

Back to Work – What Next

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BACK TO WORK WHAT NEXT?

Health and safety requirements in the workplace arising out of the Covid 19 pandemic

The key piece of legislation is the Health & Safety at Work (NI) Order 1978 which imposes duties on employers to safeguard as far as reasonably practicable the health and safety of employees and places responsibilities on employees to comply with measures put in place for their health and safety.

There are also a series of regulations enacted underneath the Order which make practical rules for specific aspects of health and safety in the workplace.

Relevant in the current context are:

- Management of Health & Safety at Work Regulations (NI) 2000
- Personal Protective Equipment at Work Regulations (NI) 1993

Also relevant are The Health Protection (Coronavirus Restrictions) (NI) Regulations 2020

Employers need to be aware of their key legal responsibilities and take appropriate steps to safeguard their employees.

COVID 19 ADVICE AND GUIDANCE FOR PLACES OF WORK – RISK ASSESSMENT

The HSE(NI) has prepared a generic Risk Assessment template for dealing with the current Covid 19 situation in the workplace.

Although not all of the steps may be necessary or relevant to all employers it is a very useful document and if an employer conducts a risk assessment using it as a template they should have considered all relevant issues.

What are the hazards?

Spread of Covid 19 Coronavirus

Who might be harmed?

Staff, visitors, vulnerable workers, cleaning staff

Controls

Handwashing facilities, cleaning, social distancing, wearing of gloves, emphasising that anyone becoming unwell with a new continuous cough or a high temperature should go home and follow stay at home guidance.

BEFORE RE-OPENING

Check that any site or building that has been closed or only partially operational is thoroughly clean and has an adequate supply of hand washing facilities and that hand sanitizers are provided at multiple locations.

Check that notices have been placed providing hygiene guidance and that social distancing is clearly marked in public areas.

ASSESSING THE RISK - RETURNING EMPLOYEES

Preferably the employer should conduct a risk assessment before bringing employees back into the workplace.

A good starting point is to walk around your workplace and look for any hazards. A hazard is anything that may cause harm.

Then think about the risks. A risk is the chance, high or low, of somebody being harmed by the hazard, and how serious the harm could be.

Think about how accidents could happen and who might be harmed. Ask your employees what they think the hazards are, as they may notice things that are not obvious to you and may have some good ideas on how to control the risks. Focus on the real risks – those that are most likely to cause harm.

Consider the measures you are already taking to control the risks and ask if there is anything else you should do to make your workplace safer.

Once you have identified the risks and what you need to do to control them, you should put the appropriate measures into place.

Where a member of staff or a customer or client has developed Covid 19 contact the Department of Health and follow any advice/guidance given.

Drivers

Be aware that there is specific guidance for drivers. Employers should check with customers/suppliers to ensure that welfare facilities will be available to their drivers. Also drivers must be facilitated with adequate breaks to avail of proper welfare facilities.

Mental Health

This is likely to be an important issue. Employers will be expected to promote health and well-being awareness to staff and provide as much support as reasonably practicable.

Covid 19 Working Through this Together – A Practical Guide to Making Workplaces Safer
produced by the Northern Ireland Engagement Forum and approved by the NI Executive

PPE REQUIREMENTS WITHIN THE WORKPLACE

PPE Regulations state that appropriate PPE must be provided to employees who may be exposed to a risk to their health and safety at work except where the risk has been adequately protected by other means.

PPE must be readily available in good condition and cannot be charged for.

HM Government advice states as follows:

Where you are already using PPE in your work activity to protect against non-Covid 19 risks you should continue to do so.

When managing the risk of Covid 19 additional PPE beyond what you usually wear is not beneficial. This is because Covid 19 is a different type of risk to that normally faced in the workplace and needs to be managed through social distancing, hygiene and fixed teams or partnering rather than PPE.

Workplace should not encourage precautionary use of extra PPE to protect against Covid 19 outside clinical settings or when responding to a suspected/confirmed case of Covid 19. Where PPE is required it must be provided free of charge and it must fit properly.

MANAGING CHANGE AND EMPLOYMENT CONCERNS

The current pandemic has created significant uncertainty in every aspect of life including within the workplace.

Many businesses have had to cope with enormous upheaval including forcible lockdown and consequent loss of business and revenue.

Many have also availed of the CJRS “furlough” scheme to retain employees on the payroll but at home and not working.

From 1st July 2020 employees may return to work on a flexible furlough arrangement under which they can work part of the time and stay on furlough for the remainder.

If an employer intends to alter key terms and conditions of employment such as hours of work or remuneration then it must be remembered that this can only lawfully be done with the employees consent. There cannot be unilateral variation of core terms and conditions.

Before contemplating any changes familiarise yourself with best practice guidance from Labour Relations Agency.

ADVICE AND GUIDANCE ON CHANGES TO PHYSICAL LAY-OUT OF WORKPLACE: SOCIAL DISTANCING

Employers must maintain social distancing in the workplace wherever possible. Where social distancing guidelines cannot be followed in full employers need to assess how essential that activity is and take all mitigating action to reduce transmission between staff.

Possible mitigating actions

- Increased hand washing and surface cleaning
- Reduce the activity time to the minimum possible
- Use screens/barriers to separate people from each other
- Use back to back or side to side rather than face to face working whenever possible
- Use partnering or fixed teams to reduce/control the number of people each employee has contact with
- Issue frequent reminders that social distancing must be observed at entrances, exits, breakrooms, canteens as well as at work stations
- Staggering arrival and departure times at work to reduce crowding into and out of the workplace, taking account of the impact on those with protected characteristics

- Providing additional parking or facilities such as bike-racks to help people walk, run or cycle to work where possible
- Limiting passengers in corporate vehicles, for example, work minibuses. This could include leaving seats empty
- Reducing congestion, for example, by having more entry points to the workplace
- Providing more storage for workers clothes and bags
- Using markings and introducing one-way flow at entry and exit points
- Providing handwashing facilities, or hand sanitiser where not possible, at entry/exit points and not using touch-based security devices such as keypads
- Maintaining use of security access devices, such as keypads or passes, and adjusting processes at entry/exit points to reduce risk of transmission. For example, cleaning pass readers regularly and asking staff to hold their passes next to pass readers rather than touching them

PRACTICAL TIPS ON STAFF RETURNING TO WORK DISCLOSING SYMPTOMS

No-one should go to the workplace if they:

- Are unwell with Coronavirus symptoms
- Are told to self-isolate by a Government text and trace service having been in contact with someone who has tested positive
- Need to self-isolate because someone in their house has symptoms
- Need to self isolate because they're returning to Northern Ireland after a holiday or business travel

If an employee is already at work and experiences Coronavirus like symptoms s/he should:

- Tell the employer immediately and follow PHA advice on managing the situation

The Employer should:

- Send the employee home immediately
- Support them staying at home whilst they self-isolate
- Check eligibility for SSP
- Pay them contractual sick pay if applicable
- Support their well-being especially in terms of mental health
- Follow appropriate cleaning guidance dependent upon the nature of the business

REQUIREMENTS FOR EMPLOYERS, DATA PROTECTION, ADHERING TO GUIDELINES

The Information Commissioner's Office has confirmed that it recognises the unprecedented challenges facing everyone (including businesses) during the Coronavirus (Covid 19) pandemic.

Updated guidance states that the ICO is aware that businesses may need to share information quickly or adapt ways of working. The guidance states that Data Protection will not stop that being done but that everything should be proportionately.

The ICO has produced working from home guidance which includes a helpful security checklist for employers. In general it is expected that employers:

- Will have clear policies, procedures and guidance for staff who are working from home and that these will specifically address accessing, handling and disposing of personal data
- Will use the most up to date and secure version of the relevant remote access solution
- Will remind employees of the need to use unique and complex passwords
- Will have checked if multi-factor authentication is available and configured it where possible

The guidance also addresses:

- Whether the employee should use their own or a company device
- Cloud storage and the additional risks it presents
- Remote desktop working and vulnerability to attack especially, for example, an administrator account
- Use of e-mail with particular reference to defending against phishing attacks

As lockdown restrictions start to ease and businesses begin to re-open the ICO has set out key steps organisations need to consider around the use of personal information:

1) Only collect and use what's necessary

To help you decide if collecting and using people's health data is necessary to keep your staff safe, you should ask yourself a few questions:

- How will collecting extra personal information help to keep your workplace safe?
- Do you really need the information?
- Will the test your considering actually help you provide a safe environment?
- Could you achieve the same result without collecting personal information?

If you can show that your approach is reasonable, fair and proportionate to the circumstances, then it is unlikely to raise data protection concerns.

2) Keep it to a minimum

When collecting personal information, including people's Covid 19 symptoms or any related test results, organisations should collect only the information needed to implement their measures appropriately and effectively.

Don't collect personal data that you don't need. Some information only needs to be held momentarily, and there is no need to create a permanent record.

3) Be clear, open and honest with staff about their data

Some people may be affected by some of the measures you intend to implement. For example, staff may not be able to work. You must be mindful of this, and make sure you tell people how and why you wish to use their personal information, including what the implications for them will be. You should let employees know who you will share their information with and for how long you intend to keep it. You can do this through a clear, accessible privacy notice.

4) Treat people fairly

If you're making decisions about your staff based on the health information you collect, you must make sure your approach is fair. Think carefully about any detriment they might suffer as a result of your policy, and make sure your approach doesn't cause any kind of discrimination.

5) Keep people's information secure

Any personal data you hold must be kept securely and only held for as long as is necessary. It's also good practice to have a retention policy in place that sets out when and how personal information needs to be reviewed, deleted or anonymised.

6) Staff must be able to exercise their information rights

As with any data collection, we would expect organisations to inform individuals about their rights in relation to their personal data, such as the right of access or rectification. Staff must have the option to exercise those rights if they wish to do so, and to discuss any concerns they may have with organisations.

If you have decided to implement symptom checking or testing, there are additional requirements you need to follow. These include identifying a lawful basis for using the information you collect and, if you're processing health data on a large scale, conducting a data protection impact assessment. These steps are covered in our guidance and will ensure you are complying with data protection law.

Adopt a fair approach to handling people's data, which is transparent in its purpose and compliant with data protection law.

RISK ANALYSIS TEMPLATES AND PLANS AND GUIDANCE - WHERE TO FIND THESE

HSENI

<https://www.publichealth.hscni.net/>

<https://www.hseni.gov.uk/articles/covid-19-frequently-asked-health-and-safety-questions>

Mental well-being at work / Working from home

<https://www.publichealth.hscni.net/publications/directory-services-help-improve-mental-health-and-emotional-wellbeing>

Labour Relations Agency

<https://www.lra.org.uk/resolving-problems/types-problems/bullying-and-harassment>

Latest Government Guidance

<https://www.gov.uk/government/collections/coronavirus-covid-19-list-of-guidance>

Public Health Agency Guidance

<https://www.publichealth.hscni.net/news/covid-19-coronavirus>

NI Business Info

<https://www.nibusinessinfo.co.uk/content/coronavirus-workplace-safety-guidelines-and-social-distancing>

ASSESSING HEALTH AND SAFETY POLICY IN RESPECT OF COVID 19

Among the key responsibilities of employers under the Health and Safety (NI) Order 1978 is the requirement to prepare a written health and safety policy detailing implementation arrangements. This applies to all employers with more than 5 employees. The Policy must be brought to the attention of all employees.

The Policy should detail the responsibilities of key members of staff and the health and safety procedures and standards that apply.

HSENI advises that in the context of the pandemic employers should continue to assess risk and look at how current Covid 19 guidance relates to their own workplace.

HSENI states that this will likely warrant changes in certain practices and that employers should, where application, re-assess the impact on general risk control procedures and measures.

The overall aim is to reduce risk to the lowest possible level to protect employees and the public and to reduce the burden on the Health Service.

ANY TRAINING REQUIRED

HSENI advises that all employers must ensure that all staff are well enough trained to be able to work safely. It is necessary therefore to provide clear instructions and information and adequate training for all employees.

Training must be provided so that all employees know how to work safely and without risks to health.

If in-house Managers or Supervisors are used to delivered in-house training they need to be suitably experienced and competent and they may need additional/updated training on the specific hazards arising in the context of the pandemic.

New employees must receive induction training covering basic health and safety procedures and any additional Covid 19 related hazards.

It is a good idea to keep a documented record of training. It is also a good idea to provide refresher training to take account of new developments.

Particular care should be taken to ensure that:

- (a) Young workers are given tailored training which recognises their lack of experience
- (b) Migrant workers are provided with clearly understandable instructions and guidance. Interpreter assistance should be provided as required.
- (c) Vulnerable employees – this group requires particularly careful consideration in the context of the pandemic

HSE NI – Health and Safety Training – A brief guide

Please note that these slides summarise relevant guidance and information as at 8th July 2020. Nothing in these slides constitutes legal advice. Rosemary Connolly Solicitors Limited



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