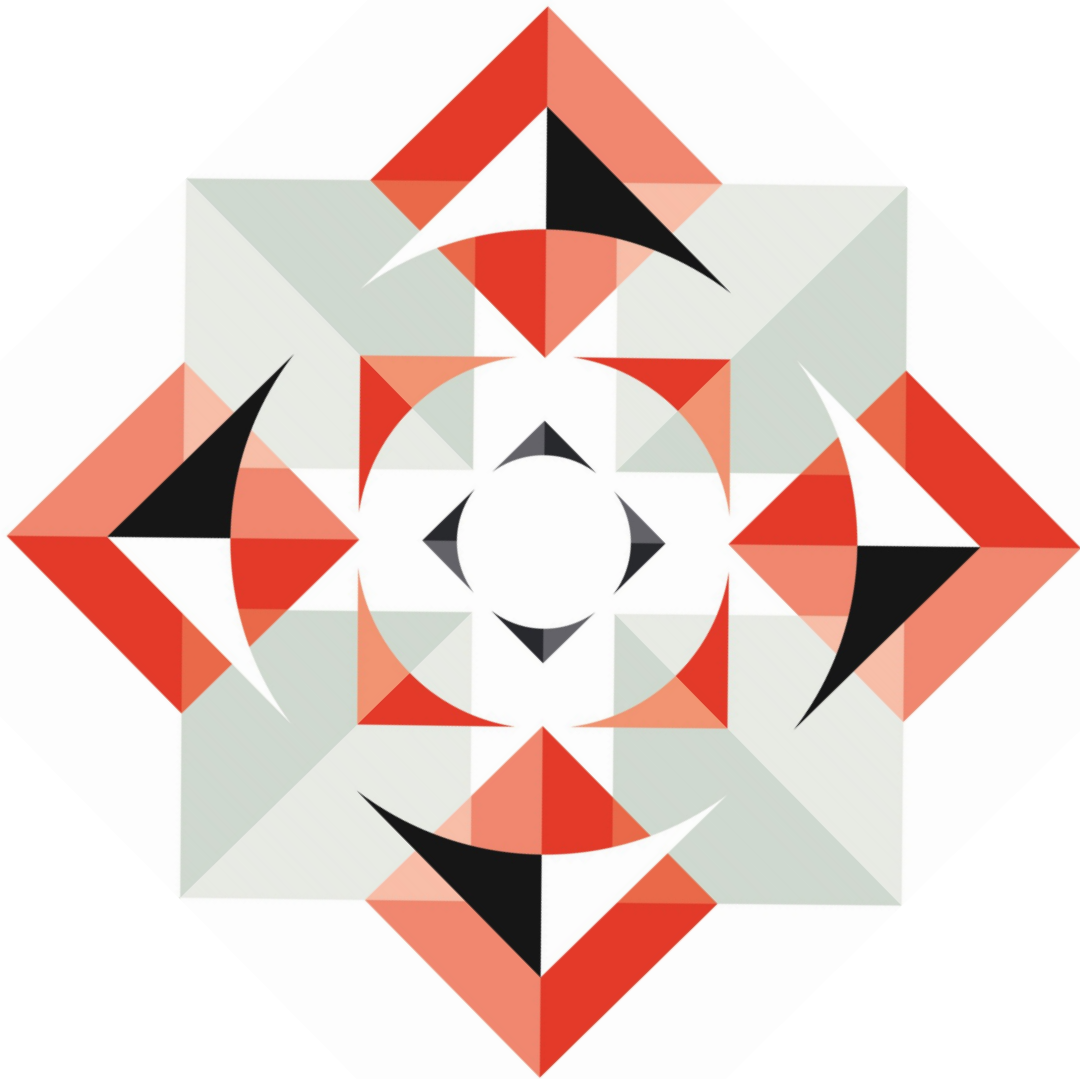


# Covid-19: Establishing a return to work plan – health and safety considerations



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## Introduction

In May 2020, the government set out its “roadmap” to ease the current Covid-19 restrictions. As set out in a document entitled *Our Plan to Rebuild*, the approach involves various steps designed to gradually enable people to return to the workplace, in addition to children returning to school and increased socialisation. We have seen some of these measures being implemented over the past weeks, with the reopening of non-essential shops and restaurants, bars and hotels.

Alongside the plan, the government published eight separate guides containing information for businesses and workers aimed at assisting them manage safely the process of returning to the workplace. These have since been updated. This Inbrief summarises the legal landscape, government guidance and other various considerations that employers need to take into account.

The government has emphasised that the relaxation of lockdown measures and any return to normal working life will be gradual and implemented on a phased basis, and only where the “R” rate of coronavirus infection in the UK is under 1 and continues to reduce. Where there has been a surge of coronavirus cases following the relaxation of restrictions, we have seen the government reintroduce restrictions—such as the closure of non-essential shops and the prohibition, on a localised basis, businesses such as hairdressers, bars and restaurants reopening.

Companies have obligations to ensure the health and safety of both their employees and visitors to their premises. They will also have to comply with any continuing government regulations and, as a minimum, the recommendations set out in the applicable workplace guidance. Implementing a carefully considered return to work plan and updating it in line with ongoing government guidance will be critical.

## The legal landscape

The Health and Safety at Work etc Act 1974 sets out an employer’s obligations. In summary, these are to:

- > ensure employees are provided with training, information, instructions and supervision which allows them to work safely
- > keep any place of work under the employer’s control well maintained to ensure it is safe to work in and has safe routes for access and exit
- > provide a safe working environment with adequate facilities for welfare at work
- > provide and maintaining safe plant and systems of work
- > ensure that articles and substances are safely used, handled, stored and transported
- > prepare and regularly revise a written health and safety policy, and inform employees of its existence and of any changes to it
- > not charge their employees for anything done or provided for the purposes of complying with health and safety law

There are also a plethora of regulations and approved codes of practice which cover specific aspects of workplace health and safety including:

- > obligations to carry out risk assessments to identify health and safety risks to employees and take steps to remove or minimise any risks
- > obligations to provide employees with information on any identified risks, the preventive/protective measures taken, and procedures in the event of an imminent danger to those at work and who is responsible for implementing them
- > appointment of an officer responsible for assisting with compliance with health and safety
- > manual handling
- > protective equipment
- > work equipment
- > display screen equipment

Employers additionally owe a common law duty to employees to safeguard their health, safety and wellbeing. This encompasses obligations to provide:

- > a safe place of work
- > safe plant and equipment
- > competent employees
- > a safe system of work

Penalties for breach of the duty can be severe from fines to imprisonment. Employers will also generally be vicariously liable for the wrongful acts of their employees if committed in the course of their employment – meaning an employer may be liable if an employee’s health is damaged due to a colleague’s disregard of health and safety rules.

## Devising a return to work plan

The health and safety risks arising from Covid-19 primarily arise from person to person contact, transmission through close proximity to infected individuals and surface transmission. This means it is vital that employers consider what steps can be taken to minimise the risk of the virus entering its premises and infecting its people and visitors and, if it does, having a quick response protocol to stop it spreading.

To get ahead and ensure readiness for staff returning to work, it is essential for employers to engage now with their key stakeholders in order to devise a plan - which should include those individuals responsible for health and safety, facilities, trade unions if recognised and HR.

### Step 1 – Risk assessments

All employers must carry out a Covid-19 risk assessment. A failure to do so could constitute a breach of health and safety law. You must consider what risks are posed by the features of your premises and your business operations and then take measures to minimise those risks. It is not obligatory to take every possible measure to eliminate the risk of the spread of Covid-19, only what is reasonably practicable. You must share your risk assessment with your workforce.

In relation to your premises, consider the following:



- > Cleaning – increase regularity and focus on equipment etc. Where health and safety regulations allow, could doors be left open?
  - > Hygiene facilities – hand sanitiser, hand-washing facilities, anti-bacterial wipes for surfaces and equipment, guidance for using toilets and showers so social distancing can be maintained
  - > Social distancing – impose 2-metre social distancing where possible, or alternatively 1-metre social distancing with additional measures to reduce the risk of transmission. Use markers, barriers, screens etc
  - > Display signage to demonstrate you have followed government guidance
  - > Disposal of waste
  - > Minimising the number of times staff can enter and exit your premises and, where practicable, designating one entry and one exit point
  - > Whether staff facilities such as canteens, gyms etc should be closed
  - > Limiting the number of people who are able to enter confined spaces within your premises (e.g. lifts, stockrooms, copying rooms, toilets, kitchens). Consider whether it would be appropriate to close off spaces which are too small to accommodate social distancing measures (e.g. small meeting rooms)
  - > Minimising non-essential visitors to your premises – ensure protocols are explained before entry, limiting visiting times, maintain records of visitors
  - > How operations which involve people can be undertaken in a way which minimises risk, e.g. postal/courier deliveries and collections, catering
  - > Requiring use of stairs rather than lifts, where possible
  - > Implementing a one-way system to minimise cross-contamination
- In relation to your people consider the following.
- > Which employees can work from home—if they can, they should continue to do so
  - > Which employees perform a genuinely business-critical or other similar role, which cannot be performed remotely
  - > Identifying vulnerable employees and how you will treat them – will they continue to be allowed to work from home and/or if they are returning to the workplace what extra measures do you need to take? Clinically extremely vulnerable individuals are strongly advised not to return to work during the pandemic peak and until the R rate is low. Clinical vulnerable individuals should take extra care in observing social distance—if they cannot maintain acceptable levels of distancing, it may be too risky for them to return to the workplace
  - > Monitoring—in order to assist the Test and Trace service, the government suggests you should keep a temporary record of staff shift patterns for 21 days
  - > How person to person contact can be minimised:
    - > fewer people in the workplace so that 2-metre distance (where possible) or alternatively 1-metre social distancing (with additional measures to reduce the risk of transmission) can be achieved
    - > adjusting working hours
    - > staggering break times
    - > dividing staff into groups and rotating attendance at work
    - > prohibiting physical contact, e.g. handshaking
    - > limiting the use of touch-based devices
    - > avoiding use of hot desks or other similar shared spaces
  - > Proximity of workstations – use back-to-back or side-to-side working
  - > Personal protective equipment – will you require staff to wear face masks, disposable shoe covers and gloves and, if so, do you have bins to ensure safe disposal of them? If staff and visitors wish to wear face coverings, they should be permitted to do so
  - > Minimising in-person meetings. If they are necessary, implement rules so that social distancing can be maintained, including in relation to sharing of pens and other objects. Ensure meeting rooms are well ventilated. Consider maintaining a record of all visitors
  - > Minimising handling of hard-copy documents including post and parcels
  - > Whether use of certain facilities should be limited, e.g. kitchens, fridges, beverage machines, crockery
  - > Whether staff should be encouraged to bring in their own food
  - > Implementing protocols for visitors to your premises, e.g. handwashing, no-contact greetings, disposable shoe covers and social distancing in meetings
  - > Personal Protective Equipment (PPE) – the government guidance does not make this mandatory (save in clinical settings), but the risks posed by your workplace should be assessed. Face coverings are mandatory on public transport
  - > How the risks associated with travel can be minimised:
    - > encouraging the use of methods of transport which involve minimum exposure to others where possible. If this is not possible, consider whether homeworking should continue
    - > staggering start and end times so peak travel times can be avoided
    - > prohibition of non-essential work travel
    - > provision of additional parking, or facilities such as bike racks to encourage staff to walk, run or cycle to work if possible
    - > regulating the use of locker rooms
    - > provision of additional storage for clothes and bags

The government guidance suggests that all employers should publish their risk assessments on their website. Businesses with more than 50 employees are expected to do so.

Finally, consider whether you have appropriate insurance in place in case anyone does become infected through attending the workplace.

Step 2 – Devise, revise or update appropriate policies and practices

Once you have established the risks, draft and/or revise your policies and practices. Consider whether updates to your sickness, health and safety, accident reporting, fire evacuation and disciplinary policies are required.

Draft new protocols for how staff and visitors should:

- > Conduct themselves so as to protect their own health and safety and that of others, e.g. how to deal with employees travelling for personal reasons rather than for work
- > Monitor their own health, report any issues and stay away if they or individuals they live with or in their support bubble feel unwell. If mandatory testing is required, there will be contractual and data protection issues to work through

If a union is recognised or you have a staff consultative body seek engagement and input on your proposals.

Set up a register of who has contracted or thinks they have contracted the Covid-19 virus. It will be important to identify if any individuals who perform health and safety functions (e.g. first-aider, fire chief) are absent and need temporary replacement.

Provide a mechanism through which employees can raise questions or make suggestions.

Establish a plan for who will come back and when. Work through business-critical roles and those which are necessary to enable proper functioning of your workplace (e.g. facilities, IT, cleaning, post room, reprographics). You may

wish to exclude vulnerable employees and seek volunteers initially. You will need to designate named persons who will manage the process of which employees will be returning and in what teams so as to ensure social distancing can be maintained.

If you will require certain roles or numbers of people to return, it will be important to establish how selection will be carried out to avoid any discrimination or other issues of unfairness which could lead to claims. If preferential treatment is given to those with caring responsibilities or those who live in close proximity to vulnerable people, consider the impact this may have on those who are required to return to the workplace and who may end up shouldering the burden of increased work.

Step 3 – Consult, train and communicate with staff and visitors

Employers have a statutory obligation to consult with their staff about the health and safety measures they are proposing. If you have designated health and safety representatives, you must consult with them. If not, you can consult with representatives who are selected by your staff or with all employees individually.

You should then:

- > Devising training for managers and employees
- > Delivering this to staff before they return to the workplace, using simple, clear messaging and visual aids
- > Holding return to work health and safety briefings by online meetings
- > Displaying communications and reminders in the workplace in key places, e.g. at hand-washing points, at entrances and exits, in toilets

Step 4 – Review

Review your plan in the light of further government guidance.

Continue to monitor the effectiveness of the policies and procedures you have developed and adapt and revise them as necessary. It would be

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advisable to set up a process through which staff can make suggestions for improvements and/or raise concerns.

### Homeworking

With any return to work likely to be gradual and phased, it is anticipated that staff will continue to need to work from home for a prolonged period. It is recommended that business undertake a homeworking risk assessment.

Employers have the same health and safety obligations to those who work from home as at their premises. You should consider:

- > measures for keeping in touch and monitoring wellbeing
- > type of work being undertaken and working hours
- > whether the work can be done at home safely
- > whether any control measures should be put in place in order to protect the homeworker

During the current crisis, many employees - especially those who do not work from home regularly - will not be set up to do so appropriately. While this may not pose a significant problem for a short period of time, the longer homeworking continues the more the risk increases. It is important that in the event of prolonged periods of homeworking, employers who require their employees to use display screen equipment should:

For further information on this subject please contact:

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