

Subsidiary Legislation made under s.36.

Employment (Self-Isolation) Pay Order 2020

LN.2020/426

Commencement **27.11.2020**

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In exercise of the powers conferred on him by section 36 of the Employment Act, and all other enabling powers, the Minister has made the following Order–

PART I – TITLE, COMMENCEMENT AND INTERPRETATION

Title.

1. This Order may be cited as the Employment (Self-Isolation) Pay Order 2020.

Commencement and Duration.

2. This Order comes into operation on the day of publication and shall continue for the Relevant Period.

Interpretation.

3. In this Order–

“Certificate of Self-Isolation” means a certificate issued by the Gibraltar Health Authority, the Director of Public Health or any medical practitioner registered in any member state of the European Community advising a person to self-isolate but does not include:

- (i) a person that has been advised to shield because they or a household member are at very high risk of severe illness from Coronavirus; or
- (ii) a person who has received a Sick Note for Guardian or Dependent in Household Isolation certificate issued by the Gibraltar Health Authority or the Director of Public Health.

“Coronavirus” means the coronavirus (SARS-CoV-2) also known as the coronavirus disease (Covid-19);

“qualifying day” means a day on which an employee is on Self-Isolation Leave or on statutory full day sick pay entitlement under the Employment (Sick Pay) Order;

“Relevant Period” means the period commencing 1 October 2020 up to the earlier of the date announced by the Minister stating that the COVID-19 pandemic is over by notice in the Gazette or 31 September 2021 (or such later date as the Minister, in consultation with the Leader of the Opposition unless it is not practicable to do so, may determine by notice in the Gazette);

“self-isolation” in relation to a person means a person who has separated themselves from any other person in such a manner as to prevent infection or contamination (with Coronavirus)-

- (a) at a designated facility;
- (b) in that person’s home;
- (c) in a hospital; or
- (d) at another suitable place;

“Self-Isolation Leave” means leave granted by an employer to an employee to whom Part II applies, subject to the conditions set out in paragraph 5;

“Self-Isolation Pay” means the sum of £52.50 per day;

“Working Day” means means–

- (a) in the case of an employee conditioned to a 7 day week any day other than a public holiday;
- (b) in the case of an employee conditioned to a 5 ½ or 6 day week a day other than a public holiday or a Sunday;
- (c) in the case of an employee conditioned to a 5 day week or lesser period a day other than a public holiday, a Saturday or a Sunday.

PART II – EMPLOYEE SELF-ISOLATION PAY

Application.

4.(1) This Part shall not apply to:

- (a) public sector employees;
- (b) employees who remain able to work notwithstanding their self-isolation as determined by the employee; and
- (c) self-employed persons.

(2) Government reserves the right to exclude from this Order employers who are predominantly reliant on Government as their main source of income.

Self-Isolation Leave entitlement.

5.(1) An employer shall allow an employee to whom this Part applies Self-Isolation Leave subject to the following conditions—

- (a) that the employee is registered with the Department of Employment;
- (b) that the employee-
 - (i) has exhausted the entirety of their statutory full day sick pay entitlement under the Employment (Sick Pay) Order and is issued a Certificate of Self-Isolation for a period within the Relevant Period; or
 - (ii) is sick within the Relevant Period but unable to claim their statutory full day sick pay entitlement under the Employment (Sick Pay) Order by reason of them having received a Certificate of Self-Isolation thereby exhausted the entirety of their statutory full day sick pay entitlement under the Employment (Sick Pay) Order;
- (c) that the employee reports his self-isolation to his employer within 14 days of his absence from employment on account of such self-isolation;
- (d) that the leave is granted for an aggregate maximum of ten Working Days within the Relevant Period; and
- (e) that the employee provides a Certificate of Self-Isolation to their employer.

(2) An employee who is on Self-Isolation Leave shall waive their right to their contracted salary for this period and shall have a right to be paid the Self-Isolation Pay rate for each day that they are on Self-Isolation Leave.

(3) Self-Isolation Leave shall not be deducted from an employee's holiday leave or sick leave entitlement.

(4) Self-Isolation Leave shall not be paid in kind or by way of the provision of board or lodging or of services or other facilities.

Self-Isolation Pay claim by employer.

6.(1) Government shall pay an employer who allows an employee Self-Isolation Leave under this Part and makes a claim to Government, an amount calculated as the Self-Isolation Pay for each day of Self-Isolation Leave, subject to the following conditions—

- (a) that the claim is a valid claim under this Order;
- (b) that the claim is made within 14 days of the last date that the employee is advised to self-isolate within the Certificate of Self-Isolation;
- (c) that the claim is made in such manner as may be determined by Government from time to time;
- (d) that the claim is limited to an aggregate maximum of 10 days within the Relevant Period per employee;
- (e) that a claim is limited to the number of days specified within a Certificate of Self-Isolation that is the subject to the claim;
- (f) that the employer has paid the employee the Self-Isolation Pay due to the employee under this Part; and
- (g) that no more than three claims are made in respect of the same person within the Relevant Period.

Records to be maintained by employers

7. Every employer shall maintain for 12 months after the end of the Relevant Period a record, in relation to each employee of his, of—

- (a) any day in that Relevant Period on which, according to information supplied by or on behalf of the employee, the employee was in self-isolation and by reason of their self-isolation was unable to work;
- (b) any day recorded under subparagraph (a) for which the employer did not allow Self-Isolation Leave to an employee;
- (c) the reason why the employer did not allow Self-Isolation Leave to an employee under subparagraph (b); and
- (d) the days which were qualifying days as between that employer and that employee in each Relevant Period.

Provision of information in connection with determination of questions

8. Any employer claiming to be entitled to Self-Isolation Pay or any employee claiming to be entitled to Self-Isolation Leave shall, if they receive a notification from the Director of Employment that any information is required from them for the determination of any

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question arising in connection therewith, furnish that information to the Director of Employment within 10 days of receiving that notification.

PART III – SELF-EMPLOYED SELF-ISOLATION PAY

Application.

9.(1) This Part shall only apply to a person who is registered as self-employed with the Department of Employment throughout the Relevant Period.

(2) This Part shall not apply to a self-employed person who remains able to work notwithstanding their self-isolation.

Self-Isolation Pay claim by self-employed person.

10.(1) Government shall pay a self-employed person to whom this Part applies and who makes an application to Government, an amount calculated as the Self-Isolation Pay for each day of self-isolation as advised by the Certificate of Self-Isolation, subject to the following conditions–

- (a) that the claim is a valid claim under this Order;
- (b) that the claim is made within 14 days of the last date that the person is advised to self-isolate within the Certificate of Self-Isolation;
- (c) that the claim is made in such manner as may be determined by Government from time to time;
- (d) that the claim is limited to an aggregate maximum of 10 days within the Relevant Period;
- (e) that a claim is limited to the number of days specified within a Certificate of Self-Isolation and within the Relevant Period; and
- (f) that no more than three claims are made in respect of the same person within the Relevant Period.

Records to be maintained by self-employed person

11. Every self-employed person shall maintain for 12 months after the end of the Relevant Period a record of any Self-Isolation Certificate that is the subject of their claim.

Provision of information in connection with determination of questions

12. Any self-employed person claiming to be entitled to Self-Isolation Pay shall, if they receive a notification from the Director of Employment that any information is required from them for the determination of any question arising in connection therewith, furnish that information to the Director of Employment within 10 days of receiving that notification.

PART IV – SELF-ISOLATION PAY EXCLUSIONS AND PENALTIES

Exclusions.

13. Any person who without reasonable excuse contravenes or fails to comply with any provision of this Order may be excluded from any BEAT COVID-19 waiver measures paid from the BEAT COVID-19 Response Fund that may be announced by Government.

Offences.

14.(1) A person shall be guilty of an offence if that person—

- (a) intentionally, or recklessly fails to comply with this Order; or
- (b) intentionally, or recklessly includes any false, inaccurate or misleading information in their claim for Self-Isolation Pay.

(2) A person guilty of an offence under this Order is liable—

- (a) on summary conviction, to imprisonment for a term not exceeding six months or a fine not exceeding the statutory maximum, or both;
- (b) on conviction on indictment, to imprisonment for a term not exceeding seven years or a fine, or both.

(3) If an offence under subparagraph (1) which was committed by a person is proved to have been committed for the benefit of a corporate body, irrespective of whether that person acted individually or as the holder of a position in or as the agent of the corporate body, the corporate body commits a similar offence.

(4) If an offence under subregulation (1) was committed by a person (“P”)—

- (a) by reason of the failure, by any director, manager, secretary or other similar officer of the body corporate, to adequately supervise or control P; and
- (b) where the corporate body benefitted from the commission of the offence,

the corporate body commits a similar offence.

Civil debts.

15.(1) A person who is determined by the Director of Employment to have intentionally, or recklessly failed to comply with these regulations or intentionally, or recklessly included any false, inaccurate or misleading information in their claim for Self-Isolation Pay shall be liable to pay the COVID-19 Response Fund the sum produced by multiplying 3 by the total amount of the Self-Isolation Pay received or claimed in the Relevant Period.

(2) A payment due under subparagraph (1) is a debt due to Government and recoverable as a civil debt.

(3) A person who is liable to a payment under subparagraph (1) shall in addition to that payment also be liable to repay all Self-Isolation Pay received in the Relevant Period.

(4) A repayment due under subparagraph (3) is a debt due to Government and recoverable as a civil debt.

(5) An appeal shall lie to the Magistrates' Court from a determination made under subparagraph (1), and on any such appeal the court may either confirm, amend or set aside the payment and repayment.

(6) If a person who is liable to make a payment under subparagraph (1) has claimed on behalf of a body corporate, and there is a failure to make any payment or repayment under this Order, that payment or repayment, or such part thereof as remains unpaid, shall be a debt due to the COVID-19 Response Fund jointly and severally from any directors of the body corporate.

Consultation where practicable.

16. Unless it is not practicable to do so, the Minister shall consult with the Leader of the Opposition prior to the Minister making new any new Order amending, extending or replacing the effect of this Order.