



## HR ADVICE UPDATE FOR SCHOOLS DURING THE COVID-19 PANDEMIC

April 2020



The following advice is based on the current guidance from the UK Government, local Government Association, and from local authorities where it has been able to ascertain what has been sent to schools.

This **DOES NOT** cover all eventualities and scenarios, and Headteachers and Senior Leaders are asked to direct all relevant queries to the lead HR adviser for the authority. The details of who leads on which authority, along with contact details can be found at the end of the paper.

### 1. Could staff be redeployed to another setting to work?

Technically yes under their contracts of employment, if they state that they can be asked to work at another site. DfE guidance suggests that this could be a possibility as schools close, that staff well/fit enough to work move to support other schools or hubs. If this was the case, the employer school still pays the employee as normal.

### 2. What happens when a member of staff says they don't want to work or is anxious about coming to work in the current situation?

Where a member of staff has anxiety around working and doesn't want to, they should apply for special leave. Whether this is paid or not, or half paid is at the discretion of management and decisions should be taken on a case by case basis.

Where the level of anxiety is such that they are off signed off sick, then they are off sick.

### 3. Staff are showing anxiety around our remote working practices and use of technology and are refusing to engage with elements of it.

Staff should engage and carry out the revised duties you have asked of them. Using any EAP or Education Support resources may help with some triggers. However, if the anxiety is around the use of technology, especially using video tools (YouTube, Zoom, Teams) you will need to understand what the anxiety triggers are, and reassure staff.

When using these tools for the first time as a learning platform, or in a school context generally, you must contact your DPO who will be able to provide you with advice and practical support to ensure that all statutory expectations are met.

Leaders need to ensure that they think about how they communicate, monitor work, and maintain line management structures while using these technologies and continue with remote learning.

### 4. How can we support staff with anxiety and mental health issues at this time?

If schools have an employee assistance programme that can be used by staff, as well as publicly available sources like Education Support <https://www.educationsupport.org.uk/>

**5. Will schools receive additional funding for incurred additional staffing costs?**

The DfE have said that a mechanism will be put in place to reimburse schools for additional occurred costs. Further information can be found at:

<https://www.gov.uk/government/publications/coronavirus-covid-19-financial-support-for-education-early-years-and-childrens-social-care/coronavirus-covid-19-financial-support-for-education-early-years-and-childrens-social-care>

**6. We are getting contacted by Supply Agencies asking if we are going to keep paying for supply staff. What should we do?**

Schools have been contacted from the start of the closure about the continued payment of agency staff. Unfortunately for schools there is conflicting guidance coming from several Government departments that is being referred to in the communications schools receive. The DfE have published some guidance around this as well:

<https://www.gov.uk/government/publications/coronavirus-covid-19-financial-support-for-education-early-years-and-childrens-social-care/coronavirus-covid-19-financial-support-for-education-early-years-and-childrens-social-care>

The Agency Worker Regulations gives qualifying agency workers (they have been on assignment for 12 weeks or more) the right to equal treatment in terms of "*basic working and employment conditions*", which in this context could mean, if a comparable employee is being paid during the workplace closure period, then the agency worker may be entitled to be paid.

The entitlement is only for the duration of the assignment if they qualify under the regulations. This is easy where the assignment is for a week or a term for example, but where it is an open-ended assignment, then schools will need to be think about when the deployment might have reasonably ended.

Where agency workers are not on live assignments with schools, or where a previously agreed assignment is due to end, schools and agencies should discuss any further demand for the worker. If there is no further demand, the agency can apply to furlough the worker via the Coronavirus Job Retention Scheme. Where an agency considers it might use the job retention scheme, then you could agree to top up the balance, so the worker doesn't lose out. You also need to bear in mind that where an agency worker is furloughed, they cannot be deployed for a minimum three-week period. Schools should also consider longer term relationships with supply staff and agencies in making decisions.

Where schools do not believe that they have a commitment, then they should push back and advise that they are happy for the agency to furlough the worker. Schools should be aware that HMRC will be scrutinising the use of the CJRS and it may be that where they feel schools should have paid for the agency worker, HMRC may instruct agencies to invoice schools retrospectively for the 80% payment.

Where schools are going to be paying for the duration of the lockdown, unless agency staff are required under the Government/PHE guidance to self/household isolate or shield, these staff should be deployed like other school staff. It may be possible for some agency staff to remote work. This in turn will free up other staff who can be used for forward planning, preparation, curriculum work, outreach etc. Remember that staff can be reasonably redeployed with training where needed, so that would work in this scenario.

Where schools do pay, they need to make it clear that this is an open book operation and that suppliers will need to make available to the school any data, including from ledgers, cash-flow

forecasts, balance sheets, and profit and loss accounts, as required and requested to demonstrate the payments made to the supplier under contract have been used in the manner intended. This falls under contract guidance, but also fits this scenario.

## 7. Can we furlough staff?

There is an expectation that organisations in receipt of public funds will not furlough their employees, as they are already receiving fund to pay for employee salaries.

However, where staff are paid entirely or in part from private income streams (ie they are not publicly funded) then it is possible to furlough staff. The DfE have published guidance on this, including five tests they feel will need to be met:

<https://www.gov.uk/government/publications/coronavirus-covid-19-financial-support-for-education-early-years-and-childrens-social-care/coronavirus-covid-19-financial-support-for-education-early-years-and-childrens-social-care>

They are also clear that they will be looking at the claims that schools make to ensure that there is not duplication of funding and will be looking to develop a mechanism to reclaim any duplication of payment.

Where schools are looking to furlough staff that are funded through private streams, they should be transparent in their thinking and produce a separate business case detailing the staff involved, the costs, loss of income and how the five tests are met, and be prepared to share this where required so the claim operates as an open book operation.

### HR Team Roles and LA Leads

HR Team Member	Role	Lead for	Contact Details
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