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# EMPLOYERS OBLIGATIONS AND AVOIDING LIABILITY CLAIMS



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S O L I C I T O R S

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# HOPE YOU'VE ALL GOT YOUR CUPPA!



# What you need to do as an employer?



# Introduction

- The Government has set out a plan to return life to as near normal as we can, as quickly and fairly as possible in order to safeguard livelihoods, but in a way that is safe and continues to protect our NHS.
- We are all advised to follow guidelines to 'stay alert and safe'.
- Employers who have people in their offices or onsite are advised to ensure that employees are able to follow the government's guidelines on working safely.

# Current Situation – Key Points

- **13 May 2020**, Those who cannot work from home recommended to talk to their employer about returning to work, and some work places allowed to open on basis of Health Protection Regulations 2020.
- **1 June 2020**, primary schools reopened for some pupils. Car show rooms and outdoor markets open
- **1 June 2020**, outdoor markets and car showrooms were allowed to reopen.
- **13 June 2020**, people are able to attend their place of worship for the purposes of individual prayer.
- **15 June 2020**, the reopening of schools for certain age groups, e.g. children in reception, Year 1 and Year 6 as well as some secondary education (ie. Year 10 and 12).
- **15 June 2020**, non-essential retail shops as well as some additional outdoor attractions (e.g. drive-in cinemas, and animal attractions like zoos, farms and safari parks) were permitted to reopen.
- **15 June 2020**, it is compulsory to wear a face covering on public transport.
- All other sectors that are currently closed, including hospitality and personal care, are not able to re-open at this point. The opening of such sectors is likely to take place in phases during step three, as set out below.
- Phase 3 is not expected to be in place until at least 1 July 2020. The government has proposed a reopening of at least some of the remaining businesses and premises that have been required to close, including personal care (such as hairdressers and beauty salons), hospitality (such as food service providers, pubs and accommodation) and leisure facilities (including cinemas).

# Ensuring you are Covid Secure

- Employers need to ensure the workplace is 'Covid secure' guidance on [www.HSE.gov.uk](http://www.HSE.gov.uk)
- Employees can also check the guidance if they are concerned about covid19 and their return to work
- **Recommendations include:**
  - deep cleaning of offices / shops / workspaces
  - provision of PPE
  - maintaining social distancing
- Specific recommendations for certain sectors (England only).



# Managing Risks & Risk Assessments at work

- Employers are **required by law** to protect employees, and others, from harm.
- Under the Management of Health and Safety at Work Regulations 1999, the minimum you must do is:
  - identify what could cause injury or illness in your business (hazards)
  - decide how likely it is that someone could be harmed and how seriously (the risk)
  - take action to eliminate the hazard, or if this isn't possible, control the risk
- Assessing risk is just one part of the overall process used to control risks in the workplace.
- For most small, low-risk businesses the steps you need to take are straightforward and are explained in HSE Guidance.
- Larger / High risk businesses should see <https://www.hse.gov.uk/simple-health-safety/risk/more-detail-on-managing-risk.htm>

# How do you manage the risks?

- You can do it yourself or appoint a competent person to help you.
- **Identify hazards** – look around your workplace and think what could cause harm?
- **Assess the risks** – how likely is it that someone could be harmed and how serious could this be?
- **Control the risks** – can you control the risk so harm is unlikely? More controls needed?
- **Record your findings** – if you employ 5+ people record findings
- **Review the controls** – conduct timely reviews

# HSE Guidance on a Covid19 Risk Assessment

- identify what work activity 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, or if this isn't possible, control the risk
- If you have fewer than five employees, you don't have to write anything down, but it might help if you do.
- Practical measures:
  - putting in place social distancing measures
  - staggering shifts
  - providing additional handwashing facilities

# Government Guidelines

- Guidance setting out how to work safely during the coronavirus pandemic.
- <https://www.gov.uk/guidance/working-safely-during-coronavirus-covid-19>
- 8 guides cover a range of different types of work.
- Many businesses operate more than one type of workplace, such as an office, factory and fleet of vehicles.
- You may need to use more than one of these guides as you think through what you need to do to keep people safe. Further guidance will be published as more businesses are able to reopen.

# Government Guides

- **5 steps to working safely (General)**
- **Sectors**
  - Construction and other outdoor work
  - Factories, plants and warehouses
  - Labs and research facilities
  - Offices and contact centres
  - Other people's homes
  - Restaurants offering takeaway or delivery
  - Shops and branches
  - Vehicles

# 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 wherever possible.
- Where people cannot be two metres apart, manage transmission risk.



# Talk to workers and provide information - Consultation

- Explain the changes you are planning to work safely
- make sure changes will work and hear their ideas
- Continue to operate your business safely during the outbreak
- Employers need to consult (2 way process) and give time prior to re opening.
- Ensure agreement has been reached
- Employers who have more than 50 people returning need to publish a risk assessment on their website in order not to breach the regulations

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# Getting to work

- **Commuting to work** - HSE has limited guidance. Employers need to identify where people can travel to work using their own transport they do this to and this should be encouraged and to ensure where possible social distancing is maintained
- **Public transport** – employees should consider all other forms of transport before using public transport. (walk / cycle / personal vehicle)





# The Law



- Employers have a myriad of health and safety obligations relevant to COVID-19 including those under the following legislation:
- Health and Safety at Work etc Act 1974;
- The Management of Health and Safety at Work Regulations 1999;
- The Workplace (Health, Safety and Welfare) Regulations 1992;
- The Personal Protective Equipment at Work Regulations 1992; and
- The Control of Substance Hazardous to Health Regulations 2002
- In essence, the main duties require employers to take as much care for employees and others affected by the business as is reasonably practicable.
- Law protects employees from detriment if they leave / resign or go to work and raise a complaint in circumstances of danger.
- TEST: Employee must have reason to believe there is a danger that is serious (covid in workplace) and no measures being taken to render the work place safe (cleaning / PPE)

# Vulnerable workers

- Employers need to consider workers regarded as at risk groups and if they should return to work, eg stay on furlough or wfh
- People required to shield, by way of age, health conditions
- Ethnic minorities (identified as at risk)
- People with particular disability or health conditions, pregnant, take steps to ensure the workspace is safe for them to return.
- People advised to shield (NHS letter) must remain at home. It is a breach of the law if you ask these people to return. They can wfh or be on furlough or receive SSP subject to eligibility criteria,



# SUMMARY

- Employers need to follow Government and HSE Guidance on return to work and ensuing workplace in covid secure.
- Failing to take adequate steps will expose the employees to risks of the virus and the employer to potential claims.
- Employees may have grounds to bring claims in the Employment Tribunal for unfair dismissal / constructive dismissal and whistleblowing (breach of Health & Safety Regulations).
- Test cases expected