Business Clinic Whether it's a legal, tax, insurance, management or land issue, *Farmers Weekly*'s experts can help

How to handle staff who ignore coronavirus advice

Q What are an employer's rights on staff observance of self-isolation and other measures?

We have a key worker who is not following the unnecessary travel rule. I do not know who they see or what they do when they go off farm, and I am concerned it will lead to coronavirus infection on farm.

There is a big issue with younger staff not taking this seriously, and some of them live on site. Can employers force them to self-isolate for 14 days, put them on statutory sick pay (SSP) – unless their contract entitles them to more – and can we dock wages or take other measures?

FLPA/ROBERT CANIS/SHUTTERSTOCK

Natalie Ward
Senior associate
Thrings

A In these unprecedented times, employers face a difficult balancing act between continuing normal business activities and safeguarding employees.

Current government guidance states that where an individual does not present Covid-19 symptoms, people need to practise social distancing and, where possible, stay at home.

There are no "employer's rights" in relation to ensuring staff observe guidelines. But if police believe an individual has broken self-isolation rules – such as meeting with others outside their household, or if an individual refuses to follow instructions – they may issue them with a £60 fixed-penalty notice.

Furthermore, a business operating in contravention of the social distancing measures (such as ensuring a 2m distance for working) may also be committing an offence.

An employer cannot force an employee to self-isolate or to take sick leave and claim SSP unless they are genuinely showing signs of illness, or someone they share accommodation with is showing symptoms of Covid-19. To do otherwise may breach the trust and confidence of that employee (an implied term of their employment), as well as rendering you unable to reclaim SSP because some or all of the eligibility criteria have not been met.

We note that some or all of your staff live on site and the risk of bringing the virus onto the farm is heightened. Our recommendation is to write to all staff reminding them of their obligations for self-isolating and social distancing and the associated penalties, and set out your expectations that they adhere to this strictly.

You should highlight their personal duty under the Health and Safety at Work Act – to take care of their own health and safety, as well as that of others who may be affected by their actions at work; and of the specific risks to the business and their colleagues as a result of their failure to adhere to government guidelines. You could state that you take breaches extremely seriously, and those who fail to comply will be at risk of disciplinary action.

This will put you in the best position to commence a disciplinary investigation if you believe an employee is refusing to self-isolate or follow guidance on social distancing, thereby putting themselves and others at risk.

Suspension may be an option while a disciplinary investigation is under way, where an individual who has been advised to self-isolate refuses to do so, but it should not be a knee-jerk reaction, and is not generally unpaid.

However, this may not achieve your objective in relation to them bringing the virus onto the farm. You would not be able to prevent them from leaving the farm for permissible reasons, such as to obtain medical or food supplies and for daily exercise.

Specific legal advice should be sought beforehand in order to prevent any possible unfair dismissal or breach of contract claims arising as a result of suspension.

In the meantime, it might be a good idea to have a quiet word with the individual who you suspect has been flouting the rules, and calmly express your genuine concern. You will want to have some evidence that they are travelling unnecessarily, but bear in mind that general employment law principles still apply, and covert monitoring of employees remains a controversial and often unlawful practice.

This is a rapidly changing area, and while correct at the time of writing, circumstances surrounding the coronavirus lockdown may have changed. We recommend you continue to monitor updates to government guidance.

DO YOU HAVE A QUESTION FOR THE PANEL?

Outline the issue in no more than 350 words and *Farmers Weekly* will put your question to a member of the panel. Please give as much information as possible. Email your enquiry to **fwbusinessclinic@rbi.co.uk**. Please include your telephone number.

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Is partnership eligible for income support scheme?

Q I farm in partnership with my wife and son. Will we qualify for the self-employment grant that has been announced due to the effects of the Covid-19 pandemic and, if so, how do we claim?

Andie Ritchie
Head of rural
Baldwins

A The self-employment income support scheme was launched by the government to provide financial grants and will open in May. Sole traders or members of farming partnerships could be eligible to claim assistance, but must be able show that they will have lost or will lose trading profits due to the pandemic.

Many who have been affected through increased costs or reduced market prices will be eligible. Dairy, fruit and vegetable farmers will certainly see higher costs and possible price reductions in the case of milk. Some livestock farmers will have suffered lower auction prices for beef and lamb.

The scheme will allow self-employed farmers and contractors to claim a taxable grant worth 80% of their trading profits, up to a maximum of £2,500 a month.

In the case of a farming partnership, the grant is available for each partner, so it is the individual rather than the business who claims it. Initially, the grant will cover a period of three months to May 2020, but may be extended by the government.

HMRC has clarified the basis of calculating trading profits for the grant. Profits will be based on previous taxable profits, but before the use of farmers' averaging and any brought-forward losses.

For farming businesses trading through the tax years 2016-17, 2017-18 and 2018-19, the trading profits will be based on an average of those three tax years. For those who have been self-employed for a shorter period, it will be based on an average calculation.

Any person with average profits higher than £50,000, and those who have more than half their taxable income from non-trading income, will not qualify. This could include self-employed farmers who also receive the majority of their taxable income through pension or diversified income, such as furnished holiday lets.

HMRC will be contacting taxpayers by mid-May to invite them to make a claim. If successful, the grant will be paid in one instalment direct into the individual's bank.

TIM SCRIVENER

Can we take advantage of biodiversity offsetting?

Q There is a lot of proposed housing development in our nearby town. We have 80ha of arable land we would consider developing, but have been told it is too far from the town.

I have heard of biodiversity offsetting and wondered whether we might be able to benefit from this. How does it work and what are the advantages of getting involved as a landowner?

Mark Russell
Partner
Carter Jonas Rural

A Biodiversity net gain (BNG) is a developing area that's confirmed in the latest National Planning Policy Framework and will be reinforced in the Environment Bill. The overarching concept is that any development scheme will need to increase biodiversity by 10%.

Securing this increase will vary greatly between schemes. For example, where 150 homes are built on 8ha of arable land, the required uplift may be achieved on site, thanks to play parks, gardens and open space with careful planting.

However, development on more sensitive land with a higher initial biodiversity level, and/or close to the urban edge, may struggle to provide uplift on site. In such cases, the developer will be able to provide the uplift on other nearby land, with a farmer or landowner improving biodiversity and receiving a payment in return.

Where a developer can't manage this, the final option is to pay into a fund for nationally important biodiversity schemes – and there will be opportunities for farmers and landowners to get involved in these. However, from what you've said, offering biodiversity offsetting to local developers could well be an option for you.

The first step is to get an approximate assessment of the biodiversity uplift you might achieve on the land you're willing to take out of production. You'll need expert advice on this. Once this is established, you'll need to be matched with a developer looking to implement their biodiversity uplift offsite.

Then it comes down to negotiating an agreement. This could be a one-off payment up front, which could be the better route if a significant outlay from you to achieve the biodiversity is required. On the other hand, a regular payment might work better, or a combination of both. In any case, the total will need to be more than you'll get from farming for this to be an economic option.

There currently aren't any guidelines as to the "value" of biodiversity offsetting. It is essentially an open market, with payment levels affected by supply and demand of suitable land.

There are lots of ways to improve biodiversity. If you were thinking of putting a site down to trees or to change management practices to farm without fertiliser, you could receive a payment from the developer for this.

Perhaps you have land adjacent to a Site of Special Scientific Interest or other designation – by managing your land in a certain way, there might be a biodiversity gain on your land and a knock-on benefit to the neighbouring ecological site. Again, you could be paid for this specific management programme.

Most farmers/landowners will prefer to retain ownership, but you might be prepared to sell the site to the developer for them to build into their scheme.

Aside from the immediate financial benefit, another upside is that you're building into your business a resilient diversification based on land stewardship.

There are downsides. First, land may be tied up for many years, depending on the deal with the developer, so you may miss out on future opportunities. There may also be inheritance tax implications, on which you should seek expert advice at the outset.