

## Coronavirus and PPE: Managing Employment Issues in social care

Few employees on the front line of the coronavirus effort in the care sector have the option of working from home. Managing staff who are understandably concerned about attending work is tricky and each case needs to be considered on its merits. To further complicate matters, different rules apply depending on whether the member of staff in question, or someone they live with is vulnerable, shielding or is experiencing symptoms of COVID-19 and you need to check that any action you take in those circumstances is consistent with the applicable government guidance.

Ultimately, managers have a right to issue the employee with a “*reasonable management instruction*” to attend work, or else be subject to a disciplinary process. But the key word is “reasonable”. If the employee is dismissed and brings an unfair dismissal claim, or resigns and brings a constructive dismissal claim, then an employment tribunal will look at the circumstances of the case and whether the employer acted reasonably, taking account of the employee’s circumstances at home as well as at work. Furthermore, if an employee is classed as disabled, a tribunal may consider it discriminatory to take disciplinary action against them (or withhold pay) for not attending work.

An employee who is found to have been dismissed because they raised a health and safety concern, or because they refused to work in a workplace found to be dangerous, may be able to claim unfair dismissal without the usual qualifying service of two years’ employment. These circumstances could conceivably apply where there is shortage of appropriate PPE, or where they are dismissed for bringing their own PPE to work. A complaint that the workplace is unsafe could also amount to a protected disclosure, and so the employee would have the additional protection against detriment and dismissal on the grounds that they are a whistle-blower.

Disciplinary action in these difficult circumstances is inevitably high risk. Cases should be carefully documented, and expert advice sought at every stage.