

Covid-19: workplace health and safety

The Health and Safety at Work etc. Act 1974 (HSWA 1974) imposes a general duty on employers to ensure, so far as is reasonably practicable, the health, safety and welfare at work of all their employees.

In addition to their statutory duties, all employers have a common law duty to take reasonable care for the safety of their employees; they have a duty to see that reasonable care is taken to provide them with a safe place of work, safe tools and equipment, and a safe system of working.

It is an implied term of employment contracts that employers will take reasonable care of the health and safety of employees and provide a reasonably suitable working environment for performance of the employee's contractual duties.

HSE: guidance and enforcement

The COVID-19 Secure guidelines notes that the HSE may take enforcement action against employers who are not taking action to comply with the relevant public health legislation and guidance to control public health risks.

Employer duty to consult on health and safety

Employers are under a duty to consult with employees on matters concerning health and safety at work.

Assuming that the employer does not recognise a trade union and there are no health and safety representatives appointed by a union, an employer must consult employees in good time on matters relating to their health and safety at work and, in particular, with regard to a number of matters which include the introduction of any measure at the workplace which may substantially affect the health and safety of those employees.

The employer may consult with either all the employees directly or they may elect one or more safety representatives to represent them. The employer must provide either the employees (if consulting direct) or their representatives with information that will enable them "to participate fully and effectively in the consultation".

The COVID-19 Secure guidelines suggests that employers can achieve this by listening and talking to them about their work and how risks from COVID-19 will be managed. Since employees do the work they often have the best understanding of the risks and will have views on how to work safely. By involving them in making decisions, employers demonstrate that they are taking employees' health and safety seriously.

Risk assessments

The HSE has produced Managing risk and risk assessments at work (which contains a risk assessment template) to assist employers undertake risk assessments.

The HSE suggests that the minimum an employer must do under the Management of Health and Safety at Work Regulations 1999, which impose the requirement for employers to undertake risk assessments, is:

- Identify what in their business could cause illness or injury (hazards).
- Decide how likely it is that someone could be harmed and how seriously (the risk).
- Take action to eliminate the hazard, or if this isn't possible, to control the risk.

Where the employer employs five or more employees, it must record:

- The significant findings of the assessment.
- Any group of employees the assessment identifies as being especially at risk.

Matters to be considered in a risk assessment

The COVID-19 Secure guidelines are intended to help employers when undertaking an appropriate COVID-19 risk assessment in their workplaces. They make practical suggestions on how work can be undertaken safely. However, each employer will need to consider the particular size and nature of their business, and how it is organised, operated, managed and regulated.

Providing information about the risk assessment

Employers must provide their employees with "comprehensible and relevant information" on the following:

- The risks to their health and safety identified by the assessment.
- The preventive and protective measures that the risk assessment has shown the employer it needs to take to comply with its legal obligations.
- The procedures to be followed in the event of serious and imminent danger to persons at work.
- The identity of the people who will implement any evacuation of the workplace.
- Where they share a workplace with one or more other employers (whether on a temporary or a permanent basis), the risks to employee health and safety notified to them by the other employer(s).

The five steps to working safely that accompany the COVID-19 Secure guidelines note that employers should share the results of their risk assessment with their workforces and suggests that employers should publish them on their websites. The government expects all businesses with over 50 employees to do so. The government has also produced a notice that employers should display in their workplaces to show that they have followed the guidelines.

Communicating with the workforce

The matters that need to be covered by an employer include:

- How it intends to emerge from lockdown in line with the government's advice.
- What steps it is taking to inform its position and what this means for employees. This could range from a return to the workplace, proposed changes to terms and conditions of employment or redundancies, which may require both individual and collective consultation.
- What changes the employer has made to the workplace to enable and support a return to work and what steps are required of employees when they are at work. Employers should be alert to and acknowledge:
 - the levels of stress that employees have been under given the threat of COVID-19 to themselves and their families;
 - the impact that lockdown has had on them;
 - the steps they are being asked to take to come back to work; and
 - the importance of open communication and cooperation in making a return to work successful.
- The support that the employer has in place for employees.
- The requirement for staff to remain vigilant about their health and that of members of their household and the steps that they must take to self-isolate if they start to experience symptoms of COVID-19.

Depending on their circumstances, employers may consider creating a COVID-19 policy or procedure to cover the issues relevant to their organisation which it can continue to update and alert staff to as required.

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