A Covid Secure return to work

30 June 2020 webinar for BIBA

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Takeaways from this webinar

- Awareness of the law
- The (current) Guidance, and myth busting
- Practical tips for RTW
- Employment law and tips
The law hasn’t changed (in England!)

- Health & Safety at Work etc Act 1974
- Management Regulations
  - Risk assessment
- Workplace regulations
- PPE regulations
What is/isn’t reasonably practicable?

- Balancing exercise:

  - Risk weighed up against the sacrifice required to reduce the risk further. The smaller the sacrifice the more likely this will be seen as reasonably practicable.
Return to work

- “5 Steps to Working Safely” and 12 sector specific guides
  - “everything practical”?!  
  - Social distancing relaxed on 24 June
  - HSE Guidance
    - Eng & Wales vs N Ireland

- What legal status does Guidance have for employers?
- What duties/obligations does it impose on e’ees?
- How will the law/guidance be enforced?
Covid 19 hierarchy of controls

- Most effective
  - Elimination (not applicable)
  - Substitution (not applicable)
- Engineering controls (ventilation, physical barriers)
- Administrative controls (training on distancing, distance markings and signage)
- PPE/RPE (masks, respirators, gloves)

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Practical tips:
1. Carry out an assessment of the activity in question – do you need employees to carry that activity out?
2. If you do, carry out a risk assessment of exposure to and transmission of Covid-19 – follow HSE NI template and guidance
3. Re risk-assess and date stamp
4. Consult with your staff like never before – achieve buy-in and confidence
5. Issue training to employees and document it
6. If applicable, give e’ees PPE / RPE or other protective measures and document this.
Practical considerations continued

7. Supervise implementation and keep up to date records of what was done by whom when and with what outcome
8. If it is not working stop and review.
9. Be aware of and follow Govt and HSE Guidance – you should then be compliant
10. If you deviate from the Guidance, document why

Above all, do something, document what you are doing and why, apply it and then review it.
Useful Links

- Weightmans’ Covid-19 page
  - https://www.weightmans.com/coronavirus/

- HSE Guidance

- NI RA template

- House of Commons Briefing
  - https://commonslibrary.parliament.uk/research-briefings/cbp-8916/

- 5 steps to working safely and 12 sector guides
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What have companies been doing?

- Business Interruption Loan Schemes/Other Government sources of funding.
- Lay Off/Short time working.
- Changes to terms and conditions and/or redundancies, re-organisation and restructuring.
- Coronavirus Job Retention Scheme.
- Employee engagement, new ways of working adopted.
What does returning to work look like?

- Government guidance on return to work issued on 11 May.

- Five keys steps to working safely:
  
  - Carry out a COVID-19 risk assessment; consulting with your workers or trade unions and sharing the results of the risk assessment on your website.
  
  - Develop cleaning, handwashing and hygiene procedures.
  
  - Help people work from home as a first option.
  
  - Maintain social distancing, where possible.
  
  - Manage transmission risk.
What do we recommend?

- Start early in your planning and pre-empt certain considerations:
  
  - Engage with staff / trade unions now – understand any particular requirements
  - Rotational/phased return?
  - Working from home – does it work?
  - Different working patterns (days/hours)
  - Work place alterations and PPE.
Important issues for you to consider

▪ What if employees can’t return to work
  – Extremely clinically vulnerable/clinically vulnerable employees.
  – Pregnant employees.
  – Childcare issues.

▪ What if employees don’t feel safe in the work place and/or refuse to come back to work?
  – S101 ERA 1996
  – ‘serious and imminent risk that can’t be controlled’: Risk of automatic unfair dismissal.
  – Reasonable adjustments for disabled employees.
Important Issues for you to consider

- **Data Protection**
  - GDPR/DPA risks
  - Testing and temperature checking

- **Whistleblowing/Health and Safety**
  - COVID19 risk assessment; publish on website if >50 employees (summary likely to suffice)
  - H&S concerns may amount to protected disclosures (especially for extremely vulnerable/vulnerable employees).
What if further measures are required?

- Temporary or permanent changes to terms and conditions of employment
  - Pay/Days of work
  - Benefits

- Redundancies, restructuring or re-organisation of your business – is this required now?

- Consultation and agreement in writing to avoid claims
Q&A