



WELCOME

Employment HR Forum



SA
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HELLO

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Aims of the session

Session from 10.00am to 11.00am

Overview of current workplace issues, focusing on Covid

1. Summary of the current position;
2. Issues you will face moving forwards;
3. Suggestions on how to address them



Stock take

Current position:

- Continue working from home where possible
- Employers should take all reasonable steps to protect workforce;
 - Risk assessments;
 - Sanitisers;
 - Social distancing guidelines;
 - Work stations;
 - Facemasks
- Many employees still working from home



Current position

Current lockdown rules in place until 19 July (possibly later):

- Laws on facemasks/social distancing currently remain in place;
- From 19 July (at earliest):
 - Encouraged to return to workplace;
 - All legal limits on social contact removed;
 - Must carry on with 'hands, face, space'.

Furlough scheme

- Furlough scheme ending on 30 September – will not be extended
- Many employees now under redundancy consultation/working notice
- Increase in unemployment?
- Good news: vaccination programme progressing well
 - As of 27 June – 70.7% UK adults with first jab; 51.7% second jab; 122.41 doses per 100 people
- Bad news – infections now over 20,000 per day (highest in Europe)

Ready, steady, return

Getting ready for 19 July and factors to consider

- Employer duties as regards a safe return:
 - Duty to provide safe place of work, and to protect health, safety and welfare of employees
 - Take all reasonable steps to mitigate risks to employees
 - Risk assessments (next slide)
 - Obtaining and recording data on vaccination and illness (following slide)

Risk assessments

- Under H&S law, duty to assess workplace risk
- Should be documented, maintained and reviewed regularly
- Seek expert guidance where appropriate
- Take steps to protect employees against harm
- Have an up to date plan to deal with an outbreak, single point of contact with PHE (Public Health England) team, report as appropriate
- Failure to take above steps – possible HSE fines/personal injury/disability discrimination claims

Vaccination and illness data

- Any outbreak must be dealt with urgently
- If outbreak declared, PHE will ask you to record details of symptomatic staff and assist with identifying contacts.
- Ask people to provide information on vaccinations on confidential basis
- Recommendation – be firm on asking people to confirm vaccination status

Conditions for return to work

- Government review of social distancing/other measures to cut transmission to be completed
- Review will inform decisions on when 1 metre plus rule, the wearing of face coverings and other measures may be lifted.
- Will also inform guidance on working from home – which should continue wherever possible until this review is complete
- Be mindful of Government's position when considering your position on returning to the workplace

Mental health

- Large number of issues have arisen
- Two issues – isolation concerns; workplace return anxiety
- Recent MHFA survey: 29% employees have never discussed mental health with line manager
- People Management poll: 1 in 4 employees have had no mental health check-in during pandemic
- Be proactive: checking in, counselling, risk assessments, OH referrals
- Longer term mental health conditions could be disabilities
- Risk of both disability discrimination and personal injury claims

Data protection considerations

Vaccination records

- Encourage employees to share details
- Keep records confidential
- Both personal data and special category data involved
- Need lawful basis for processing
- Personal data – legitimate interest processing ground available (LIA needed)
- Special category data – 2 grounds available (performance of rights and obligations in connection with employment and/or public health)
- Introduce Covid vaccination policy

Data protection considerations



Test results

Positive tests must be reported to employer,
triggering further duties

Be mindful of confidentiality



Information sharing

Employer duty to report to PHE overrides other
considerations

BUT - remain alive to data protection issues (i.e.
security, need to know access only, minimisation,
retention)



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Conditions for Return: Vaccination (i)

No Jab no job?

- Voluntary programme.
 - no legislation in place making vaccines mandatory at present
- EHRC - "likely to be unenforceable"
- ACAS - "encourage and support" don't mandate.
- But - direction of travel...

Conditions for Return: Vaccination (ii)

- Vaccines now available to everyone over 18.
 - Double vaccine exemptions.
 - Vaccine passports
- Sector specific examples
 - Care Homes
- Europe
- Corporates take the lead...

Conditions for Return: Vaccination (iii)

- Corporate approach
 - Appetite to risk
 - Assessment of likely claims and their value
 - Statistics and recruitment.
- Employer options:
 - New starters
 - but job applicants are protected by Equality Act too
 - Existing staff
 - reasonable instructions

Conditions for Return: Policies for return

- Resetting expectations – rebalancing exercise
- Clear policies
 - aims: facilitation of health and safety of employees and others;
 - scope: who it applies to;
 - provide information on the vaccine;
 - encourage participation whilst recognising exceptions may apply;
 - vaccination is not in substitution to other social distancing measures;
 - pay and reward – carrot v stick
 - vaccine bonuses
 - enhanced sick pay conditions
 - consult with staff associations/unions

Conditions for Return: Policies and legal risk

- Indirect discrimination:
 - Sex, pregnancy and maternity cases
 - Religious belief and race cases
 - Antivaxxers and philosophical beliefs
 - BUT - manifestations of beliefs v beliefs...

Conditions for Return: Policies and Legal Risk

- Indirect discrimination
 - Justification:
 - Legitimate aim; and
 - Proportionate means of achieving it
- From policy to practice...

Challenges of returning: Managing issues



Reasons

“Can’t do” v “won’t do”



Misconduct and Dismissals

Reasons and Reasonableness

Challenges of returning: Dismissals and risk

Normal unfair dismissal (+2 years)

- Fair reason and fair process

Whistleblowing and discrimination cases

- Role of OH in disability cases
- Reasonable adjustments

Health and safety cases – s100 cases

- Grounds
- Recent examples

The Future of Work: Flexible/agile working

Why?

- Election Manifesto and response to pandemic.
- Reduced risk
- Healthy work-life balance
- Increased productivity
- Greater job satisfaction

What's the difference?

- Flexible working
 - Right to request procedure
 - 8 reasons for refusing
 - ACAS guidance
- Hybrid Working and the future...

The Future of Work: Agile working policies

Agile working policies

- Who?
 - roles
 - seniority
 - Seasonal demands
 - fairness
- How?
 - % of time spent at home
 - control
 - holiday periods
 - redefining office space – “together time”

The Future of Work: Agile working policies

- Insurance and equipment
- Security of data
 - Use of home IT
 - Remote portals
- Risk assessments
- Performance management
- Where?
- Care for dependants
- Rights of return
 - for the employer
 - for the employee
- Tax issues
- ACAS guidance on working from home



THANK YOU

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