

COVID-19

Health and Safety Insurance Services



In the period between 10 April and 11 July 2020 the HSE reports that there have been 7,971 disease notifications of COVID-19 where occupational exposure is suspected and reported under RIDDOR to enforcing authorities. The number includes 119 deaths. These figures don't include cases where the exposure has occurred to non-employees, visitors, members of the public etc.

All cases reported to the HSE and Local Authorities are being assessed and investigations initiated where appropriate. In some cases this has led to enforcement action against the organisation and it is vital that your customers are supported by lawyers with a proven record in advising businesses on regulatory investigations and enforcement.

Unfortunately, it may be only a matter of time before the current trickle of claim notifications increases significantly, representing potentially large claims for damages and legal expenses.

To respond effectively and in a way that preserves control over costs you will need the support of a legal team with a track record of expertise and experience complemented by established, trusted relationships with brokers and businesses. The Coronavirus crisis will generate three main types of cases all of which may trigger a response under your EL or PL policies.

CRIMINAL INVESTIGATIONS BY REGULATORS

Whilst regulators said they would take a pragmatic approach to enforcement during this crisis, they increasingly require strict adherence to guidance as evidence of compliance with legal duties. The HSE has drafted detailed guidance for employers and has been working alongside Public Health England

to provide technical input following large outbreaks suspected to be connected to workplaces. As employees are being encouraged to return to work, HSE is adjusting the focus of its activities, including visits to business premises and sites. It is essential that early advice is obtained to mitigate the business consequences of COVID-19 notifications which could include closure of premises, reduced production, loss of contracts and adverse publicity for the organisation involved, in addition to the risk of prosecution.

From the beginning of the pandemic our specialist regulatory team has been providing valuable support to businesses across a range of sectors on issues including the following:

- Advice on RIDDOR reporting;
- Advising on internal investigations where COVID-19 positive cases or deaths are linked to a workplace;
- Reviewing COVID-19 and Return to Work Risk Assessments;
- Advice on the interpretation of government guidance and the application of sector specific guidance;
- Advising on contractual provisions and relationships with suppliers;
- Responding to investigations by regulators including the HSE, local authorities and the CQC;
- Advice on restructuring services to accommodate the new normal;
- Responding to Coronial investigations.

CLAIMS FOR DAMAGES

The claims industry is already mobilising to pursue a range of causes of action. These could include:

- Injury claims by employees affected by COVID-19;
- Claims for symptoms of stress/anxiety/PTSD;
- Claims arising from non employees following injuries or deaths caused or contributed to by COVID-19;
- Secondary liability claims by relatives of front line workers;
- Human Rights Act claims;
- Deprivation of liberty claims caused by enforced isolation/shielding.

There is the potential for claims to include a range of the above factors (for example fatal claims coupled with HRA claims). We have also identified potentially complex issues in relation to causation. Whilst the claims landscape is still emerging, there is clearly the potential for these claims to generate significant damages and costs. If you want to know more, please [click here](#) to view our further guide on the consideration of potential areas for EL/PL claims during the COVID-19 pandemic.

INQUESTS

Even before the pandemic, inquests into workplace death and deaths in care could be contentious and complex. Evidence at inquests can often form the basis for civil claims for damages and inquest proceedings are frequently monitored by regulators including the HSE, Local Authorities and the CQC, before decisions are made in relation to enforcement action.

Bereaved families will understandably be keen to understand the circumstances surrounding COVID-19 related deaths through the inquest process. The Chief Coroner's latest guidance is that Coronial investigations may be required where human error contributed to the death. That could mean detailed scrutiny of measures taken by organisations during the pandemic, especially in COVID-19 related deaths among front line workers, including care workers and of service users following hospital discharges.

Complying with regulators' guidance can be difficult; [click here](#) to read our article about some of the issues arising from CQC guidance during this crisis.

Depending on the setting, Local Authorities or HSE will investigate issues relating to the safety of employees, including the provision of suitable PPE. The CQC will investigate concerns about service user safety in the health and social care sector. In either case, investigations can be long and expensive and may lead to criminal prosecutions for organisations and individuals. They are stressful for those involved and a prosecution can lead to high fines and reputational damage.

All three types of case can and do happen at once, meaning it is vital to have a coordinated response including the following:

- identifying more complex cases which involve the risk of multiple legal actions;
- carrying out early, privileged investigations to establish the facts and capture key documents and witness evidence;
- treating every intervention or enquiry from a regulator as having the potential to result in enforcement action and responding with the benefit of legal advice;
- carefully coordinating legal defence work to protect an insured's position in any claim, inquest and potential prosecution;
- sharing with clients our repository of sector-specific guidance and advice, so that scope for further claims or regulatory action is minimised;
- collating data from similar cases and where service providers face multiple claims in order to minimise costs and build up a portfolio of key defence evidence.

DAC Beachcroft has long-established teams with a shared wealth of expertise in all three areas and a proven track record of working together with insurers and their customers. This means that our lawyers can deliver their specific expertise in complex claims, disease litigation, regulatory criminal defence and inquests, whilst working in mixed teams.

Our approach ensures that key information is shared, evidence gathering is not duplicated and criminal and civil defences are properly aligned. These factors are vital when responding to multiple claims arising from this crisis and will help to control costs.

If you would like to talk about how we can start to help you prepare for COVID-19 cases now please contact:



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