 1 month full sick pay for the first year of service, which increases to 6 months full pay after 5 years' service. Smaller Councils don't have large workforces, and the loss of 2 to 3 people due to self-isolation can be damaging. Clearly it would be better to have those workers back at work rather than having to self-isolate, which they could do if they were vaccinated.

The question therefore is, can those Councils who provide NJC/Green Book sick pay to their Employees, suspend this term of employment to unvaccinated staff?

This option is not without legal risks. The most obvious being a breach of contract/Constructive Dismissal. For a Council to unilaterally impose a change to an Employee's contract without prior consultation, would fundamentally breach it. The risk then for the Council could be to be taken to an Employment Tribunal and have to convince a Judge

that their actions were justified and what any reasonable Employer would do in such circumstances.

Others risks could include claims for Discrimination. Employees with long term health problems may have mitigating reasons for not being vaccinated. To treat them unfavourably in this manner could result in claims for Disability Discrimination. Its worth noting that IKEA are not including pregnant staff in the sick pay exclusions, presumably due to concerns over claims for Sex Discrimination. There could also be a risk of claims of discrimination on the grounds of the Employee's beliefs.

Advice from the CIPD to Employers is to avoid differentiating between Employees in this manner because of the possible legal risks.

PROFILE

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