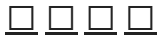


# Some assembly required to follow IKEA's sick pay cut for unjabbed staff

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Image



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As more and more global employers consider penalising workers who refuse covid vaccinations, it has been reported that flat-pack furniture giant IKEA has cut sick pay for unvaccinated UK staff required to self-isolate following exposure to the virus.

While the Dutch-headquartered multinational's employment contracts entitle its approximately 10,000 UK-based workers to enhanced sick pay, some unvaccinated employees will now only receive the statutory sick pay minimum of £96.35 a week.

“Fully vaccinated co-workers or those that are unvaccinated owing to mitigating circumstances which, for example, could include pregnancy or other medical grounds, will receive full pay,” the Swedish retailer said in a statement.

“Unvaccinated co-workers without mitigating circumstances that test positive with covid will be paid full company sick pay in line with our company absence policy. Unvaccinated co-workers without mitigating circumstances who have been identified as close contacts of a positive case will be paid statutory sick pay.”

IKEA's move comes as businesses seek to mitigate the impact of covid on staff absences, especially at a time when the more transmissible omicron variant has set infection rates soaring worldwide. While vaccinations do not fully protect people from infection, it does reduce transmission rates.

In England, updated guidance means people with at least two doses of vaccine need not self-isolate if they have been in close contact with someone infected with covid. However, by law, the unvaccinated must continue to self-isolate for ten full days after being exposed to the virus.

“Given the high case numbers at the moment it’s feasible for unvaccinated employees to need to self-isolate multiple times and in certain sectors, such as retail, where working from home is not possible, this is causing major disruption for some businesses,” said Laura Farnsworth, a partner at Lewis Silkin.

The new policy adopted by IKEA and other employers, including supermarket Morrisons and utility provider Wessex Water, requires careful planning.

“Employers may previously have extended payment of company sick pay to cover self-isolation as a close contact – even though the individual isn’t sick – but have decided to withdraw that concession now that the rules have changed so that fully vaccinated individuals can continue to work,” Farnsworth continued.

“It’s important to make this distinction in any policy and continue to pay full sick pay to those who have tested positive, whether vaccinated or not, to encourage them to self-isolate.”

Businesses considering the IKEA route should first check the wording of their sick pay policies – or any previous announcements to staff about entitlement to pay when self-isolating – to ensure they have not created a contractual entitlement to pay in these circumstances, which could be difficult to withdraw, Farnsworth advised.

Further, any employer looking to differentiate between employees for sick pay purposes for any reason needs to consider whether that reason could be discriminatory, added Raoul Parekh, a partner at GQ|Littler.

“Covid-19 vaccination status isn’t a protected category, like age or race, but there’s still a possibility that a move like this could be indirectly discriminatory. For example, vaccination rates are generally lower in pregnant women than the population as a whole, likely due to initial uncertainty about vaccine safety for this group.”

However, Parekh said this risk can be addressed by ensuring employees’ specific circumstances are taken into account. “It’s been clear from the reporting of IKEA’s policy change that they are doing this, with ‘mitigating circumstances’ being considered before any deduction.”

The head of Lewis Silkin’s rockhopper service added: “If an individual’s job can be done at home on a temporary basis then that should be the primary response if someone is identified as a close contact, rather than sick leave, in which case they should receive their normal pay during that period. The policy should make this clear.”

Operating such a policy will also require employers to know whether their staff are vaccinated or not, raising data protection implications. “Vaccination status is special category data so employers should ensure they comply with the relevant data protection obligations, including carrying out a data protection impact assessment,” Farnsworth said.

Parekh added: “Employers have rightly been cautious about gathering this data, since doing so requires a solid justification under GDPR. However, just as governments have moved to using vaccination status as a factor for deciding whether people can attend mass events or work in care homes or even introducing vaccine mandates, so employers have become more comfortable with this.

“With a properly thought through justification, it’s likely employers can find a lawful basis for this use too, but they will need to ensure it is properly documented and communicated to employees.”

Finally, as debate over no jab, no job policies rage, IKEA’s move should not be confused with a mandatory vaccination policy, Farnsworth warned. “Employees may choose not to be vaccinated and continue in their role. It just impacts on the pay they will receive if they have to self-isolate as a result of being a close contact.”