

COVID-19

# Employment issues arising out of re-opening workplaces

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# Introduction

- First of 3 webinars focusing on practical advice for the next phase of managing your business during the pandemic:
  - Employment issues arising out of re-opening workplaces
  - Flexible furlough – what does this mean for your business?
  - All your current TUPE questions answered
- Today's session will look at employment issues arising out of re-opening workplaces
- Discussion on:
  - Risk assessments and implementing safe systems of work
  - Testing in the workplace and data protection issues
  - Test and Trace considerations
  - International travel and quarantine
  - Handling different employee reactions to the prospect of returning
  - Is permanent homeworking the future?
- Questions

# Current position – a quick recap

- You must not reopen if your business is closed under current government guidance
- Other businesses can remain open and their employees can travel to work where they cannot work from home
- Anyone that can, should remain working from home
- Workplaces should, where possible, ensure employees can maintain a 2 metre distance from others and wash their hands regularly
- Government Recovery Strategy published on 11 May 2020
- Step by step approach along the “cautious roadmap”

# Reopening workplaces – legal considerations

- Statutory and common law duties of health and safety
- Implied duty to take reasonable care of the health and safety of employees and provide a reasonably suitable working environment
- General government guidance on implementing safe systems of work
- Detailed guidance for specific business types

# Implementing safe systems of work – government guidance

- General government guidance is available from [www.gov.uk/guidance/](https://www.gov.uk/guidance/) and provides guides for specific business types
- 5 steps to working safely:
  - Carry out a COVID-19 risk assessment
  - Develop cleaning, handwashing and hygiene procedures
  - Help people to work from home
  - Maintain 2 metre social distancing, where possible
  - Where people cannot be 2 metres apart, manage transmission risk
- Display the 5 steps to working safely poster in a prominent position

# COVID-19 Risk Assessments

Key areas to cover:

- Are you able to maintain social distancing at all times?
- Will this require you to rearrange workstations?
- Is there a requirement for PPE?
- Do you need to reduce the number of employees that are permitted to come on site/into work at any given time?
- Can employees work side-to-side rather than face-to-face?
- Identify what activities or situations might cause transmission of the virus
- Think about who could be at risk
- Decide how likely it is that someone could be exposed
- Act to remove the activity or situation if not possible to control the risks

# Practical considerations

- A clear communication plan is key
- Start talking as soon as possible
- Employee engagement considered key
- When are employees going to return?
- Which employees are to return?
- Do you need to consider phased working/rotas?
- Don't forget travel to/from workplace
- Explain how health and safety is being reviewed
- Explain adjustments being made
- Consider working areas, moving around, common areas
- Cleanliness and hygiene – consider additional stations/cleaning
- Will any changes amount to a contractual change?
- Be aware that staff will be worried
- Do you need to offer specific training in relation changes
- Is there a need to introduce new policies?
- Continue to review and keep talking

# Tricky issues

- Who should you be consulting with?
- Can you consult with a furloughed worker?
- What do you need to do with your completed risk assessment?

# Useful links

- ACAS – Coronavirus (COVID-19): advice for employees and employers  
<https://www.acas.org.uk/coronavirus/returning-to-the-workplace>
- HSE – Working safely during the coronavirus outbreak – a short guide  
<https://www.hse.gov.uk/news/assets/docs/working-safely-guide.pdf>
- HSE – Talking with your workers about preventing coronavirus  
<https://www.hse.gov.uk/news/assets/docs/talking-with-your-workers.pdf>

# Workplace testing for non-essential workers – employer guidance

## Is it even possible?

- Yes, to compliment an overall plan designed to minimise the spread of COVID in the workplace
- GDPR implications
  - Processing of ‘special category’ data.
  - Data Protection Impact Assessment must be completed
  - Update and circulate Privacy Notices
  - Each employer case for testing will be different
- ICO Guidance published on 13 May 2020

# Workplace testing for non-essential workers – employer guidance

## Watch out areas

- Inform the data subjects
- Collect and share only necessary data
- Consider less intrusive alternatives
- Keep records accurate and up-to-date
- Apply testing in a fair and lawful manner – avoid unfair or discriminatory treatment
- Refusal to take part

# Impact of NHS test and trace service

## What is it?

- Central part of government's recovery strategy
- App not yet launched
- Doesn't change the existing guidance of working from home wherever possible
- Employer guidance published on 27 May 2020
- Support is available from Local Authorities / Public Health England in the case of any workplace outbreak

# Impact of NHS test and trace service

## Employer considerations

- The need for employees to self isolate / expectations to declare symptoms
- Contingency planning to prevent high levels of absence / self-isolation
- Sick pay considerations: SSP or Company Sick Pay?
  - SSP only recoverable for employers with less than 250 PAYE employees (on or before 28/02/20) for 14 day self-isolation period
  - Evidence of worker's notification required for reclaiming
- Annual leave as an alternative to self isolation?

# COVID and international travel

## Current government guidance

- No-one should travel abroad unless it is absolutely essential
- WHO Guidance: Non-essential work travel to areas with COVID-19 transmission should be cancelled or postponed
- From 8 June 2020: individuals returning from overseas are required to self-isolate for 14 days

## 'Essential' Business trips abroad?

- Are there alternatives arrangements that can be put in place?
- Additional health and safety obligations, dependent upon country visiting
- Breach of duty of trust and confidence to enforce non-essential trips

## Personal trips abroad

- Self-isolation / pay considerations / policies to be updated

# Returning to work – handling different employee reactions

## Ending furlough

- How do you end furlough for employees?
- What if we don't want everyone back from furlough at once?
- How do we select who should return? What are the risks?
- Do you need to incentivise staff to come back?

# Returning to work – handling different employee reactions

## Ending furlough continued

- What happens to pay when staff return from furlough?
- Can we make changes to pay rather than make redundancies?
- How should I resume an internal process which was interrupted by furlough? What are the risks?

# Returning to work – handling different employee reactions

## Refusing to return

- Employees who are ill or showing symptoms
- What if an employee is vulnerable?
  - Clinically extremely vulnerable (advised to shield)
  - Clinically vulnerable
- What about those who live with a vulnerable person?

# Returning to work – handling different employee reactions

## Refusing to return continued

- What if the employee has no available childcare?
- What if the employee is pregnant?
  - Special risk assessment
  - Statutory rights to safe alternative work
  - May be able to return or suspend on full pay

# Returning to work – handling different employee reactions

## Refusing to return continued

- Employee citing serious and imminent danger
  - Do they have good reasons?
- What about employees who just refuse to return?
  - Risks associated with taking disciplinary action

# Homeworking – the future?

- Will permanent homeworking arrangements become the norm?
- Consider practical issues such as:
  - Contractual changes
  - Data protection issues
  - Health and safety issues
  - Efficiency and supervision
- How will you handle potentially difficult areas such as:
  - Where too many employees want to work from home
  - Disagreements about whether work can be done from home
  - Employee's home set up not allowing for home working

# Get in touch

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