

Changing times: Reopening Workplaces Safely

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A change in regulatory approach?

Ahead of the heralded relaxation in the emergency measures in place in response to the COVID 19 pandemic, for Organisations planning to reopen their offices and premises for non-essential activities, we sense a change in mood and approach. At the outset there was certainly a feeling that employers and employees were all in this together and needed to do the best they could to respond to this little known and invisible risk.

The HSE on its website says that it will take a flexible and proportionate account of risks around the pandemic. Employers might have interpreted this to mean that the HSE will take a light touch to enforcement and that there was a low risk of prosecution.

However we consider that as non-essential workplaces re-open there is every likelihood that this approach will change for the following reasons;

- Employers have now had a number of months to understand the risks of COVID 19 (although knowledge about the virus is still evolving) and to put appropriate planning in place;
- Guidance (although sometimes inconsistent and variable in the level of detail depending on industry sector) is available on HSE and Government websites;
- The public are concerned about the implications of lockdown being relaxed (49% of those asked in a TUC survey indicated that they were worried);
- Workers could report concerns to the HSE or other regulators if they are unhappy with the way that operations have been resumed or accelerated at the expense of safety; and
- The TUC and other Unions have called for the HSE and other regulators to increase enforcement and to take a more interventionist approach. The TUC are calling for HSE to act quickly to apply sanctions to employers including prosecutions who don't take safety seriously.

We understand that Government is working on guidelines to introduce mandatory requirements for all businesses to publish the measures they have taken in relation to COVID 19.

We are already seeing HSE making regular enquiries as to the measures implemented by businesses to respond to the risk presented by COVID 19. We are also seeing the first regulatory investigations commence relating to a failure to implement effective social distancing measures. We are being asked to advise on health and safety compliance in relation to the reopening of work places.

What action should employers take?

To protect the safety of employees and to protect their organisation from risk of prosecution employers need to ensure the safety of employees and others affected by their undertakings in so far as it is reasonably practicable in accordance with their section 2 and section 3 HSWA 1974 duties. As in all HSWA cases the burden is on the employer to demonstrate that he has discharged its duty.

Employers should follow the normal hierarchy of controls in relation to the COVID 19 risk ensuring that they follow sector guidance but also are aware that measures they take to address issues in relation to COVID 19 might increase the risks in relation to other hazards or indeed introduce new risks. For example in relation to manual handling a system which requires 2 persons to lift might need to be reviewed to give effect to social distancing, but could inadvertently increase the risk of injury if reduced. Where lone working is introduced to respond to the risk of COVID 19 the risks relating to lone working need to be assessed and control measures introduced.

A significant part of assessing COVID 19 risks is to look at individual fitness to work at the relevant location. The employer should be asking himself a number of questions which will include, but are not limited to;

- Can the employee carry out his or her work at home ?

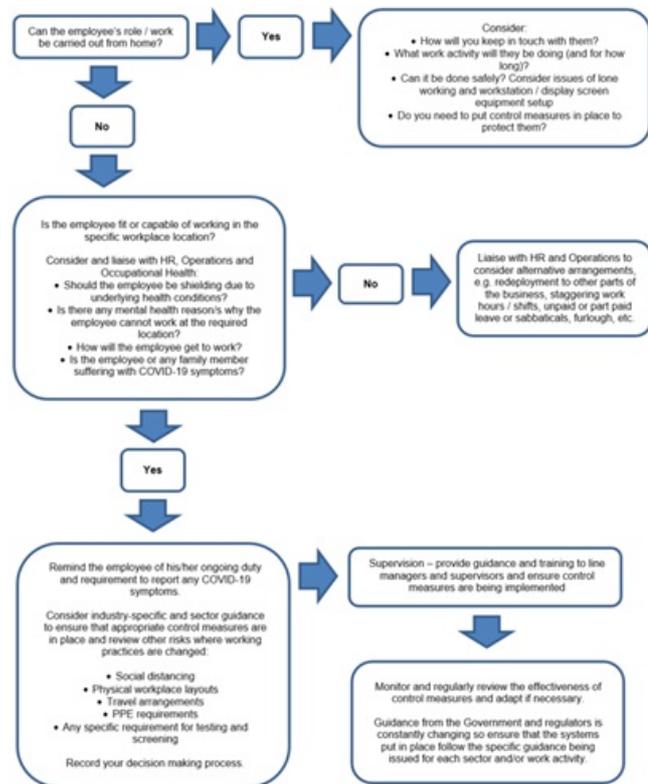
- Should the employee be shielded due to underlying health conditions?
- Is there any psychological/mental health reason of which the employer is aware why the employee can't work at the required location?
- How will the employee get to work?
- Is the employee or any family member suffering with COVID 19 symptoms?

Employers will need to include some of these questions in the enquiries they make of contractors visiting their premises, as to how they are managing the risks of COVID 19.

COVID 19 presents employers with new challenges in relation to implementation of measures and the supervision and monitoring of them. Employers will be required in the defence to any prosecution to demonstrate that the control measures it has devised to reduce the risks of COVID 19 infection are being effectively implemented. Historically employers have relied heavily upon managers and line managers to observe that control measures are being effectively implemented. Measures to ensure effective social distancing might make that type of supervision more problematic. Employees may be reluctant to report symptoms for fear of being prevented from working.

Monitoring the effectiveness of the control measures as with any other identified workplace risk will also be key. It will undoubtedly be more challenging given that those employees reporting COVID 19 symptoms might not have developed it as a result of a work place exposure.

A multi-disciplinary approach will be required between HR, Operations, Occupational Health to effectively manage the risk. Use the flowchart below as a guide to compliance.



[*click here](#) to view our Top Tips to prevent stress and develop resilience brochure.

Ultimately the message to work forces should be that although we live in uncertain times, this doesn't mean that we have to take an uncertain approach to working safely. Ensuring there is comprehensive, but targeted and simple to understand guidance provided to employees, contractors and others should ensure that certainty in what is expected of them is achieved, and therefore a healthy and safe work environment established.

We can help: our [specialist lawyers](#) are on hand to assist with any queries you may have.

For more advice on returning the work, read our recent article [Preparing for the end of lockdown - key issues for employers](#).

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