

# Planning for the “new normal” post lockdown – key employment law issues

As lockdown measures are eased in England, and Government guides on return to the workplace are published, employers have a great deal to consider when making decisions about how their business will operate.

## Checklist



### Health and safety in the workplace

The UK [Government guides](#) on workplace safety measures for different workplaces in England should be followed as well as general health and safety principles. Employers operating in Scotland, Wales and Northern Ireland should consult the guidance issued by their respective countries. The guides require a health and safety risk assessment, where employees are returning to the workplace. You are required to consult with health and safety representatives and should involve them and any trade unions or representative bodies, or consult directly with a smaller workforce, to gain employee trust that you are taking appropriate steps to ensure safety at work. The risk assessment you produce should be in writing and where you have 50 or more employees, the Government's expectation is that it will be published on your website. Some health and safety measures will involve variations to terms and conditions of employment which will require consent, or where that is not forthcoming, a process to vary terms and conditions formally. Different measures will be appropriate for each employer and workplace and there is a great deal of detail on what are appropriate social distancing and hygiene measures in the guides.

Face coverings are optional and should not replace other measures to address safety where social distancing is not possible. Whilst the guides do not deal with this, employers should take a measured approach to more controversial options such as any kind of health testing or requiring the use of contact tracing trackers, especially in light of privacy concerns. Any information held about employees' health is special category data, and employers should consider the legal basis on which they can validly process it.



### Phased return to work

The guides provide that where employees can continue to work from home, they should do so. Only where employees are not able to work from home should they return to the workplace. Even then, social distancing restrictions (to travel or at the workplace) may limit who should return. Where only certain employees are returning to work, selection should be based on objective and non-discriminatory factors. Government guidance and business need should be central to this decision-making. Employers should avoid making assumptions about employees' wishes based on their personal circumstances as this could create discrimination risks. Seeking volunteers may help reduce dissatisfaction.

Where employers have used the Government's Coronavirus Job Retention Scheme, similar questions arise as to who should return from furlough first, and will be more difficult where employees on furlough are not on full pay. Some employees will prefer to stay at home on a lower salary, while others will want to return to work as soon as possible.



## Staying in the home office?

As the guides provide that remote working should continue where possible, it is likely that office-based roles will continue working from home in the short to medium-term. Additionally, many employers can see the benefit of a reduced office footprint and are contemplating more home working for their employees. This requires employee consent and certain key issues such as data security in home offices and health and safety risk assessments for permanent home workers should be taken into account. Equally, many employees are seeing the benefit of a reduced commute and employers should be ready for an increase in flexible working requests.



## The new normal?

Now will be a good time to review what has worked well for your organisation during lockdown, and what has worked less well. As well as home working, the guides prescribe minimising business travel and face to face meetings. In any case, many companies will be rethinking these business practices. It may be useful to turn short-term adaptations into permanent changes now, while government sanction and the momentum to do so is still there.



## Changes to employment terms

Where your proposed recovery plan includes changes to working hours, use of annual leave, pay cuts or other changes to employment terms, it is likely that you will need employee consent. Where consent is not forthcoming and the change involves 20 or more employees, this may require a consultation process.



## Redundancies

While the extension to the Coronavirus Job Retention Scheme into the Autumn is helpful to some employers, some companies are already proposing or contemplating redundancies. The redundancy process can be complex and getting this wrong can incur criminal liabilities for an employer and its directors. With tensions running high at present, and employees likely to feel more isolated if they are working from home, these processes should be managed even more carefully than normal.



## Managing employees sensitively

This will be a difficult time for employees who are anxious about their safety or the safety of those they live with. Employees' concerns should be dealt with sensitively, not least because they may benefit from discrimination protection if they have a disability, or whistle blower protection if they raise a concern about workplace safety. Providing employees with training on any new procedures and practices will also be important.

Employees may have built up annual leave during lockdown and it will be important to manage requests for holiday appropriately, taking into account business need.



## Keeping close

It continues to be crucial that employers keep in contact with their staff and maintain their trust. Consultation and regular and clear communications about any changes you are proposing will help to maintain staff trust through the stages ahead. Providing support for those whose mental health may be suffering on a continuing basis will be important in this period of ongoing change.

For more detail on the issues click [here](#) for our Law Now.

If this is an issue that affects your business, please get in touch with our Employment Team through your usual contact or at: [CMSEmployment.Team@cms-cmno.com](mailto:CMSEmployment.Team@cms-cmno.com)

We can help you navigate the current circumstances by working through with you the various issues for consideration in the short, medium and long term.