

Back to Work – What Next

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HEALTH AND SAFETY REQUIREMENTS

- The Safety, Health and Welfare at Work Act 2005 (as amended) and associated regulations.
 - General obligation on an employer to *“ensure, so far as is reasonably practicable, the safety, health and welfare at work of his or her employees.”*
 - A significant number of other specific duties are imposed on employers with regard to employees’ safety, health and welfare at work.
 - Employees’ duties.
- The Return to Work Safely Protocol (the **“Protocol”**).
 - Specific national protocol for employers and workers.
 - Imposes a range of mandatory obligations on employers including the appointment of a lead worker representative, development of a Covid-19 response plan, preparation of a contact log, preparation and issuing of a pre-return to work form, training and prevention and control measures.

PPE REQUIREMENTS WITHIN THE WORKPLACE

- An employer may be under a pre-existing obligation to provide PPE to an employee.
- In the context of Covid-19, the Protocol states that in dealing with a suspected case of the disease in the workplace, an employer must “*provide as is reasonably practicable*” PPE; gloves, masks (amongst a range of other measures).
- More generally, the Protocol makes clear that PPE should not be viewed as a substitute for the other preventative measures outlined in the Protocol.
- Employers are advised to check the HSPC website regularly for updates regarding use of recommended PPE.
- Employers must provide PPE and protective clothing in accordance with identified Covid-19 exposure risks in line with public health advice.
- Training must be provided to workers in relation to the proper use, cleaning storage and disposal of PPE and the PPE must be inspected, cleaned, maintained and replaced as necessary.

MANAGING CHANGE AND EMPLOYMENT CONCERNS

- Different forms of change have been engendered by Covid-19 and many other types of change may be necessary.
 - Changes to remuneration.
 - Changes to working hours/patterns.
 - Redundancies.
 - Changes to the workplace.
- Management of these changes is challenging and potentially creates various forms of legal risk.
- Employee concerns are many and varied. Communication and consultation will be key.

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

- Employers must maintain social distancing in the workplace wherever possible. The Protocol gives examples of ways in which this may be achieved.
- Where 2 metre work separation cannot be ensured, the Protocol requires alternative protective measures to be taken such as:
 - Installing physical barriers;
 - Maintaining a distance of at least 1 metre or as much distance as is reasonably practicable;
 - Minimising any direct worker contact and providing hand washing facilities and other hand hygiene aids;
 - Making face masks available in line with public health advice.

PRACTICAL TIPS ON STAFF RETURNING TO WORK DISCLOSING SYMPTOMS

- If employers and workers comply with their respective obligations under the Protocol, an employee should not return to work displaying/disclosing symptoms.
- The Protocol requires employers to establish and issue a pre-return to work form for workers to complete at least three days before their return to work which asks whether the worker:
 - has symptoms of Covid-19 or had such symptoms in the past 14 days;
 - has been diagnosed with confirmed or suspected Covid-19 infection in the previous 14 days;
 - has been a close contact of a confirmed or suspected case in the past 14 days;
 - has been advised by a doctor to self-isolate/cocoon at this time.
- If a worker answers yes to any of the above, the worker should seek and follow medical advice before returning to work.
- Workers are obliged to self-isolate at home and contact their GP promptly if they have symptoms and stay out of work until all symptoms have cleared.

PRACTICAL TIPS ON STAFF RETURNING TO WORK DISCLOSING SYMPTOMS

- The Protocol requires employers to develop a response plan to deal with suspected cases that may arise during the course of the working day.
- The response plan should include:
 - Define a response structure that identifies the team(s) responsible for responding to a suspected cases.
 - Appoint an appropriate manager(s) to deal with suspected cases.
 - Identify an isolation area in advance. It should be easily accessible.
 - Take account of the possibility of one or more persons displaying symptoms. Do you have additional isolation areas or a contingency plan for dealing with this?
 - Is it possible to isolate the person behind a closed door? If not, the employer must provide an area away from other workers.
 - As is reasonably practicable provide: ventilation, tissues, hand sanitiser, disinfectant, wipes, PPE, clinical waste bags.

PRACTICAL TIPS ON STAFF RETURNING TO WORK DISCLOSING SYMPTOMS

- If a worker displays symptoms during the working day, the manager and the response team must:
 - Isolate the worker and have a procedure in place to accompany the individual to the designated isolation area via the isolation route, keeping at least 2 metres away from the symptomatic person.
 - Provide a mask for the person presenting with symptoms if one is available.
 - Assess whether the unwell individual can immediately be directed to go home and call their doctor and continue self-isolation at home.
 - Arrange transport home or to hospital for medical assessment. Public transport of any kind should not be used.
 - Arrange for cleaning of the isolation area and work areas.
 - Conduct an assessment of the incident to determine follow up actions.
 - Provide advice and assistance if contacted by the HSE.

REQUIREMENTS FOR EMPLOYERS, DATA PROTECTION, ADHERING TO GUIDELINES

- The Protocol requires employers to obtain personal data relating to employees and others which they would not ordinarily obtain. For example in relation to:
 - Maintaining a contact log;
 - Pre-return to work form; and
 - Implementing temperature testing in line with public health advice.
- All of the above will involve the processing of personal data and, in many cases, processing special category personal data.
- The Data Protection Commission (“**DPC**”) and the Department of Business, Enterprise and Innovation have issued recent guidance in relation to the data protection issues arising from complying with the Protocol.

REQUIREMENTS FOR EMPLOYERS, DATA PROTECTION, ADHERING TO GUIDELINES

- Contact log
 - Purpose of this information is to facilitate the HSE's official contact tracing procedures;
 - Personal data held in a contact log should not be used for other purposes;
 - Avoid disclosing information in relation to a particular employee's diagnosis to other employees;
 - Only retain the information for as long as considered necessary for the purpose for which it is held.
- Pre-return to work form
 - Should be tailored to collect the minimum information necessary and should not be processed for any other purpose;
 - Form not to be retained once an employee has returned to work.

REQUIREMENTS FOR EMPLOYERS, DATA PROTECTION, ADHERING TO GUIDELINES

- Temperature testing
 - Only to be undertaken in line with public health advice. No current public health recommendation that such testing be undertaken at present.
 - DPC states that employers considering implementing temperature testing must be in a position to justify why any processing of personal data is necessary to mitigate an identified risk and advice of public health authorities will be key to assessing the proportionality and necessity of such a measure.
 - Employers need to consider whether a data protection impact assessment might need to be conducted.

RISK ANALYSES TEMPLATES AND PLANS AND GUIDANCE

- General Guide to Risk Assessments and Safety Statements available on the Health and Safety Authority's website (www.hsa.ie).
- Other important documents:
 - The Protocol;
 - The Department of Business, Enterprise and Innovation's explanatory guidance for employers and workers regarding the Protocol and data protection; and
 - The DPC's recent guidance regarding the Protocol.
- The Health and Safety Authority has published a number of very useful templates and checklists on its website relating to matters such as:
 - Planning and preparing;
 - Control measures;
 - Induction;
 - Cleaning and disinfection; and
 - Lead worker representatives.

ASSESSING HEALTH AND SAFETY POLICY IN RESPECT OF COVID-19

- Under the 2005 Act an employer is required to have a safety statement.
- Given the very likely far-reaching changes to work activities as a result of the measures mandated by the Protocol, an employer will need to conduct appropriate risk assessments.
- Under the 2005 Act an employer is required to review the safety statement where there has been a significant change to the matters to which it refers or there is another reason to believe that the safety statement is no longer valid.
- Given the extensive changes to workplaces which will be caused by compliance with the Protocol, employers must update their safety statements and bring the updated safety statement to the attention of employees and any other persons at the workplace who may be exposed to any specific risk to which the safety statement applies.

TRAINING REQUIRED

- Various forms of training are required by the Protocol:
 - The lead worker representative(s) must be provided with necessary and relevant training. No guidance is provided in the Protocol as to the form this training should take.
 - Covid-19 induction training must be provided to all workers. This training should at a minimum include the latest up to-date advice and guidance on public health; what a worker should do if they develop symptoms of Covid-19; details of how the workplace is organised to address the risk from Covid-19; an outline of the Covid-19 response plan; identification of points of contact from the employer and the workers; and any other sector specific advice that is relevant.
 - Advice and training must be provided in relation to how to perform hand hygiene effectively.

Please note that these slides provide a summary of issues and do not amount to professional advice. Legal advice should be sought in respect of specific queries. The Covid-19 situation is evolving rapidly and these slides were prepared on the basis of information available as at 8 July 2020.



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