

The Covid-19 Crisis – Returning to Work Briefing

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The Covid-19 Crisis – Returning to Work



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As the Government continues to ease some lockdown restrictions and people return to work, there are both short term challenges for businesses with continued social distancing requirements as well as long term changes to the way we work. Effectively managing these issues is likely to require a combination of following up-to-date government guidance as it now evolves, amending relevant working policies and, in some instances, contractual variations. We highlight below some of the key short and longer term issues we see arising over the coming months.

Short Term Challenges

Returning to work and social distancing

- **Health and safety:** These issues will underpin all return to work strategies. As well as keeping a close watch on government guidance, employers remain bound by the existing framework of health and safety legislation in the UK. Maintaining employee confidence will be key. Risk assessments should help address concerns as to whether open plan offices provide sufficient protection, what is considered a safe capacity for the workplace and how to ensure social distancing in shared spaces such as staircases, corridors, canteens and production/manufacturing areas. Many employers are already working on a staggered or rotational basis by splitting the workforce into teams that alternate between working from home and attending the workplace when necessary. This not only creates more space for social distancing but limits interactions between distinct teams, reducing the risk of a large number of the workforce taking sick leave simultaneously and therefore supporting business continuity (although this will only work where low risk travel options are available).

- **Workplaces:** Businesses will need to ensure they are monitoring the changing government guidance in relation to physical premises and assessing how social distancing can be implemented in their workplaces. The Department for Business, Energy and Industrial Strategy has so far published sector-specific guides to cover a range of different types of working and how to make these workplaces Covid-secure. This includes five main steps to working safely. Employers should carry out Covid-19 risk assessments in line with Health and Safety Executive guidance, in consultation with workers or trade unions. Employers should take all reasonable steps to help employees work from home, by ensuring they have the right equipment and discussing home working arrangements. In the workplace, 2m social distancing should be maintained where possible with the use of signage, floor tape, arranging one-way systems through the workplace and avoiding the sharing of workstations where possible. Where workers cannot be kept 2m apart, the risk of transmission should be minimised by using screens or barriers, avoiding face-to-face working, staggering arrival and departure times and reducing the number of people each employee has contact with by using fixed or rotating teams. Steps may also be taken to prevent staff and third parties displaying symptoms from entering the workplace. For example requiring the signing of declarations in relation to recent health, interaction with confirmed cases or travel to high-risk locations.
- **Technology:** This should be used to promote remote working and limit face-to-face interactions as far as possible in line with government advice to work from home if possible. Businesses should continue to embed the use of Teams/Webex/Zoom as a viable alternative to meetings in person and promote a consistent experience for staff working from home and in the workplace. This may include further training of staff to make the most of the full functionality available and the extension of helpline services and support available. Businesses should take care that all mediums used to communicate or share information while working remotely are secure and comply with regulatory requirements where relevant to their industry.
- **Commuting:** Ongoing restrictions in relation to travel are likely to continue in some form as lockdown is eased. Public transport poses particular risks to staff considered vulnerable due to their age or underlying health conditions. Businesses may consider ways to reduce risks such as offering flexible working to avoid peak travel times and encouraging staff to

only attend the workplace for work that cannot be done from home, for example for certain core days of the week. Face coverings will be compulsory on public transport in England from 15 June. Employers may wish to discourage car sharing, which may require the provision of further space for car parking to allow employees to travel to work separately where possible.

- **Vulnerable workers:** Staff considered vulnerable due to their age or underlying health conditions will need additional consideration by employers in line with their duty of care and duty to make reasonable adjustments for workers falling within the definition of disability. Vulnerable workers should be prioritised for working from home, either in their current role or in an alternative role, where possible to optimise the workforce as a whole. At present, workers at significant risk from coronavirus who have been told to shield by the government should not be required to come to work. If they are unable to work from home, these workers can be furloughed under the Coronavirus Job Retention Scheme.
- **Holiday:** Employers should continue to encourage workers to take annual leave throughout the year to promote rest and good physical and mental health. For businesses that are particularly busy during the pandemic, new laws allows staff to roll over up to four weeks' annual leave into the next two holiday years if they are unable to take it this holiday year. Employers may also wish to avoid too much annual leave being accrued if this will cause work shortages if taken later in the year. Employers have the right to require staff to take, or not take, leave on certain dates, subject to notice requirements and terms of the relevant employment contract. Due to current travel and social restrictions, staff may seek to cancel pre booked leave but employers do not have to agree to this. Following the government's introduction of a 14-day quarantine period for people travelling to the UK from abroad from 8 June, employers should pre-empt requests from staff to work from home or take unpaid leave on return from foreign holidays, and decide if and how this may be facilitated.

Staff Policy Changes

- **Furlough:** Before the government launched the Coronavirus Job Retention Scheme, employers were unlikely to have policies in relation to furloughing staff. Policies should deal with issues such as minimum periods of furlough, the requirement that staff do not work or generate revenue for

their employer while furloughed, as well as arrangements for ending a period of furlough such as notice requirements. The government has recently announced changes to the Scheme, including new flexibility to bring furloughed staff back to work on a part time basis from 1 July, whilst allowing employers to claim under the scheme for hours not worked. Additionally, the scheme will taper from 1 August. This will initially require employers to contribute to the costs of national insurance and pension contributions of furloughed workers. From 1 September, employers will also be required to pay 10% of furloughed workers' wages, increasing to 20% from 1 October. The cap of £2,500 per month for each worker's wages will remain the same. The scheme is due to close on 31 October. Furlough policies should therefore be updated by employers wishing to utilise these changes, in tandem with contractual variations where required for amendments such as any changes to pay. A furlough policy should reflect that workers told to shield who cannot work from home qualify for furlough and should not currently be asked to return to the workplace. See our guidance document to furloughing staff for further information.

- **Sickness absence:** changes to statutory sick pay and guidance in relation to self-isolation or shielding may require changes to existing sick leave policies. Statutory sick pay is now payable from the first day of absence if related to Covid-19, rather than from day four. This includes instances in which a worker is self-isolating because they, or someone in their household, has coronavirus symptoms or if the worker is at high risk of severe illness and has been told to shield. The requirement in sickness absence policies for evidence of illness should also be updated to reflect the difficulty in obtaining a note from a GP due to changes in the way the NHS operates, and increased reliance on notifications to self-isolate.
- **Social distancing:** Businesses are unlikely to have pre-existing social distancing policies, so these should be introduced in line with up-to-date government advice and communicated to staff effectively. They should cover issues specific to the employer's relevant sector and the individual challenges faced by the business but may generally include regulation in relation to vulnerable workers, break times and areas, staggered arrival and departure times, commuting and PPE. Social distancing may also be facilitated by phased or rotated return to work policies, to reduce the overall risk of

Covid-19 cases in the workplace, as well as the likelihood of the virus spreading between discreet teams. This should form part of wider steps to improve workplace safety where appropriate such as the provision of hand sanitiser, face masks, tissues and the dissemination of information for example, in relation to regular hand washing, symptoms and self-isolation. This will also need to be extended to ensure there are clear protocols when dealing with third parties visiting the premises, for example seeing visitors by appointment only.

- **Travel:** Travel policies will need to be updated to reflect issues with travelling to higher risk locations, requirements to quarantine for 14 days on arrival in the UK from abroad from 8 June and/or to help save costs during a time of financial pressure by reducing travel expenses wherever possible. Quarantine requirements remain the subject of political debate and challenge and may change, for example through the introduction of 'international travel corridors' for arrivals into the UK from countries with low infection rates and robust healthcare systems. Some workers are already exempt, for example freight and haulage workers, medics and carers providing essential healthcare, UK residents who usually travel abroad at least once a week for work and seasonal agricultural workers, if they self-isolate where they are working. Travel policies must reflect up-to-date government guidance, including in relation to commuting, and therefore may require frequent updates.
- **Disciplinary and grievance procedures:** Existing procedures relating to disciplinary and grievance processes are unlikely to consider factors such as social distancing, home working or furloughed staff. Historically, these procedures rely on face-to-face meetings, which may no longer be feasible before workplaces open. Employees retain the right to raise a grievance while working from home or on furlough and employers must consider how they can carry out a fair grievance procedure safely. Grievance procedures should therefore account for current health and safety guidance, the wellbeing of employees involved, whether the matter can be dealt with fairly remotely and an employees' right to be accompanied in key meetings. This may involve conducting the process virtually where technology allows, or postponing an investigation until meetings can be held in person in line with social distancing guidelines. If a worker wishes to make a claim to an employment tribunal, the usual

legal time limits apply despite the Covid-19 pandemic, even if grievance or disciplinary procedures are postponed.

- **Data and cyber security:** Data and cyber security policies will need updating in relation to increased levels of remote working and the related changes in working practices, such as the use of personal devices while working from home and third party access management. This should form part of ongoing disaster recovery protocols, cyber risk management and business continuity planning. Employers should also be aware of the way that changes in working practices may affect the collection, storage and movement of sensitive data. This may include client data or confidential information being taken offsite by remote workers or third parties, which may have security and GDPR implications. Businesses may also find themselves collecting more data in relation to employees for example temperature checks, Covid-19 tests and records in relation to health, which will be considered sensitive data and therefore must be obtained and processed in line with GDPR requirements. Employers must also liaise where necessary with the Government's 'track and tracers' in relation to employees and visitors identified under the contact tracing programme.
- **Home working:** The increased reliance upon working from home is likely to be longer term and therefore may call for more detailed remote working policies where previously not required. Such policies should cover issues such as hours of work, employee supervision, conduct, the use of video conferencing software, effective communication patterns and the provision of technical or other equipment for employees. A home working policy should be drafted with the purpose of building trust with employees, as well as meeting employer's legal obligations in relation to health and safety risk assessments and the reporting of any issues or accidents. As many workplaces reopen at lower capacity, policies should also deal with flexible working and the combination of working from home where possible, whilst only attending the workplace when necessary.
- **Mental health and wellbeing:** The impact upon workers of social distancing, self-isolation and more limited access to health services must not be underestimated by employers. Remote working may make it more difficult for managers and occupational health specialists to spot potential concerns in relation to the mental health and wellbeing of particular workers. Wellbeing policies may include the establishment of

support networks, easily accessible staff helplines, regular communications on the importance of wellbeing and upskilling managers on how to identify and address any stress related issues.

- **Learning and development:** Professional development must not fall by the wayside during the immediate period of adjustment and longer term way of working. There is likely to be a continued shift away from face-to-face or classroom-based learning and policies should be adjusted accordingly. However, the growing availability of remote and flexible training can deliver distance learning at a lower costs and is more easily managed around workloads. Workers furloughed under the government's Coronavirus Job Retention Scheme can undertake training as long as none of their activities generate revenue for the business. A period of furlough should therefore be considered an opportunity to upskill workers at an efficient time and training opportunities offered can be tailored towards changes expected when staff return to work. Offering training to both furloughed staff and those that remain at work is an effective way of maintaining workforce motivation and focussing upon the future of the business.

The Longer Term Challenges

For many businesses, once the Coronavirus Job Retention Scheme ends on 31 October, there will be difficult decisions to be made. Work levels for most are unlikely to increase to early 2020 levels for many months, if not longer. There are a range of options for businesses to consider:

- **The future of flexible working:** In some industries where home working has not been common, recent months may show how the barriers to home working can be overcome. Whilst clearly the lockdown period has been exceptional, the ability to have remote 'face-to-face' meetings, and manage work effectively will, for some, change the way they want to work going forward. Employers faced with increased requests for flexible working may find them more difficult to resist in many cases. As discussed above, the period of lockdown has highlighted some areas that would need to be addressed in terms of long term home working. For example, ensuring greater flexibility over the hours/times of day staff can work as well as adequate training and supervision for more junior team members. Regular face-to-face meetings through video conferencing will help but flexible hours may also necessitate the restriction of meetings

to a reduced period of core hours in a day. Strong leadership will help to build up a good team rapport, address worker isolation issues and ensure effective communication channels are open between team members as well as with clients and customers. All these issues will need thought and planning to ensure the business achieves the best from its workforce.

- **Reduction in work:** If this is likely to be a short term issue, some alternatives to redundancies may be viable. For example staff could be asked to agree to short term variations such as reduced hours, deferred pay (provided pay does not reduce below national minimum wage levels), secondments or a period of unpaid leave. In the absence of a contractual right to do this, employers should seek agreement from staff. Flexibility in the Coronavirus Job Retention Scheme from 1 July will enable workers to return to work on a part time basis, while employers can continue to access government contributions for wages for hours not worked. As the scheme tapers until 31 October, the government hopes that by asking employers to gradually increase contributions that jobs will be retained in the longer term, with greater flexibility, and therefore avoiding redundancies.
- **Permanent contractual changes:** This could be considered to help plan for similar issues in the future, such as another period of enforced lock down. For example to include a contractual right to lay off staff (where there is a temporary shortage of work), furlough staff or put them on short-time working. Depending on the number of employees involved there may be a need to collectively consult to effect any such contractual changes. We may also see the greater use of the powers under the Working Time Regulations which can be incorporated into contracts to allow employers to decide when holidays will need to be taken and provide less flexibility more generally for holiday requests at the busy times of the year for the relevant sector.
- **Redundancies:** As the crisis has been so severe for many, the financial problems many businesses are facing are likely to be more long term and so redundancies in many sectors, will be unavoidable. Employees with more than two years' service are entitled not to be unfairly dismissed and whilst "redundancy" is a potentially fair reason for dismissal, it is also important that the process be carried out fairly to avoid and defend claims for unfair dismissal. There are additional requirements to collectively consult if the employer proposes to dismiss 20 or more employees by reason of redundancy in

a 90 day period. This applies where the 20 or more employees work in one 'establishment' - a defined term that needs careful legal advice before employers proceed. This additional duty to consult collectively may not be triggered if the total number of redundant staff exceed 20 overall but are spread across several establishments in separate groups of less than 20.

- **Restructuring:** Just as it is critical to now be constantly considering the financial forecasting to meet the costs of the business, we are advocating workforce forecasting to consider what size, shape and skills are needed to drive revenues. It may be that employers do not find a long term reduction in their worker requirements but there is an important change in the nature of work required to meet their business needs. This may not require a reduction in worker numbers or the roles but rather a refocus of the workforce, mapping employees into evolving jobs that use their skills in different ways and upskilling staff to adjust to these changes. This can help to reduce the cost of redundancy payments, retain talent and foster loyalty in the workforce. Again, legal advice is sensible when planning any redundancy or restructure of the business to ensure that the prescriptive requirements of consultation and consent to any new contract changes are met.
- **Talent Retention:** During a period of change, targeted recruitment, talent retention and succession planning must not fall by the wayside. Increased levels of remote working will require changes to performance management and the way that work effort is measured / reported. Where possible, this should be driven by output which promotes flexibility but with a focus on measurable results. Businesses may consider moving away from traditional face-to-face only meetings as part of annual appraisal processes towards the greater use of data analytics to inform staff performance. Communicating opportunities to staff for professional development and progression will become increasingly important where such opportunities may be less visible or tangible while working from home. Encouraging meaningful career conversations at an appropriate frequency will help to motivate the workforce, improve productivity and reduce flight risks.
- **Remuneration:** Increased financial pressure as a result of the pandemic may drive businesses to approach remuneration more creatively, for example to promote cash flow if profits are affected. In the short term this may involve deferring bonuses or linking them to overall company performance in the usual way. Businesses may however choose to offer a broader

range of incentives in the future, linked to their brand or sector. For example, more special offers for products or events; an aligning with other businesses from different sectors who share their values and appreciate the joint brand recognition. The overall reward packages will be most effective when tailored to the workforce and offering greater flexibility. For example, providing staff choice to purchase additional leave, take sabbaticals, as well as greater choice of bespoke health and other benefits packages that best suit the individual and their current needs. There may therefore be a move away from reliance on the discretionary bonus schemes to a more honed approach to the individual's motivation to be compensated in a particular way with an emphasis for the employer to promote longer term reward plans rather than short term cash gains, alongside these more bespoke benefit/reward packages.

- **Care Responsibilities:** School closures and increased help required by the elderly and vulnerable during the pandemic has highlighted the importance of individual caregiving responsibilities during a period of unprecedented pressures on public health services. This could have a longer term impact upon the significance of family-based policies such flexible working in relation to the hours and mobility needs for staff that may have to be recognised with more adaptable working policies particularly around times of work and location.
- **Corporate Social Responsibility:** The reality of social distancing and increased remote working may cause some businesses to shift away from centrally-managed volunteering and fundraising efforts that rely on single large events or staff being in one physical location. The coronavirus pandemic has highlighted the importance of charitable endeavours within local communities, specifically in relation to local healthcare services and vulnerable people. This is likely to have continued relevance for staff working from home and therefore spending more time in their local communities. CSR may therefore have a greater impact on staff engagement and company reputation if it reflects this shift.
- **Reputation:** The UK Government has spoken openly about the importance of businesses doing what they can to protect workers and jobs in these unprecedented times. Employers are under pressure from communities and workers to act responsibly and share the burden of the impacts of coronavirus on society as a whole. Although larger scale redundancies will prove inevitable for a number of sectors, the onus remains on businesses to think in the longer term and

use technology and the resources at their disposal to minimise the negative impacts on workers. It is an opportunity to promote loyalty, increase retention rates and help make workers brand ambassadors for their businesses at a time when there is still so much uncertainty around Brexit and the impact on obtaining the necessary talent. In many instances, the changes required will require a commitment to innovation and more lateral solutions around areas such as alternative ways of working and reward, which can still minimise the exposure to costs in these tough financial times but maximise productivity to allow the business to then not just survive, but thrive.

Conclusion

Key issues to consider as restrictions continue to ease:

- Health and safety provisions and government guidance will underpin the workplace strategy.
- Make the workplace Covid-secure – consider issues such as social distancing and hygiene.
- Risk assessments – follow up to date guidance from the Health and Safety Executive for your industry and consult with staff to address their concerns.
- Travel – continue to promote home working where possible, consider ways to reduce commuting risks or the need for business travel and abide by quarantine requirements.
- Employee mental health – provide support and guidance for employees and OHS specialists to help with staff issues relating to stress and mental health.
- Reduce contact at work – provide more automated entrances and consider the rotation of office-based staff.
- Technology - look to improve remote contact and access. Ensure webex/ zoom/ Teams work for your business.
- Staff policy changes – ensure staff are adapting to the new working model and that their wellbeing is a priority.
- Furloughed staff – consider how to utilise the flexible scheme from July onwards, the impact of tapering and the long term aim of avoiding redundancies.
- Data security – ensure policies and procedures on data protection and cyber security are updated to account for changes to home working, engagement with the Government's 'track and tracers' and a possible spike in Data Subject Access Requests.

- Contractual changes – longer term contractual changes may be helpful to prepare for a further lockdown period either in the short or longer term.

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