

Working Safely during COVID-19: New Guidelines and HSE Enforcement

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The government has this week published new 'COVID-19 secure' guidelines to help UK businesses to get back up and running whilst ensuring that workplaces are operating as safely as possible. The guidelines were prepared by the Department for Business, Energy and Industrial Strategy (BEIS) in consultation with approximately 250 stakeholders including Public Health England (PHE) and the Health and Safety Executive (HSE), to develop best practice on the safest ways of working across the economy.

The new guidelines cover eight workplace settings:

- [Construction and other outdoor work](#)
- [Factories, plants and warehouses](#)
- [Homes](#)
- [Labs and research facilities](#)
- [Offices and contact centres](#)
- [Restaurants offering takeaway or delivery](#)
- [Shops and branches](#)
- [Vehicles.](#)

The guidelines include shops such as non-food stores, fashion stores and other types of retail that are currently closed on the basis that the guidelines will help them consider what their operations may need to look like when they are allowed to open.

For the construction sector these guidelines complement guidance already in place by way of the [Site Operating Procedures](#) issued by the Construction Leadership Council in April.

The guidelines are designed to give practical steps to enable employers to identify risks that COVID-19 creates and to take pragmatic measures to mitigate them which will depend on the nature of the business including its size, type, how it is operated and regulated.

COVID-19 Risk Assessment

It is important to note that the guidelines do not supersede any legal obligations such as health and safety duties and it is vital that businesses do not fall foul of complying with their existing obligations. Employers have a legal duty to protect employees and others from risks to their health and safety and the starting point is to conduct a suitable risk assessment - a legal requirement under Regulation 3 of the Management of Health and Safety at Work Regulations 1999. The guidelines recognise this by requiring employers to undertake an appropriate COVID-19 risk assessment to help inform what reasonably practicable steps need to be taken to minimise the risk of employees and others contracting COVID-19.

The guidelines emphasise the importance of consulting with employees and health and safety representatives when assessing the risks and how they should be managed. Furthermore, an employer should share the results of its risk assessment with its workforce - if possible publishing it on the company's website, mandatory, if the business has over 50 employees.

Mitigating Actions

The guidelines set out preventative measures that should be carried out to reduce the risk to the lowest level reasonably practicable. This includes making every reasonable effort to enable working from home and where this is not possible, workplaces should make every reasonable effort to comply with the social distancing guidelines (2m separation). Where the social distancing guidelines cannot be followed in full, in respect of a particular activity, businesses should consider whether that activity needs to continue for the business to operate. If it does, then all possible mitigating actions should be taken to reduce the risk of transmission.

The guidelines for each of the eight workplace settings have a number of common mitigating actions, examples of which include:

- **Deciding who should go to work** - for example planning for the minimum number of people needed to be on site to operate it safely and effectively and protecting people at higher risk and those who need to self-isolate.
- **Social distancing at work** - employers will need to consider staggering arrival and departure times and break times; using marking and one-way flow on walkways and at entry/exit points to help maintain a 2m distance; reducing job rotation and equipment rotation.
- **Managing customers, visitors and contractors** - limiting site visits; encouraging remote connection; providing site guidance on social distancing and hygiene standards to any visitors.
- **Cleaning the workplace** - employers need to ensure frequent cleaning of work areas and equipment between uses; providing more waste facilities and more frequent rubbish collection; regular reminders and signage to maintain hygiene standards and providing additional handwashing facilities for example on large construction sites.
- **Managing your workforce** - fixing teams or shift groups so that where contact is unavoidable it happens between the same people; minimising non-essential travel and minimising the number of people who have to travel together in any one vehicle.
- **PPE and face coverings** - additional PPE beyond what an employee usually wears for protection is not considered beneficial because COVID-19 need to be managed through social distancing, hygiene and fixed teams. The exception is clinical settings such as hospitals for which there is specific advice available from the government and PHE. The guidelines do however say that employers should support their workers in using face coverings safely if they choose to wear one.
- **Inbound and Outbound Goods** - for example revising pick-up and drop off collection points; procedures, signage and markings; minimising unnecessary contact at gate house security, yard and warehouses and where possible and safe having single workers load or unload vehicles.

It should also be noted that the guidelines state that in the event of an emergency such as an accident, fire or chemical spill, people do not have to stay 2m apart. Although not covered in the guidelines, businesses should consider what their procedures are for administering first aid in the event of a workplace accident and whether the current procedures need to be revised to minimise the risk of transmission of COVID-19.

A downloadable notice is included in the documents, which employers should display in their workplaces to show their employees, customers and other visitors to their workplace, that they have followed this guidance. This notice includes a contact number for the HSE for workers to report any concerns that they may have.

HSE Enforcement

It is essential that employers comply with the guidelines that have been published to keep people safe. The guidelines state that where the enforcing authority, whether the HSE or local authority, identifies employers were not taking actions to comply with the relevant public health legislation and guidance to control public health risks, they will consider taking a range of actions to improve control of workplace risks. It refers to the HSE providing specific advice through to issuing enforcement notices to help secure improvements.

Although the HSE has said that they will be taking a flexible and proportionate approach to the risks arising from the COVID-19 crisis, employers should be aware that in appropriate cases, it is possible for the HSE to go beyond the issuing of enforcement notices and consider a prosecution.

Given the guidance that has been issued and the publicising of the HSE's contact number for reporting any concerns, we consider that many businesses, particularly those involved in high risk industries such as construction, will be exposed to investigations by the HSE on the back of concerns raised by employees, contractors and suppliers. The difficulties of establishing causation given the complexities of identifying the source of the transmission will not necessarily deter the HSE given that they only need to prove that an employer has exposed employees and/or others to a material risk of harm.

As part of this week's announcement, the government has made available up to an extra £14 million for the HSE, equivalent to an increase of 10% of their budget, for extra call centre employees, inspectors and equipment if needed. This strongly suggests that businesses who do not properly plan for a safe return to work will face scrutiny from the HSE.

As the UK faces months of change and challenge, these guidelines will need to continue to evolve and all businesses will need to ensure they keep updated on changes to guidance to remain compliant and provide ongoing training and information to their employees.

DAC Beachcroft's National Regulatory team has set up a specialist team who can advise on health and safety queries relating to the COVID-19 guidelines. If you have any queries please telephone or e-mail one of the contacts below:

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