

RIDDOR Reporting Requirements

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The Health and Safety Executive ('HSE') has issued guidance in relation to when organisations are required to make a report under RIDDOR (The Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 2013) in relation to Covid-19 related incidents.

HSE guidance states that organisations are required to file a RIDDOR report in relation to Covid-19 in each of the following circumstances:

1. An unintended incident at work has led to someone's possible or actual exposure to coronavirus. This must be reported as a dangerous occurrence.

HSE guidance refers to Regulation 7, Schedule 2, Section 10 of RIDDOR which states the following should be notified as a 'dangerous occurrence':

'Any accident or incident which results or could have resulted in the release or escape of a biological agent likely to cause severe human infection or illness'.

The example given in the guidance is where a lab worker accidentally smashes a glass vial containing coronavirus leading to people being exposed. This is clearly a very specific scenario and organisations will also need to consider the wider range of circumstances in which the coronavirus could be released within their workplace. Based on the guidance available, there should be a specific, identifiable incident or accident, rather than general exposure risk but there is no need to confirm actual exposure as a result of that incident.

By way of example, a dangerous occurrence report is likely to be needed in circumstances in which staff have been provided with PPE (in accordance with the relevant guidance on PPE) but that PPE proves to be ineffective or insufficient (for example if specific items are unavailable or PPE is ill-fitting) and a staff member goes on to be involved in a specific incident in which they are exposed, or may be exposed to the virus, for example provision of personal care or close contact to a service user that has relevant symptoms.

2. A worker has been diagnosed as having Covid-19 and there is reasonable evidence that this was caused by exposure at work. This must be reported as a case of disease.

HSE guidance refers to Regulation 9(b) of RIDDOR which states the following should be notified as a 'case of disease':

'...any disease attributed to an occupational exposure to a biological agent.'

A 'biological agent' is defined as *'a micro-organism, cell culture, or human endoparasite, whether or not genetically modified, which may cause infection, allergy, toxicity or otherwise create a hazard to human health'*.

In relation to what qualifies as a 'diagnosis', this is defined as being:

'a registered medical practitioner's identification (in writing, where it pertains to an employee) of –

(a) new symptoms; or

(b) symptoms which have significantly worsened.'

HSE guidance states that if there is 'reasonable evidence' that someone diagnosed with Covid-19 was exposed because of their work, it must be reported using the case of disease report. The example given is a healthcare professional who is diagnosed with Covid-19 after treating patients with Covid-19.

It should be noted that the regulations do not require a positive test result as proof of 'diagnosis' to trigger reporting requirements and an employee must simply be showing new or worsening symptoms, identified by a registered medical practitioner (in writing), and there is reasonable evidence that this was after being exposed to Covid-19 at work, rather than any other exposure, for example whilst at home or in other public places / on public transport.

3. A worker dies as a result of occupational exposure to coronavirus.

HSE guidance refers to Regulation 6(2) of RIDDOR which states the following should be notified as a work-related fatality:

'...Where any person dies as a result of occupational exposure to a biological agent...' (see definition of a biological agent above).

The example given is where someone dies as a result of work related exposure to coronavirus and this is confirmed as being the likely cause of death by a medical practitioner. In such circumstances, this must be reported as soon as is practicable and, in any event, within 10 days of the death.

As evidenced above, the guidance issued by HSE requires interpretation and application to a wide range of scenarios that providers may face. In relation to whether or not there is 'reasonable evidence' that an employee's Covid-19 diagnosis is caused by 'exposure at work', unless the individual affected has been living and working at their place of work and not going elsewhere (given the incubation period ranges from 1-14 days and, most commonly, around 5 days), it is unlikely to be possible to confirm, with a reasonable degree of certainty that cases were caused by an exposure to coronavirus occurring during the course of employment.

In light of the above, it is unlikely that organisations will be in a position of needing to report each individual positive case of Covid-19 under RIDDOR to HSE. In each case, an assessment of the circumstances and need for the reasonable degree of certainty that the exposure to the virus occurred at work must be considered and recorded. This should of course be assessed on a case by case basis and relevant information and questions should be asked of employees to investigate the possible source of exposure before making a final reporting decision.