

PEOPLE: POST-LOCKDOWN ISSUES FOR EMPLOYERS (UK)

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Legal Briefings

On 11 May 2020 the UK Government published its roadmap for coming out of lockdown, providing for a (conditional) phased return of schools and businesses over the coming months and subject to continuing social distancing requirements. Most businesses and venues (except for certain close contact businesses) are permitted to re-open from 4 July 2020, subject to guidance on social distancing and COVID-secure workplaces (and to any local lockdowns in place). Employers who shut down or reduced their operations at the start of the lockdown are now urgently focussing on how to reopen their workplaces.

Health and safety is obviously key, both from a legal perspective and, more importantly, to ensure both workforce and customers have confidence that the site can be reopened safely. Individual employees will be facing very different challenges, due to individual risk profiles, caring responsibilities, home environment or commute. Unfortunately, many employers may also be forced by the economic impact of the pandemic ultimately to consider redundancies or restructuring, particularly once the government's Coronavirus Job Retention Scheme starts to be wound down.

This briefing highlights some of the issues employers may face from an employment law perspective. Our dedicated Health and Safety team is currently advising clients on their return to work strategies and completion of risk assessments and has developed a toolkit to assist businesses prepare their own office-based risk assessments. Please contact us if you would like to discuss any of these issues further.

HEALTH AND SAFETY

An employer is under a statutory duty to ensure, so far as is reasonably practicable, the health and safety at work of its employees, that is, to set up and implement a safe system of work. There is also a similar common law duty. The employer must both provide an adequate system and ensure that employees follow it, through management, instruction, incentivisation and ultimately discipline. Liability is non-delegable, and ensuring safe systems are implemented and followed by staff is as important as the risk assessment determining what a safe system looks like.

Compliance with Government guidance will be good evidence of what is reasonably practicable, and is highly likely to set the standard required by the Health and Safety Executive (HSE) in terms of its enforcement action. Failure to follow the guidance will be strong evidence of not taking reasonable care. However, what is reasonable is inevitably fact-specific and employers should consider if there might be other reasonable steps in the specific circumstances of their workplace. It is also worth bearing in mind that, for many employers, whether or not there is the potential for legal claims will be seen largely as an issue for the future; the priority will be doing what is required to build workforce and customer confidence. Consulting employees and their representatives on how to create a safe system of work will help minimise both the risks themselves and the level of concerns or complaints.

GOVERNMENT GUIDANCE

When the lockdown was announced on 23 March 2020, the UK government closed specific businesses and venues. All other employers were asked to "take every possible step to facilitate their employees working from home". Where employees' roles could not be carried out at home and businesses which were permitted to stay open did so, employers were asked to follow social distancing guidelines, including where possible maintaining a two metre distance from others and hand hygiene measures. Detailed guidance on social distancing in the workplace was published on 7 April 2020, with more sector-specific guidance covering eight workplace settings published on 11 May 2020 as the Government set out its roadmap for easing the lockdown. From 1 June 2020 outdoor markets and car showrooms were permitted to reopen, and this was extended to other non-essential retail on 15 June 2020.

Following the announcement on 23 June 2020 of a relaxation to social distancing guidelines (from two metres to "two metres, or one metre with risk mitigation where two metres is not viable") and a broadening of the [types of business permitted to open from 4 July 2020](#), there is now workplace guidance covering twelve workplace settings:

- [Close contact services](#)
- [Construction and other outdoor work](#)
- [Factories, plants and warehouses](#)
- [Heritage locations](#)

- [Hotels and other guest accommodation](#)
- [Labs and research facilities](#)
- [Offices and contact centres](#)
- [Other people's homes](#)
- [Restaurants, pubs, bars, takeaway services](#)
- [Shops and branches](#)
- [Vehicles \(covering couriers, mobile workers, lorry drivers, on-site transit and work vehicles, field forces and similar\)](#)
- [The visitor economy](#)

The guidance follows a broadly similar structure for each of the different workplace types and sets out practical steps for businesses focused around [five main steps](#) that should be considered by all employers:

- Employers will need to carry out **COVID-19 risk assessments** in consultation with their workers or trade unions, to establish what control measures to put in place. The results of the risk assessment should be shared with the workforce. Employers should consider publishing the results of their risk assessments on their website if possible, and all businesses with over 50 employees are expected to do so.
- Workplaces should be **cleaned** more frequently, paying close attention to high-contact objects like door handles and keyboards. Employers should provide handwashing facilities or hand sanitisers at entry and exit points. Ventilation and air conditioning systems may need to be checked.
- **All reasonable steps should be taken by employers to help people work from home.** The Government has emphasised that there is no change to the position that everyone who can work from home should still do so. This will cover the vast majority of office workers.
- Employers should adapt workspaces and processes to **maintain two metre distances** between people wherever possible. The steps to achieve this may include staggering start times, creating one way walk-throughs, opening more entrances and exits, changing seating layouts, avoiding shared workstations, using floor tape or paint to mark areas to help workers maintain social distancing, and putting up signs to remind workers of social distancing.

- Where people cannot be two metres apart, employers should **manage the transmission risk**. Businesses should first consider whether a particular activity is necessary. If not, the activity should cease. If the activity is necessary, the employer should put in place mitigating measures. The guidelines are now to maintain two metres' separation or one metre "with risk mitigation, where two metres is not viable". Mitigating measures could include erecting physical barriers in shared spaces, creating workplace shift patterns or fixed teams to minimise the number of people in contact with one another, and/or ensuring colleagues are facing away from each other and spend the minimum amount of time in close proximity. Following updates to the guidance on 3 July, the guidance also notes that steps should be taken to avoid people needing to unduly raise their voices, such as avoiding playing music at a level that makes normal conversation difficult.
- A downloadable [notice](#) is included in the guidance documents, which employers should display in their workplaces to show their employees, customers and other visitors to their workplace, that they have followed the guidance.

Although guidance is focussed on safety in the workplace, it also touches on **travel to and from work** and suggests steps such as providing additional parking or facilities such as bike racks to help people walk, run, or cycle to work where possible, and limiting passengers in corporate vehicles, eg work minibuses, possibly leaving seats empty. There are also suggested measures to manage visitors (including clients, customers, and contractors), inbound and outbound goods, and the use of personal protective equipment (PPE) and face coverings.

The guidance states that employers are only required to provide **PPE** if that is normally required to protect against non-COVID-19 risks or in clinical settings and certain other identified roles eg first responders and immigration enforcement officers. The guidance is that workplaces should not encourage the precautionary use of extra PPE to protect against coronavirus outside clinical settings or when responding to a suspected or confirmed case of coronavirus. Unless the employer is in a situation where the risk of coronavirus transmission is very high, its risk assessment should reflect the fact that the role of PPE in providing additional protection is extremely limited.

There is no requirement that employers provide clinical masks or other **face-coverings** for employees. Equally, it might be viewed as an unreasonable instruction for an employer to insist on the wearing of face masks (which it would need to provide), although employees may be willing to do so voluntarily. The Government has urged that the supply of clinical masks be reserved for the healthcare sector. However, the Government has accepted that a face covering may be marginally beneficial as a precautionary measure (in terms of protecting others if the wearer is infected but has not developed symptoms) and could be worn in enclosed spaces where social distancing isn't possible. Face-coverings are now required by law when using public transport and are recommended if needing to share private transport (although this should be avoided if possible). Employers should support their workers in using face coverings if they choose to wear one and ensure they are used correctly. Their use should not be instead of other more effective measures of mitigating risk (e.g. minimising contact time, using fixed teams, increased hand and surface hygiene).

WORKING FROM HOME

As stated above, current government guidance is that all employees should still work from home if at all possible. Employers should be doing what they can to facilitate home-working, whether that be by providing equipment or perhaps accepting less than ideal performance, particularly where employees are clinically vulnerable or extremely vulnerable (see below). An instruction to work from home, potentially performing different tasks, would usually be a reasonable instruction (even without an express mobility clause in the employment contract) and employees would be under a general obligation to comply, provided the employer puts in place suitable homeworking arrangements. A refusal to comply would be a disciplinary matter. Employees working their normal hours from home should be paid as normal.

Employers should ideally have a homeworking policy to cover issues such as:

- health and safety aspects of working from home – discussed below
- provision of equipment
- data security, data protection law, and other IT issues
- hours of work and working time rest breaks; any requirement to be available to travel to the office/elsewhere
- whether permitted by home insurance, mortgage or lease terms
- additional expenses (household bills, printing, postage, increased insurance premium etc) although the individual may also save on travel costs
- any tax consequences.

Thought should also be given to how to manage supervision, performance reviews, communication and measures to minimise isolation and stress.

Acas has published guidance on [Coronavirus: working from home](#) and a general guide [Homeworking](#).

Where part of the workforce is returning to the workplace, employers will need to continue to consider their health and safety duties in relation to those still working from home. Employers should continue to monitor their wellbeing and help them stay connected to the rest of the workforce on-site. Employers should keep in touch with off-site workers on their working arrangements including their welfare, mental and physical health and personal security, and provide equipment for people to work at home safely and effectively, for example, remote access to work systems.

The HSE has so far taken the view that employees asked to work from home due to the COVID-19 pandemic have been doing so 'temporarily' and so have accepted that a full DSE (display screen equipment) home workstation assessment is not required and that employees should instead be sent a health and safety checklist and asked to confirm they have suitable arrangements – see [here](#). However, the Chief Executive of the HSE has commented that it is starting to become clear that some part of the workforce will be working from home for an extended period and therefore fuller home workstation assessments may be needed. The ability to create a safe home working environment for specific individuals may be one relevant factor in determining priorities for the phased returning of staff to the workplace.

Guidance on the taxation of expenses where employees work from home due to coronavirus has been published [here](#).

MENTAL HEALTH

Employers have an obligation to take measures to protect the mental health of their employees as well as their physical health. Employees may be suffering from personal health worries, illness or bereavement, social isolation, and fears for their jobs. Homeworking may increase stress due to having to juggle childcare, the lack of clear divide between work and leisure time, or having to deal with unsatisfactory IT or workspaces. There will be an increased need for support measures to be implemented to protect mental health, including communication, encouraging employees to access support and take holiday, and watching for and responding quickly to signs of distress. On 18 May 2020 Acas published new [guidance](#) on mental health at work during coronavirus.

WORKSITE RISK ASSESSMENTS

The key first step for employers considering resuming operations is the required health and safety risk assessment. All employers are required by law to carry out assessments to identify risks to the health and safety of their employees whilst at work. Employers with more than five employees must record their risk assessments in writing.

Employers bringing any staff back on site should first carry out risk assessments to identify and mitigate the specific risks posed by the COVID-19 pandemic. It is also important to review the approach to pre-existing risks in light of COVID-19 and in particular the social distancing rules, to consider whether any adjustments are needed. In addition to the new Government guidance listed above, the HSE has produced a short guide [Working safely during the coronavirus outbreak](#), Acas has also published [guidance](#) on the return to work, while CIPD have published a [sample general workplace risk assessment](#) and a [guide on returning to the workplace](#).

We have developed a toolkit to assist businesses prepare their own office based risk assessments. Please [contact us](#) if this is of interest.

Consultation

The new Government guidance states:

"Employers have a duty to consult their people on health and safety. You can do this by listening and talking to them about the work and how you will manage risks from COVID-19. The people who do the work are often the best people to understand the risks in the workplace and will have a view on how to work safely. Involving them in making decisions shows that you take their health and safety seriously. You must consult with the health and safety representative selected by a recognised trade union or, if there isn't one, a representative chosen by workers. As an employer, you cannot decide who the representative will be.

At its most effective, full involvement of your workers creates a culture where relationships between employers and workers are based on collaboration, trust and joint problem solving. As is normal practice, workers should be involved in assessing workplace risks and the development and review of workplace health and safety policies in partnership with the employer."

In fact employers must consult any health and safety representatives appointed by a recognised trade union and, if there are employees not represented by those union representatives, the employer can choose whether to consult those employees directly as individuals and/or through elected health and safety representatives. The HSE's brief guide to consulting employees is available [here](#).

The HSE's guide, [Talking with your workers about preventing coronavirus](#), provides a useful list of suggested questions that can be used to discuss managing the risks with workers or worker representatives when doing the risk assessment. The HSE [website](#) also includes toolkits for carrying out assessments and the consultation obligations.

Publication

The new Government guidance states that the employer must share the results of its COVID-19 risk assessment with the workforce and, if possible, consider publishing the results on its website. The guidance goes on to say that the Government "would expect" all businesses with over 50 workers to publish the results on their website, although currently it is not a legal obligation to publish on the external website and therefore a decision whether to do so will be influenced by how best to establish workforce and customer confidence and reputational concerns. Unions are highly likely to press for publication – indeed the Trades Union Congress has been pressing (so far, unsuccessfully) for publication of risk assessments to be mandatory in the same way as gender pay gap reporting. Employers may decide to publish a summary of the findings on their external website rather than the full, detailed assessment, or alternatively may just place the risk assessment on the intranet and communicate to visitors in some other way eg, by displaying a poster.

It is also important that COVID-19 risk assessments are not viewed as one-off tasks but are kept under review as both risks and work activities change, and potentially as more data and scientific evidence becomes available on the characteristics making individuals more vulnerable to serious illness and on what measures may be effective to minimise transmission. The workforce itself will often be in the best position to identify issues and it is important to be sensitive and responsive to any gaps, perceived or real. Employers should take their time to plan, consult, and carry out limited test-runs before bringing large numbers of employees back on-site. Some employers are also employing independent health and safety experts to provide advice.

Compliance

The new guidance includes contact details for employees to contact the HSE to raise concerns. Where the enforcing authority, which will be the HSE or local authority depending on the type of employer, identifies employers who are not taking action to comply with the relevant public health legislation and guidance to control public health risks, they can take a range of actions including the provision of specific advice to employers through to issuing enforcement notices to help secure improvements, prohibition notices or prosecutions. Failure to ensure a safe system of work is a criminal offence. Breach of the duty to consult employees or their safety representatives over health and safety matters could also lead to HSE enforcement action.

Individual employees are able to bring a claim for unlawful detriment or automatically unfair dismissal (regardless of length of service) if treated less favourably or dismissed for refusing to attend work in certain circumstances (see below) or because of taking part in health and safety consultation or, in some cases, raising concerns about health and safety. Claims must be brought in the Employment Tribunal, usually within 3 months, and uncapped compensation can be awarded mainly to reflect loss.

Individuals may also be able to bring a claim for personal injury where the employer has breached its common law duty to take reasonable care for the health and safety of employees in the workplace. To succeed in their claim, an individual will have to show that the employer breached the duty of care owed to the individual, this caused the injury, and the injury was of a type which, as a result of the breach, was reasonably foreseeable. Claims can be brought in the civil courts, normally within 3 years. However, in many cases it may be difficult to prove on the balance of probabilities that an individual's infection was caused by a workplace breach, given the many other potential sources of infection.

WHO SHOULD RETURN

Where employers are bringing only part of the workforce back on-site, there will obviously be a need to consider which employees should take priority. Clearly business need will determine the types of roles that are critical and can be carried out safely, but employers may need to take various factors into account when determining which individuals fulfil those roles in the initial phases of a re-start. Some employees may have struggled more than others with the isolation of home-working or be unable to set up a satisfactory home office, and therefore be keen to return, particularly if they can easily commute without using public transport. Others will be reluctant to return because they still have children at home (or reduced access to reliable childcare), need to use public transport to commute, or are or live with a clinically vulnerable person. Ascertaining employee views and seeking possible volunteers will be a sensible first step.

Where employees have been furloughed, it will be important to ensure that, if their final period of furlough started on or before 30 June, it lasts at least 21 days in order to remain eligible to claim for that period under the Coronavirus Job Retention Scheme. Some employers may also have permitted furloughed employees to take other jobs, which will need to be ended. Depending on the terms of the furlough, notice of ending the furlough may need to be given. It may also be necessary to consult over and/or agree any changes to the terms of employment (eg, to hours or pay) to apply on their return (see below). Employers may want to design a phased return in such a way as to be able to take advantage of the revised furlough scheme permitting flexible furlough from 1 July 2020 until the end of October 2020.

Obviously employees who are self-isolating because of having or living with someone who has COVID symptoms should not be returning until they have the all clear – see below.

Many employers are surveying their staff to assess what concerns and challenges they have returning to work, and of course employers will need to ensure compliance with data protection rules when processing this data, particularly if this includes sensitive health data. The CIPD has a template conversation record itemising topics for discussion with an employee when proposing their return to the workplace (available [here](#)).

Employers should also check appropriate insurance is in place and whether reopening plans should be checked with insurers.

Clinically extremely vulnerable individuals

People with specified serious underlying health conditions (see [here](#)), described as "clinically extremely vulnerable", were written to by the NHS to advise "shielding" or strict self-isolation until the end of July 2020 (at which point the shielding programme is to be "paused").

Employers aware that an individual is "clinically extremely vulnerable" should support them if they decide to comply with the guidance and these employees should not be required to return to work on site while shielding is advised.

Where individuals are unable to work from home, a "clinically extremely vulnerable" employee can be furloughed under the Coronavirus Job Retention Scheme while that is available. The SSP regulations were amended with effect from 16 April 2020 to also enable shielding employees to be placed on statutory sick leave and be eligible for SSP "as a safety net ... in cases where their employer chooses not to furlough them under the Coronavirus Job Retention Scheme and does not have other suitable policies in place (e.g. the ability to work from home, or the provision of special leave)". Small and medium-sized employers may be able to recoup up to 14 days' SSP. In some cases these individuals may also qualify for contractual sick pay depending on the contractual terms, or be eligible under PHI; employers may choose to augment pay in any event.

Once the shielding programme is paused, SSP will no longer be available. Amendments to the regulations with effect from 6 July 2020 make clear that SSP entitlement will end when the period specified in a shielding notification expires or if a notification expressly ends shielding, although eligibility will revive if further shielding notifications are made in future. The government is asking employers to ease the transition for their clinically extremely vulnerable employees, ensuring that robust measures are put in place for those currently shielding to return to work when they are able to do so.

Clinically vulnerable employees

Clinically vulnerable individuals at increased risk of severe illness have been advised to be particularly stringent in following social distancing measures. This group includes those aged 70 or older, those under 70 with particular underlying health conditions (listed [here](#)), and those who are pregnant.

The Government guidance states that clinically vulnerable workers should also be helped to work from home, either in their current role or in an alternative role. If home working is not possible, a risk assessment should be carried out for individuals in the clinically vulnerable groups in relation to their travelling to and working at the particular workplace. The Government guidance states that they should be offered the option of the safest available on site roles, enabling them to maintain social distancing. If their role does not permit social distancing, employers should carefully assess whether this involves an acceptable level of risk taking into account specific duties to those with protected characteristics. Where the level of risk cannot be reduced to an acceptable level, employers will need to consider other options.

In relation to pregnant individuals, the duty to protect their health and safety in the workplace requires employers to assess the workplace risks posed to new or expectant mothers or their babies, alter working conditions or hours to avoid any significant risk and, if this is not reasonable or effective, offer suitable alternative work; if that is not available or the employee reasonably refuses it, the employer must suspend the employee on full pay.

Individuals with underlying health conditions may well qualify as disabled and therefore the employer would be under a duty to make reasonable adjustments. Again, this might involve identifying another role that can be done from home or temporarily suspending them on full pay if this is not feasible.

Clinically vulnerable individuals will not qualify for SSP. Where it is not possible to reduce the level of risk to an acceptable level, employers should consider suspending them on full pay, allowing them to take annual or unpaid leave or offering to place them on furlough in these circumstances.

Discrimination

The guidance highlights that employers must not discriminate, directly or indirectly, against anyone because of a protected characteristic such as age, sex or disability when applying the guidance. It states that employers should be mindful of the particular needs of different groups of individuals and suggests that the following steps will usually be needed:

- understanding and taking into account the particular circumstances of those with protected characteristics;
- involving and communicating appropriately with workers whose protected characteristics might either expose them to a different degree of risk, or might make any measures proposed inappropriate or challenging for them;
- considering whether any particular measures or adjustments are needed to take account of duties under the equalities legislation;
- making reasonable adjustments to avoid disabled workers being put at a disadvantage, and assessing the health and safety risks for new or expectant mothers; and
- making sure that the steps taken do not have an unjustifiable negative impact on some groups compared to others, for example, those with caring responsibilities or those with religious commitments.

The Equality and Human Rights Commission has published COVID-19 [guidance for employers](#) on avoiding discrimination.

Working parents

The guidance does not address the issue of working parents being asked to return to work despite some schools, nurseries or other childcare providers remaining wholly or partially shut (or with reduced capacity due to social distancing).

Schools were shut (save for the children of key workers and vulnerable children) on 20 March 2020. A phased reopening began on 1 June 2020, starting with pupils in reception, year 1 and year 6 and some provision for year 10 and year 12 students from 15 June 2020. The Government plans that all school children will be able to return full-time from September 2020.

The statutory right to unpaid emergency leave only covers a day or two while parents make arrangements for ongoing childcare. Other options may therefore need to be considered for parents unable to work from home until schools are fully reopened. Certainly parents will need sufficient notice of returning to work in order to try and find childcare provision, which is likely to be more difficult to find than usual over the summer given the impact of social distancing requirements on holiday clubs.

Parents with a year's service may have an unused entitlement to unpaid parental leave; others may be able use up paid holiday or take other unpaid leave. Some employers may be able to offer adjusted hours or reduced hours (and pay). Employers can also offer to place parents on furlough with their agreement, although from 1 July 2020 this is limited to employees who completed a three week continuous period of furlough prior to 30 June 2020 and the scheme will end on 31 October 2020. There has been some discussion as to whether further government assistance may be put in place if and to the extent that medical advice and closure of schools respectively force shielding employees and working parents to remain at home.

Employees refusing to return to work

Even where an employer has put in place a safe system of work, individual employees may have particular concerns about returning, where their commute involves public transport, they have childcare or other caring responsibilities, they feel at heightened risk of severe illness, or they fear exposing clinically vulnerable individuals in their household to the virus. Employees may also refuse to return to work if they feel the employer's safety measures are inadequate.

As a first step, employers should be seeking to understand the concerns, communicating what steps have been taken to reduce risk and discussing if anything more can reasonably be done to address the concerns. Creating and maintaining trust is key. Acas guidance recommends that an employer should listen to any concerns staff may have and carefully consider the individual's personal circumstances, while treating requests consistently.

Assuming the employee's role cannot be done from home and no alternative tasks can be given to permit this, can the employee be given a special area at the workplace where risks can be reduced further? If the commute is the concern, will a different shift help or can the employer facilitate private travel? If the employee lives with someone in a clinically vulnerable category, can assistance be given to enable them to isolate from the individual within the household? If not, is it possible to furlough the individual, or allow them to use holiday or unpaid leave? Dismissal without considering these other options could well be ordinarily unfair, depending on the circumstances.

Taking disciplinary action or withholding pay for a refusal to return could also be discriminatory, particularly where the employee is in one of the clinically vulnerable or extremely vulnerable groups and may be entitled to adjustments including paid suspension if pregnant or disabled. (Note that under UK domestic law a claim of indirect discrimination by association is only possible if the claimant themselves has the protected characteristic, and therefore is not possible in relation to a requirement to return to work disadvantaging an individual because they live with a disabled person. There is ECJ caselaw suggesting this fails to implement EU law, but it is unclear whether the courts would feel able to purposively construe domestic law (whether by reading in words or relying on the requirement to disapply provisions that breach a general principle of EU law) in order to permit such a claim against a private employer.)

If an employee reasonably believes that there is serious and imminent danger which the individual cannot reasonably be expected to avert, then they could have a claim for unlawful detriment or automatically unfair dismissal (for which there is no minimum period of qualifying service and compensation is uncapped) if dismissed or disciplined or pay is withheld for refusing to attend work. The employee's belief might well be reasonable where the employer's management of an existing infection or contamination has been poor, or because colleagues are not following recommended hygiene or social distancing guidelines, for example. The danger could be to the employee themselves or to another person, for example if they live with an clinically extremely vulnerable individual and cannot effectively isolate from them. There is also some case law supporting the view that the fear of danger can be in relation to the commute to work, certainly if transport is provided by the employer, and possibly in respect of public transport use too.

The extent to which the employer has complied with Government guidance, and clearly communicated this to the individual, will be relevant but not necessarily determinative of whether a fear of danger is deemed reasonable. The individual's own risk profile will also be relevant, for example if they are within the clinically extremely vulnerable category advised to shield at home until 31 July 2020.

Employers should also bear in mind that employees who complain about the safety of the working environment may also have protection from detriment and dismissal as a whistleblower, and may be able to claim interim relief.

Although perhaps unlikely in the current economic climate, employees may also be able to resign and claim constructive, ordinary unfair dismissal based on an employer's failure to take reasonable steps to ensure their safety.

Consulting on and agreeing what measures should be put in place with the workforce and any unions will be helpful in minimising these situations.

Ending furlough

Employers should be sensitive to the potential for conflict and resentment where one section of the workforce is returning from furlough and another has worked through the lockdown (or even where one group is retained on furlough longer than another as a result of any phased return). Employers should avoid exacerbating the situation by ensuring consistent treatment, for example in terms of dealing with holiday requests.

Employers who re-hired employees purely so they could benefit from furlough may need to address re-terminating their contracts.

INTERNATIONAL TRAVEL

During the lockdown the Foreign and Commonwealth Office's guidance has been that no-one should travel abroad unless it is absolutely essential. An employer's health and safety duty will mean that in most cases international business trips should not occur and a request from an employee to return to their country of origin to work remotely should be (sensitively) refused. Even if there is a case for saying a trip truly is essential, employers should clearly bear in mind employee concerns, particularly if an employee is within one of the clinically vulnerable groups of individuals or if public transport is to be used. There may also be requirements to self-isolate for a period on arrival at the destination country and, from 8 June 2020, those returning to the UK were required to self-isolate for 14 days (except for a tightly defined list of key workers). Where business travel is required, employers will also need to ensure they supply employees with any support and equipment needed to comply with the differing rules on quarantine, PPE and testing in other countries.

It is unlikely to be a reasonable instruction to prevent (rather than seeking to dissuade) employees undertaking personal travel contrary to Government advice. However, an employer's health and safety duties would justify requiring employees who have travelled abroad to remain at home for 14 days on return, given this is a requirement from 8 June 2020. If an employee develops symptoms on return, SSP would be payable (and probably any contractual sick pay, depending on the contractual terms). Guidance clearly provides that inability to work purely because of being subject to a 14-day quarantine required on entering or returning to the UK does not qualify employees for SSP. If they do not suffer any symptoms but cannot work from home, the employer will need to consider carefully whether to treat the period as paid suspension, unpaid leave or further paid holiday, bearing in mind any contractual terms and whether the consequence has been made clear to the employee before they travel. In deciding how to respond, employers should give careful consideration to the reasons for travel, given that requests to travel internationally (to the extent possible) are more likely to come from non-UK citizens and therefore raise the possibility of indirect discrimination claims.

With effect from 4 July 2020, the Foreign and Commonwealth Office has updated its global advisory against 'all but essential' international travel to exempt certain destinations that no longer pose an unacceptably high risk of COVID-19; these will be kept under review. The Government has also [confirmed](#) that, from 10 July 2020, people arriving from selected destinations will be able to enter England without needing to self-isolate, unless they have been in or transited through non-exempt countries in the preceding 14 days. All passengers, except those on a small list of exemptions, will still be required to provide contact information on arrival in the UK. The Government's expectation is that a number of the exempted countries will also not require arrivals from the UK to self-isolate. The exempted countries and territories will be kept under constant review.

COVID-19 INFECTIONS

INFECTED EMPLOYEES

Government guidance states that staff who are unwell with symptoms of COVID-19 should not travel to or attend the workplace. Any member of staff who develops symptoms of COVID-19 (a new, continuous cough or fever or a loss or changed sense of normal smell or taste) should be sent home (if possible, avoiding the use of public transport) and should arrange to have a test. They should then stay at home for 7 days from onset of symptoms (in the absence of a negative test result) and longer while a fever persists. If the member of staff lives in a household where someone else is unwell with symptoms of COVID-19, or is part of a support bubble with such a person, then they must stay at home for 14 days in line with the stay at home guidance.

Under the test and trace symptom in place from 28 May 2020, when someone first develops symptoms and orders a test, they will be encouraged to alert the people that they have had close contact with in the 48 hours before symptom onset. If any of those close contacts are co-workers, the person who has developed symptoms may wish to (but is not obliged to) ask their employer to alert those co-workers. At this stage, those close contacts should not self-isolate, but they:

- must avoid individuals who are at high-risk of contracting COVID-19, for example, because they have pre-existing medical conditions, such as respiratory issues
- must take extra care in practising social distancing and good hygiene and in watching out for symptoms.

If the person with symptoms tests positive for COVID-19, the NHS test and trace service will ask them to share information about their close recent contacts. An individual who is notified that they have had contact with an infected person must then stay at home for 14 days. (Unless the notified individuals develop symptoms, individuals in their household will not have to self-isolate.) Employers are asked to keep up to date records of staff contact details and temporary records (for 21 days) of staff shift patterns and of contact details of customers and visitors attending a workplace, to help NHS Test and Trace with requests for that data if needed.

If an infected person works in – or has recently visited or attended – one of the following settings, the contact tracing process will be escalated to local public health experts, who will liaise as necessary with the manager of the relevant setting:

- a health or care setting, for instance a hospital or care home
- a prison or other secure establishment
- school for children with special needs
- any setting where there is a risk of a local outbreak

If multiple cases of coronavirus appear in a workplace, an outbreak control team from either the local authority or Public Health England will, if necessary, be assigned to help the employer manage the outbreak. Employers should seek advice from their local authority in the first instance. Updates to the COVID-Secure workplace guidance made on 3 July add a new section on outbreaks in the workplace. This notes that as part of the employer's risk assessment, the employer should have an up to date plan in case of an outbreak, nominating a single point of contact to lead on contacting local Public Health teams. A suspected outbreak should be reported if there is more than one case of COVID-19 associated with the workplace. If the local team declares an outbreak, the employer will be asked to record details of symptomatic staff and assist with identifying contacts. Information about the outbreak management process will be provided, covering control measures, staff communications and prevention message.

The guidance also suggests that workers who think the contacts that have triggered notifications are workplace contacts should ask their employer to consider what further mitigating actions could be taken to reduce the risk of COVID-19, such as using screens to separate people or 'cohorting' to reduce the number of people each person has contact with.

If someone with COVID-19 comes into a workplace, the workplace does not necessarily have to close. Whether this is necessary will depend on how quickly any required deep cleaning can be done. Guidance on cleaning an area after someone with suspected COVID-19 has left is set out [here](#).

The general duty to protect the health and safety of other employees means that employers will in most cases need to keep an employee with suspected COVID-19 infection away from the workplace until the risk has passed (whether after 7/14 days or on receipt of a negative test result). Employers should remind and instruct their staff to comply with the above advice and to notify the employer if they need to self-isolate according to the guidance; it would be reasonable to take disciplinary action for a failure to do so.

Statutory sick pay

Employees who are able to work from home should be doing so anyway, and if self-isolating individuals are well enough to work remotely, the employer can allow or instruct the individual to carry on working from home on full pay. If the employee is not well enough to work, or the individual's role cannot be performed at home, individuals required to self-isolate because they have, or live with or (from 6 July 2020) are in a support bubble with someone who has, symptoms of COVID-19 will be treated as sick for SSP purposes from day one (rather than the usual day four) until the end of the required 7/14 days or, if earlier, the individual with symptoms testing negative for COVID-19.

With effect from 28 May 2020, individuals who have been notified that they have had contact with an infected person and instructed to stay at home for 14 days under the new NHS test and trace system will also be deemed incapable of work and eligible for SSP. (Note that the regulations extending SSP to self-isolation where a member of a support bubble develops symptoms, with effect from 6 July, currently refer to a regulatory provision for the definition of support bubble (described as a "linked household" in England) which was revoked in between the SSP regulations being made and brought into force. This is undoubtedly a mistake which hopefully will be rectified - the concept of support bubbles has been retained in guidance on lockdown restrictions in force from 4 July 2020 and hopefully HMRC will still accept SSP rebate claims on this basis. Such individuals may be covered by the test and trace system once the symptomatic person tests positive.)

Individuals may also qualify for contractual sick pay depending on the contractual terms, certainly where they are unwell. Employers may choose to augment pay in any event, to support their staff and discourage attendance at work against government guidance. [Guidance](#) for employers on the test and trace system suggests that employers should also allow self-isolating staff to take paid holiday instead of sick leave if they prefer, in order to receive full pay.

Small and medium-sized employers (with fewer than 250 employees on PAYE payroll on 28 February 2020) can reclaim the first 14 days of SSP due to absence because of COVID-19 (with retrospective effect from 13 March 2020). Claims can be made through the online Coronavirus Statutory Sick Pay Rebate Scheme from 26 May 2020. HMRC recently updated its [guidance](#) to confirm that an SSP rebate can be claimed for employees who have transferred under TUPE by transferees unable to meet the 28 February conditions provided the previous employer did meet the conditions.

Employees can self-certify for the first seven days off work. After that, the Government states that employers should use their discretion not to require evidence for a period of self-isolation in accordance with government advice, but if they do wish to ask for evidence, employees can get an "isolation note" from the NHS website [here](#). It is possible to have the isolation note sent directly to the employer's email, and to create one on behalf of someone else. The NHS test and trace service will provide a notification that an employee can use as evidence to inform their employer that they have been told to self-isolate pursuant to this service. Employers will need this evidence if they are a small or medium sized employer claiming a rebate for SSP.

Reporting

Employers are obliged to make a formal report to the HSE under the Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 2013 when an unintended incident at work has led to someone's possible or actual exposure to coronavirus, a worker has been diagnosed as having COVID 19 and there is reasonable evidence that it was caused by exposure at work, or a worker dies as a result of occupational exposure to coronavirus. **First aiders**

Employers may also need to take steps to maintain appropriate first aider cover notwithstanding heightened levels of COVID-19 sickness absence - see the HSE's guidance [here](#).

Attendance management policies and bonuses

Employers who operate absence management policies may want to consider informing employees that they will disregard COVID-related absence when applying the triggers for formal action, to avoid discouraging sensible self-isolation. Similar considerations apply where bonus schemes are based partly on total hours worked. A failure to disregard such absence could lead to discrimination claims, for example from disabled employees within the clinically vulnerable groups who are likely to suffer more severe symptoms if they catch the virus or require longer periods of self-isolation.

TESTING STAFF FOR SYMPTOMS

Information regarding an employee's health, such as temperature readings, whether the employee is suffering symptoms of coronavirus, or has been diagnosed as having the virus, is special category data under the GDPR.

The Information Commissioner's Office (ICO) has published [six data protection steps](#) and a helpful set of FAQs for employers on [COVID-19 workplace testing](#). The ICO accepts that employers will often be able to show a legitimate reason for processing health data in compliance with the GDPR and to discharge health and safety obligations, as long as they are not collecting or sharing irrelevant, inaccurate or unnecessary data. Employers should carry out, and continually review, data protection impact assessments covering any new testing activity. Data must be processed securely and kept for no longer than necessary, and transparency will be critical. Employers should keep staff informed about potential or confirmed COVID-19 cases amongst their colleagues, but should avoid naming individuals if possible, and should not provide more information than is necessary.

The ICO suggests that, when decided whether testing is appropriate, employers first consider their specific circumstances (type of work and premises and whether home working is possible) and then ask whether they really need the information, whether the steps will actually help provide a safe environment, and whether the same result could be achieved through other, less privacy intrusive, means. Relevant considerations include: whether the testing can be confined to the highest-risk roles; whether access to health information can be limited to medically qualified staff, those working under specific confidentiality agreements or those in appropriate positions of responsibility; and whether other reasonable alternative measures such as strict social distancing or home working are available. The ICO guidance suggests that, if staff proactively ask an employer to collect information or undertake testing, this could be used to demonstrate that these measures are proportionate for those employees. Previous versions of the guidance noted that careful consideration would be needed before implementing tests, covering issues such as:

- who should collect the data, maintaining confidentiality and ensuring retention is appropriate
- what should happen if an employee refuses (if sending the employee home, this is likely to need to be on full pay even if it is not possible to work remotely)
- what should happen if an employee tests positive (given other potential causes of a high temperature, this is likely to be sending the employee home, asking them to take an antigen test, and implementing appropriate hygiene steps)
- whether employees should instead be advised to self-test before travelling into the office (particularly where there are long commutes).

Processing should be limited to the extent truly necessary, a data protection impact assessment and/or risk assessment undertaken, and an appropriate policy document is also needed.

Further advice should be sought if considering temperature checking by third persons such as building owners/landlords.

Similar considerations will be relevant if an employer is considering offering private antibody or antigen tests. Guidance [here](#) temporarily stated that an employer's provision of testing kits or tests carried out by a third party were to be treated as taxable benefits in kind for the employee, but this plan appears to have been dropped as the text was removed 24 hours later. The Chancellor subsequently confirmed in a response to the Treasury Select Committee that the government will introduce an exemption from income tax and NIC for coronavirus tests provided by employers to their employees.

It would typically be reasonable for an employer to take disciplinary action against an employee who failed to comply with a request to declare if they are experiencing COVID-19 symptoms or have been notified as having had contact with an infected person under the new test and trace system. However, disciplining an employee for refusing to have a temperature check or other test may not be reasonable depending on the circumstances (including the reason for the refusal and the extent to which the employee may have unavoidable personal contact with others, in particular clinically vulnerable individuals, as part of their job).

CHANGES TO STATUTORY HOLIDAY CARRYOVER

On 26 March 2020 the Government amended working time legislation with immediate effect to provide that the EU-derived 4 week statutory annual leave entitlement (which must normally be taken by the end of the leave year) can be carried over into the next two leave years where it was not reasonably practicable for the worker to take some or all of the leave as a result of the effects of coronavirus (including on the worker, the employer or the wider economy or society).

An employer may only exercise its right to require a worker not to take this carried-over leave on particular days requested by the worker (by giving notice of at least twice as long as the holiday period, unless the contract provides differently) if the employer has 'good reason' to do so. 'Good reason' is not defined.

The usual requirement for payment in lieu of untaken entitlement on termination is also extended to cover this carried-over leave.

The aim is to help employers in essential services who might otherwise find themselves short-staffed if forced to ensure staff take their minimum annual entitlement within the leave year, but the change applies to all workers and employers.

The Government published [guidance](#) on this new right on 13 May 2020. It suggests that factors relevant to what is "reasonably practicable" include:

- whether the business has faced a significant increase in demand due to coronavirus that would reasonably require the worker to continue to be at work and cannot be met through alternative practical measures
- the extent to which the business' workforce is disrupted by the coronavirus and the practical options available to the business to provide temporary cover of essential activities
- the health of the worker and how soon they need to take a period of rest and relaxation
- the length of time remaining in the worker's leave year, to enable the worker to take holiday at a later date within the leave year
- the extent to which the worker taking leave would impact on wider society's response to, and recovery from, the coronavirus situation
- the ability of the remainder of the available workforce to provide cover for the worker going on leave.

It is suggested that workers who are on furlough are "unlikely to need to carry forward statutory annual leave, as they will be able to take it during the furlough period (in most cases at least)". One exception may be where, due to the impact of coronavirus on operations, the employer is financially unable to top up the 80% covered by the CJRS to full holiday pay (as required by the Working Time Regulations), in which case the worker would be able to carry over their annual leave.

The change does not apply to the additional 1.6 weeks of annual leave provided under domestic law, which can already be carried over for one year if the contract so provides. Carry-over of any additional contractual holiday entitlement will depend on the terms of the contract. Employers may wish to amend the contractual terms to allow the carry-over of 1.6 weeks for one year, if this is not already in place, and possibly also to permit carry-over of any contractual enhancement, particularly if they are involved in providing essential services and may want to restrict leave during the crisis. Employers may also want to include or review provisions specifying which types of leave entitlement are used up first.

EMERGENCY VOLUNTEERING LEAVE

The Coronavirus Act enacted on 25 March 2020 introduced a new right for employees and agency workers to take one period (per 16 week period) of two, three or four consecutive weeks' unpaid Emergency Volunteer Leave from their usual jobs in order to work temporarily in the NHS or social care sector. Employers with fewer than 10 staff are excluded. Regulations have not yet been made to bring this into force and perhaps are now unlikely unless a second wave of COVID-19 infections threatens to overwhelm current NHS resource.

DISCRIMINATION

The pandemic has unfortunately given rise to a risk that employees may be harassed by colleagues or customers because they are perceived to be, or are, from a particular country and as a result are perceived to be more likely to have the virus. Employers should keep a close eye on the situation and may need to take steps to prevent employees being subjected to racial or other harassment or discrimination arising from the outbreak.

REDUCTION IN WORK / RESTRUCTURING / RETRAINING

Employers will need to assess whether there is likely to be a continued reduction in the need for certain roles once the lockdown has eased and indeed whether new roles are needed for which employees could be re-trained or up-skilled, in particular given the renewed importance of technology and automation. More remote-working may present cost savings in terms of physical space as well as a wider potential talent pool. Employers reliant on a self-employed workforce should also start considering their response in the event that tax and national insurance for the self-employed are more closely aligned with the employment position, as intimated by the Chancellor when announcing the furlough scheme.

Of course for some employers in key businesses, the challenge will be ensuring sufficient staffing given the possibility of higher absence levels due to further outbreaks or where staff are unable to work due to shielding or caring responsibilities, and some key sectors are already seeing demands for wage increases.

Layoffs and short-time work

Employers are only entitled to "lay off" employees (ie, provide no work or pay) or put them on "short-time working" (ie, provide less than half a week's worth of that employee's work and pay, so half of part-time hours/pay for a part-time employee) if the contract provides that there is no obligation for the employer to provide work and no obligation to pay unless work is done. It is more common to find an express provision to this effect in the manufacturing sector and some professional services, but it remains unusual.

For employees who do not have this type of contract (and who do not agree to a change to their employment contract to allow this), it would be a constructive dismissal to lay them off or put them on short time work. It would be very hard to imply a right to do this in most contracts. For a term to be implied through custom and practice, there must be a custom of laying-off or short-time work within that particular business. The custom must be both, reasonable, certain and well known; and such that, no employee could be supposed to have entered into employment without assuming it was part of the contract. This is a very strict test and it is highly unlikely that a right to lay off will be implied.

However, where an employer does have and exercises this right, the employee will become entitled to a statutory redundancy payment (SRP), provided they have two years' service, if they are laid off or on short-time for four or more consecutive weeks or for a total of six weeks in any 13 week period. An employer can resist a claim for SRP if the employee will return to normal working hours within four weeks and continue for at least 13 weeks.

Employees will also be entitled to a statutory guarantee payment on up to five workless days in a three-month period (pro-rated for part-time employees), calculated using normal weekly pay subject to a cap (currently £30 per day). Employers may also need to consult with unions over a decision to implement layoffs or short-time work under the provisions of a collective or national industry agreement.

Alternative cost-saving measures

Employers without the contractual right to lay off or impose short-time work will need to consider other options to deal with a temporary reduction in work. These could be using up paid holiday, unpaid leave, reduced hours, or reduced or deferred pay.

Changes to contractual terms on hours or pay would need to be by agreement with employees, following appropriate consultation, largely as a way of seeking to avoid redundancies. (Employers will also need to notify employees of a change to their "Section 1 statement of employment particulars" at the earliest opportunity and in any event not later than one month after the change.)

Imposing changes unilaterally or dismissing on notice and offering re-engagement on new terms gives rise to various risks including unfair dismissal claims. Dismissals in order to re-engage on new terms also count as collective redundancies for consultation purposes (see Redundancies below). In any case there could also be an obligation to consult with unions, works councils or other employee representatives about proposed changes, so advice should be sought.

Salary freezes (ie on pay reviews) are usually possible, unless employees have a contractual right to an increase. Commonly, employees only have a right to a salary review, in which case a decision not to award an increase will be upheld unless it is made capriciously, in bad faith or in breach of trust and confidence. Extra care is also needed when deciding the level of any discretionary bonus, as there may be prescribed factors that have to be taken into consideration and, again, an employer must not act capriciously, in bad faith or in breach of trust and confidence.

Employers could also impose a freeze on new recruits and can withdraw job offers prior to acceptance. If a recruit has already accepted the offer, they would be entitled to notice or pay in lieu. Another option may be to defer start dates with the employee's agreement, perhaps in return for some compensation.

Holiday

In any event employers may want to ensure that employees take some of their paid holiday over the coming months, to avoid large numbers saving it up to take off in one go at the end of the year. Under the Working Time Regulations (unless the employment contract says something different), employers can require employees to take statutory holiday entitlement by giving notice to the employee which is at least twice as long as the holiday period being imposed. The contractual terms will determine the position for enhanced contractual holiday.

Coronavirus Job Retention Scheme

On 20 March 2020 the Chancellor announced a Coronavirus Job Retention Scheme available to any employer (of whatever size) to apply to the HMRC for a grant of 80% of the wages of all employees on the PAYE system who are "furloughed" (ie kept on payroll but without work), up to a maximum of £2,500 a month (just above the median income), plus associated employer NICs and minimum auto-enrolment employer pension contributions. Where employees do not have a lay-off clause in their contract, they must consent to be furloughed, although this is likely to be forthcoming where the alternative is redundancy (and particularly if the employer offers voluntarily to top up the 80% to full pay). (Again, employers will need to notify employees of a change to their "Section 1 statement of employment particulars" at the earliest opportunity and in any event not later than one month after the change.)

The scheme was backdated to 1 March 2020 and was extended in its original form until the end of June 2020. From 1 July 2020 flexible furlough has been permitted, allowing employees to be furloughed for part only of their usual working hours. From August 2020 employees will continue to receive at least 80% of their wages subject to the £2,500 per month cap, but employers will be asked to 'start sharing the cost' of the scheme. For August 2020 employers must pay the employer NICs and pension contributions for the hours not worked. For September 2020, employers must contribute 10% of the capped wages (plus employer NICs and pension contributions) with the government paying 70% of capped wages for the hours the employee does not work. For October 2020, the employer contribution increases to 20% (plus employer NICs and pension contributions) and the government contribution reduces to 60% of capped wages. Employers can continue to top up wages to 100% if they wish.

The scheme will close on 31 October 2020.. We have published a separate briefing on the scheme which is updated regularly as further details emerge.

Redundancies

If redundancies are ultimately required (or the employer is considering introducing changes to terms and conditions by dismissing and re-engaging employees), there are collective consultation requirements if 20 or more dismissals (for redundancy or some other reason unconnected with the individual) are proposed within a 90 day period at one establishment. The duty is to provide specified information and consult with unions or employee representatives about ways of avoiding or reducing the number of dismissals and mitigating the consequences.

The process must start in "good time" and at least 30 days before the first dismissal, and 45 days before if 100 or more dismissals are proposed. Employers will need to bear in mind that the process may take longer than usual where staff are furloughed and therefore, where they do not have union representatives or a standing employee body for consultation purposes, it may be prudent to start planning for the election of representatives earlier rather than later. There are significant financial penalties for non-compliance (potentially 90 days' pay per affected employee).

Where the collective consultation duty applies, the employer must also notify the Department for Business, Energy and Industrial Strategy of the proposed redundancies by letter or on form [HR1](#) (copied to the union/ employee representatives), at least 30 days (or 45 days if 100 or more dismissals) before the first dismissal. Failure to do so can lead to criminal prosecution and a fine (with no upper limit), on summary conviction, for the company and/or officers of the company, although only a few prosecutions have been brought to date.

Redundancy is a potentially fair reason for dismissal, but employees with two years' service will be eligible to bring unfair dismissal claims if a fair process is not adopted. Employers also need to avoid unlawful discrimination in how they apply the redundancy process.

Note that employers have to pay Class 1A employer NICs on ex gratia termination compensation payments above the £30,000 tax-free threshold in respect of terminations taking place on or after 6 April 2020 (bringing NICs into line with income tax).

REVIEW OF POLICIES/ LONG TERM PLANNING

In addition to new health and safety protocols, employers may also need to review and update more general policies to ensure they are adapted to the new circumstances on site or for home-working. This might involve reviewing contractual sick pay and PHI entitlements, flexible work policies, requirements for face-to-face meetings as part of disciplinary or grievance procedures or performance management/reviews, provision of equipment for home working and so on. Employers should capture their experience of home-working during the lockdown as this will provide key evidence when considering the feasibility of accepting requests to continue working flexibly.

Employers should also ensure they prepare now in case of a second wave of infections, learning any lessons from what could have gone better during the current lockdown, identifying any positive initiatives to retain, and of course ensuring employee contact details are kept up to date.

Longer term, in addition to reviewing human resource needs and considering upskilling and retraining employees, employers should keep in mind the impact of possible reform to the taxation of self-employed workers in light of the financial support provided during the pandemic.

RELAXATIONS - DSARS/ IR35/ GENDER PAY GAP/ IMMIGRATION

With respect to more general data protection compliance, the ICO has published a statement to individuals on its website advising that they should expect delays in companies responding to subject access requests because resources are being diverted elsewhere. This should not be considered by employers to be a waiver of their obligation to respond but should hopefully provide reassurance that they will not be sanctioned should they be unable to respond within the statutory timeframe due to issues arising out of the current situation.

This is particularly welcome given the recent change to the ICO's right of access guidance to apply a stricter timescale for employers (and other data controllers) to comply with a data subject access request. Previously, if a controller asked the data subject for further information/clarification of the request, the start of the one-month time period for compliance was paused until that information was received. The guidance has now been amended to state that the clock will no longer be paused in this situation – the one-month timescale will start to run from the date of receipt of the subject access request or, if later, upon receipt of proof of identification. Controllers may be able to extend the time limit by two months if the request is complex or the individual has made a number of requests.

The planned [extension of IR35 reforms](#) to private sector large and medium-sized companies has been delayed by a year, to April 2021, in light of the COVID-19 outbreak.

On 24 March 2020 the Government Equalities Office and the Equality and Human Rights Commission [suspended enforcement of the gender pay gap deadlines](#) for this reporting year (2019/20), confirming that there will be no expectation on employers to report their data.

From 30 March 2020 temporary changes have been made to the requirements for right to work checks so that these can now be done without needing to see the individual in person. Once the COVID-19 measures end, the usual checks should be done retrospectively within eight weeks (see [here](#)). The Government has also confirmed [here](#) that no enforcement action will be taken against sponsors of Tier 2 workers where the normal requirement not to take more than four weeks of unpaid leave per calendar year is breached by unpaid absence caused by the COVID-19 outbreak. Employers proposing salary cuts or deferrals or changes to duties for Tier 2 workers should check the latest Home Office concessions and/or obtain immigration law advice. An update to the guidance on 3 April 2020 suggests that cutting pay of Tier 2 workers to the lower of 80% or £2,500 a month is permissible if it is "part of a company-wide policy to avoid redundancies and in which all workers are treated the same" and the pay-cut is reversed once the "furlough" scheme has ended.

KEY CONTACTS

If you have any questions, or would like to know how this might affect your business, phone, or email these key contacts.



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