

# The Coronavirus Act 2020 Emergency Volunteering Leave



# The Coronavirus Act 2020: Emergency Volunteering Leave (EVL)

## What is EVL?

EVL is legislation permitting anyone (employees or workers) to take statutory unpaid leave to carry out both coronavirus-related, and non-coronavirus related essential services. EVL is a new, temporary, statutory right and is available for eligible workers to take Emergency Volunteering Leave to help the Health and Social Care system in response to the Coronavirus outbreak. EVL has been introduced in the Coronavirus Act 2020, which received Royal Assent on 26 March 2020. Although technically in force, a statutory instrument must now be passed in order to implement EVL.

## Q: How long could EVL last?

A: In order to ease the impact on business, EVL will be limited to being taken in blocks of two, three or four consecutive weeks in any 16-week period per volunteer.

## Q: How does a worker apply for EVL?

A: A worker is entitled to be absent from work on EVL for the period specified in an emergency volunteering certificate (EVC) provided, not later than three working days before the first day of the period specified in the EVC, the worker:

- notifies their employer in writing of their intention to be absent from work on leave for the period specified in the EVC; and
- provides their employer with a copy of the EVC.

## Q: How does a worker obtain an EVC?

A: An EVC may be issued by an appropriate authority (NHS bodies, local councils, London borough councils etc), and must certify that the worker:

- has been approved by the authority as an emergency volunteer in health or social care (no other functions have been identified in the legislation); and
- will be acting as an emergency volunteer in health or social care from the date and for the period specified in the certificate.

The government intends to publish guidance on how individuals can apply, and how public authorities assess applications and grant EVCs.

## Q: Will I have to pay the worker during EVL?

A: No - the employee will be compensated by the Secretary of State for Health and Social Care for loss of income and expenses. The appropriate rate of compensation has not yet been determined by the government.

## Q: Do other terms and conditions of employment continue during EVL?

A: During their period of leave, an employee who takes EVL is:

- entitled to the benefit of all of the terms and conditions of employment (not including wages or salary, but employers must continue to meet pension contributions and other benefits) which would have applied if the employee had not been absent (i.e. they will continue to accrue annual leave); and
- bound by any obligations arising under those terms and conditions (except in so far as they are inconsistent with the taking of EVL).
- Employees on EVL are protected against detrimental treatment and dismissal as a result of taking, or requesting to take, EVL. In fact, any such dismissal will be deemed to be automatically unfair and the compensation for such a claim is uncapped. Importantly, employees do not need to have two years' employment in order to bring a claim for unfair dismissal in these circumstances. However, the employer may be able to significantly reduce the compensation award where it can show it would have made the employee redundant as a result of Covid-19.

**Q: Is the worker entitled to return to work at the end of EVL?**

A: Workers on EVL have the right to return to the job in which they were employed before the absence:

- with the same seniority, pension and similar rights as they would have had if they had not been absent; and
- on terms and conditions no less favourable than those which would have applied if the employee had not been absent.

**Q: Can I refuse to agree to EVL or request deferral?**

A: The legislation provides exemptions for "micro businesses" (businesses with less than 10 employees), civil servants, the military, police and parliamentary and commission staff. There is a power for the Secretary of State to add to the list of exemptions. There is no process in the legislation entitling the employer to defer unilaterally a period of EVL to a more convenient time.

**Q: How does the EVL scheme work for employees who are furloughed?**

A: How compensation under the EVL scheme will interact with the CJRS has not yet been determined – e.g. whether employees will be able to claim compensation under the EVL scheme if they choose to participate in the EVL scheme while also furloughed under the CJRS.

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