Employment – 20:20 vision
Providing clarity and insight on employment law matters

Covid-19 update: Looking beyond lockdown

As lockdown is eased, there are several Covid-19 related areas that employers should have on their radar. In this alert we look at:

- **Short term**: what employers should be thinking about now regarding a return to the workplace including an updated return to work checklist.

- **Medium term**: what other issues employers can expect to arise as lockdown is eased.

- **Longer term**: implications for future planning.

Short term: What should employers be thinking about now regarding a return to the workplace?

Return to work checklist and updated government guidance

Considering the recently updated government guidance on "*Working safely during the coronavirus*" we have updated our **return to work checklist,** which can be found at the foot of this alert. We've also picked out some of the key themes in the updated guidance. The guidance provides:

- An easing on the requirement to work from home wherever possible – opening the option of employees returning to their usual workplace provided they are made "**COVID-19 Secure**". The discretion lies with the employer to decide what is best for their workforce.

- Focus on the importance of **consultation** - employers should consult with their employees to determine who, from 1 August 2020, can safely return to the workplace (taking into account a person's use of public transport, childcare responsibilities, protected characteristics and other individual circumstances – with extra consideration given to those individuals who are higher risk).

- The importance of employers carrying out COVID-19 **risk assessments** and taking actions to manage the risks of transmission in line with the guidance.

- A focus on **face coverings**. The guidance notes that employers should assist their employees to ensure face coverings are worn safely and correctly, such as telling them to wash or dispose of their face covering daily and wash their hands regularly. Additionally, some employees will be excluded from wearing face coverings owing to health, age or equality reasons.

- Guidance regarding **work related travel**: walking or cycling to work is preferable to driving or taking public transport. If public transport is taken, face coverings must be worn whilst travelling and those who do not are at risk of a fine. Any shared cars should be limited to people who share a "bubble" or to fixed travel partners.

- Guidance on ventilation systems, other hygiene measures and larger gatherings.

There are 14 guides covering different types of workplaces including offices, factories, hotels, restaurants, retail, laboratories and more – click here for a link to the various guides, which include practical steps that employers should consider.

Medium term: What else can employers expect in the coming months?

- **Flexible working:** We anticipate that there will be an uptick in flexible working requests once the return to work period begins. Some employees may have enjoyed working from home and request to do so permanently or at least for multiple days per week. Others may have enjoyed working more flexible hours and being able to fit in childcare or other responsibilities. Employers should start thinking about business needs and how they may respond to such requests see below re updating policies in anticipation of these requests to avoid the need for staff to make formal requests and tie up management having to deal with them (e.g. allowing staff (who can) to work from home at least two days per week).

- **Quarantine issues:** How to deal with quarantines imposed for employees returning from particular countries. For example, at the time of writing there is a 14 day self-isolation period required for individuals returning from Spain. Employers will need to consider how any quarantine period should be treated and associated pay (e.g. if the employee can work from home or whether the employee will need to take holiday or unpaid leave).

- **Review policies:** Employers may also see an increase in grievances, whistleblowing or health and safety concerns in cases where employees do not feel the workplace is Covid-19 secure or where they are uncomfortable with the actions or omissions of colleagues (we anticipate an uptick in the latter). In preparation for these issues, employers are advised to review their employee handbooks focusing on the following policies: flexible working, working from home, grievance, whistleblowing, health and safety.

Longer term: Future planning

- **Furlough:** If employers are currently taking advantage of the furlough scheme, they should be considering plans for when the furlough scheme closes on 31 October 2020. Whilst there is a furlough bonus for retaining furloughed employees until January 2021, this amount may not be material enough to incentivise employers to retain staff. Employers should start considering alternative options such as restructuring, implementing contractual variations or ultimately redundancies (and should do so no later than the beginning of September).

- **Redundancies:** Will redundancies be required? Will collective consultation requirements be triggered and have employers considered the minimum time periods set by law between starting a process and any redundancies taking effect (30/45 days)? If you are grappling with redundancies we have produced a webcast to help guide you through the process and we are of course happy to assist with specific queries.

- **Contingency planning**: with the start of a "second wave" beginning in Spain, France and Australia as well as local lockdowns being imposed in the UK, employers should take this opportunity to plan for contingencies. For example, planning track and trace systems in case there is a rise in infections when employees are back in the workplace or permanent alterations to the workplace to "de-densify" the space on a more permanent basis.

We have a dedicated Covid-19 team of employment lawyers keeping up to date on the latest developments and who are available to answer any questions you may have. You can find more information here.

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RETURN TO WORK CHECKLIST

This checklist provides examples of some of the key areas employers should consider.

	Considerations	**Status**
	Can you enforce social distancing?	
	Social distancing measures are likely to remain in place for an extended period, long after lockdown ends and an initial return to work is permitted. Government Guidance states that a distance of 2 metres, or 1 metre with risk mitigation where 2 metres is not possible, should be maintained between individuals to prevent the spread of Coronavirus. How can this be achieved in the workplace?	
1	Can you adapt your current floorplan to allow for social distancing when at full capacity? Is it possible to disseminate a virtual tour of the new layout before employees return to allay any concerns they have and to ensure the new floorplan is understood in advance?	
2	How will you limit the number of people in communal areas such as kitchens, lifts, lavatories and meeting rooms at any one time? Can you minimise the number of people who must undertake work related travel?	
3	Can you avoid a build-up of people surrounding entry/exit doors or barriers at busy times of the day? Can you implement a shift pattern to minimise any congestion? Employees will need to be reminded not to fall back into old habits.	
4	If your workplace is customer facing, what measures will you take to protect both your customers and employees? Can you change workstations from being "face to face" to being "side by side"?	
	How can you increase hygiene standards in your workplace?	
	Existing health and safety policies may not be stringent enough to stop the spread of Coronavirus. Prudent measures to consider are:	
1	Do you have a Hygiene Policy and if so, does it require updating?	
2	What are the practicalities of more frequent "deep cleaning"? Which areas will require particular focus?	
3	How can you minimise the use of any communal items, such as pool laptops, printers or other equipment? If their use is imperative, how can you ensure they are kept clean?	
4	Can hand sanitisers be fixed in key locations around the office such as at doors, barriers and beside the lifts?	
5	Will you require employees to wear face coverings whilst in the workplace? Consider any adjustments you will have to make to face coverings to accommodate any religious, health, age or equality needs of your employees. Do you need to provide extra non-recycling bins for the disposal of single-use face coverings/or other PPE?	
6	Have you reviewed your workplace's ventilation system? Steps to be taken include increasing the existing ventilation rate, ensuring the ventilation system is on whenever anyone is in the office and keeping doors and windows open where possible.	
	How will you manage your workforce?	
	Updated Government Guidance suggests altering the way your workforce is managed to hinder the spread of COVID-19. Employers should consider the following:	

	Considerations	**Status**
1	Have you consulted with your employees about returning to the workplace and working safely? Consider employee surveys and questionnaires or hosting presentations about the return and undertaking consultation to take on board employees' views. We can assist you with drafting employee surveys bespoke to your business.	
2	Have you carried out your Covid-19 risk assessment? If so, have you put in place sufficient measures to manage the risks of Covid-19? (A failure to do so can constitute a breach of health and safety law).	
3	Do you need to run any training sessions regarding the return to work? Suggested topics include any an introduction to new hygiene procedures introduced, protecting employees' mental health and the use of track and trace.	
4	Have you created any new signage or communications to enforce COVID-19 specific messages, for employees as well as customers, contractors or visitors to the workplace? Where will you position such signage for maximum effect? Can you ensure the signage is accessible for all?	
**Will you need to update policies and procedures?** Given the rapid adaptations employers have had to make to accommodate the impacts of the Coronavirus pandemic, it is unlikely that existing Company policies will provide sufficient guidance to the rapidly evolving "new normal", which is likely to include a greater emphasis on working from home.	
1	If an employee becomes unwell with suspected Coronavirus symptoms having returned to the workplace, what actions should you and the employee take?	
2	How will you manage whistleblowing complaints such as reporting of those not practising social distancing or those who are exploiting the situation?	
3	What measures or contingencies will you put in place to deal with a possible "second wave" of Coronavirus lockdown?	
4	Consider which policies and procedures need updating in light of Government guidance and the new health and safety protocols, for example, your Health and Safety Policy, Working from Home Policy, Holiday Policy, Whistleblowing Policy and Disciplinary and Grievance Policies. Any deviation from Government guidance will need to be documented in case it is questioned at a later date.	
5	Regular risk assessments will be vital to documenting all changes and identifying any areas of improvement. Consider circulating these and publishing them on your website.	

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