



COVID-19 RETURN TO WORK AND EMPLOYMENT LAW

Action Plan for Businesses in England

On 22 February, the UK Government announced a new four-step plan to ease England's lockdown (with Devolved Administrations setting out separate plans for Scotland, Wales, and Northern Ireland). The Government has reviewed the impact of vaccines on social distancing measures and is introducing [Step 4 guidance](#) from 19 July 2021 onwards. Until then, employers should follow the [Step 3 guidance](#).

This Action Plan analyses the latest guidance on who is currently permitted to work in the office and key steps for employers to ensure the workplace is COVID-19 secure.

Return to work guidance

From Step 4, the Government is no longer instructing people to work from home if they can, so employers can start to plan a return to workplaces. During this period of high prevalence, the government expects and recommends a gradual return over the summer. The Government expects employers to discuss a return to the workplace with workers and trade unions to make working arrangements that meet both business and individual needs.

Employers should remain responsive to workers' needs, particularly during this period when not every adult will have been offered two vaccine doses. Employers should adopt practices that help to reduce the risks to individuals in the workplace. The Government recognises that ways of working have shifted through the pandemic, and many employers are looking at future hybrid models which include an element of home-working. Whatever model an employer chooses to follow for the longer term, an employer should discuss it with those who might be affected and also with employee representatives. Employers should discuss the timing and, where applicable, phasing of any return with workers. To help workers feel safe returning to work, employers should consult with them on any health and safety measures implemented to reduce the risk of COVID-19 spreading.

Employers should ensure workplaces are COVID-secure. The risk of transmission can be substantially reduced if COVID-secure guidelines (summarised below) are followed closely.

Guidance for working safely in offices

When you consider that workers should come into your place of work, you should:

1. Reflect this in your workplace risk assessment.
2. Take action to manage the risk of COVID-19 spreading, in line with the guidance for [Working safely during coronavirus \(COVID-19\); guidance from Step 4](#).

While those who are clinically extremely vulnerable are no longer advised to shield, employers should also take steps to protect people who are at higher risk of infection and/or an adverse outcome if infected (see guidance on [who is at higher risk](#) and [protecting people who are clinically extremely vulnerable](#)). Extra consideration should be given to people at higher risk and to workers facing mental and physical health difficulties. Employers should continue to support these workers by discussing with them their individual needs and supporting them in taking any additional precautions advised by their clinicians. Employers should consider providing support for workers around mental health and well-being. This could include advice or telephone support. Taking these extra steps will help to minimise the risk of any discrimination claim.

Employers must carry out a **risk assessment** that includes the risk of COVID-19, in consultation with employees:

- Employers are encouraged to consult directly with employees, particularly those who are clinically vulnerable, clinically extremely vulnerable, or live with others who fall into these categories. Employers should also consider workers facing home-working-related mental or physical health difficulties, or those with a particularly challenging home-working environment.
- Consultation can be done through, for example, the use of town hall meetings, surveys, or conference calls. Where risk to these employees is unavoidable, employers should do their best to accommodate such employees, including by permitting them to work from home where possible or transferring them to roles which allow them to work from home.
- Employers must consult with a health and safety representative appointed by a recognised trade union, or, if there isn't one, a representative chosen by workers.
- The purpose of the risk assessment is to identify and address employees' concerns and vulnerabilities, and to devise sensible measures to control any risks in the workplace. The risk assessment should consider any employees with relevant protected characteristics, such as expectant mothers.
- The risk assessment results must be shared with the workforce, and should be published on the employer's website (and the Government expects employers to do this if they have more than 50 employees).
- A template risk assessment form that will be appropriate for most office-based jobs has been prepared by the Health and Safety Executive (HSE) and can be found [here](#).

The guidance outlines six priority actions to take in order to protect office staff, most of which are well understood by employers:

- **Complete a health and safety risk assessment that includes the risk from COVID-19.** Complete a risk assessment, considering the measures set out above. Also consider reasonable adjustments needed for staff and customers with disabilities. Share it with all your staff and keep it updated.
- **Provide adequate ventilation.** Employers should make sure there is a supply of fresh air to indoor spaces where there are people present. This can be natural ventilation through opening windows, doors, and vents, mechanical ventilation using fans and ducts, or a combination of both. Employers should identify any poorly ventilated spaces in their premises and take steps to improve fresh air flow in these areas. In some places, a CO2 monitor can help identify if the space is poorly ventilated. Advice on air conditioning and ventilation on the HSE website can be found [here](#).
- **Clean more often.** Cleaning should take place more frequently. It's especially important to clean surfaces that people touch a lot. Employers should ask their staff and their customers to use hand sanitiser and to clean their hands frequently.
- **Turn away people with COVID-19 symptoms.** Staff members or customers should self-isolate if they or someone in their household has a persistent cough, a high temperature, or has lost their sense of taste or smell. They must also self-isolate if they or a close contact has had a positive COVID-19 result, or if they have been told to self-isolate by NHS Test and Trace. If you know that a worker is self-isolating, you must not allow them to come to work. It's an offence to do this.
- **Enable people to check in at your venue.** Employers are no longer legally required to collect customer contact details, but doing so will support NHS Test and Trace to contact those who may have been exposed to COVID-19 so that they can book a test. Employers can enable people to check into their venue by displaying an NHS QR code poster which can be found [here](#). Employers do not have to ask people to check in or turn people away if they refuse. If you choose to display a QR code, you should also have a system in place to record contact details for people who want to check in but do not have the app.
- **Communicate and train.** Keep all your workers, contractors, and visitors up-to-date on how you're using and updating safety measures. These are the priority actions to make your business safer during coronavirus. You should also read the full version of the guidance below.

The Government has also published a [notice](#) which employers should display in the workplace to show employees that they have followed the guidance.

Employees can report concerns about their employer's approach with their employee representative, trade union (if applicable) or the HSE. HSE inspectors are also undertaking compliance checks nationwide. The HSE can provide specific advice to employers to ensure they meet required standards, and it can also issue enforcement notices to secure improvement. Employers are expected to respond to HSE advice or notices rapidly and within set time frames. Failure to comply with an enforcement notice can be a criminal offence punishable by a fine or up to two years' imprisonment for the most serious breaches.

Despite the Government guidance, many grey areas and potential issues remain. Particular media attention has been given to whether employees can refuse to operate if conditions are unsatisfactory, and in what circumstances they can refuse to come into work altogether. On the other hand, media attention has also been given to whether employers are able to require employees to be vaccinated in order to attend the workplace and data privacy issues surrounding the collection of vaccination status data. See our COVID-19 Employment Q&A for an analysis of these considerations and potential employer liabilities.

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