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Workplace Trends Virtual Event

Health & safety law – Duties to protect staff & visitors from Covid-19 in the workplace

The law firm for health, safety, environmental and regulatory defence
Speaker:

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Overview

Health & safety law – Duties to protect staff & visitors from Covid-19 in the workplace

• What are an employer’s health & safety criminal law obligations for Covid-19?
• Working from home – how far do your duties extend?
• What needs to be considered in your return to workplace plans?
• Social distancing – how far do you have to go?
• Q&A
Criminal H&S law obligations:

Health and Safety at Work Act 1974

All *reasonably practicable* steps to safeguard employees and non-employees, includes:

- keeping up to date with Covid-19
- all reasonably practicable risk reduction measures: planning, training, communication, information, implementation, monitoring and review
- Following Govt guidance where applicable
Criminal H&S law obligations:

Management of Health and Safety at Work Regulations 1999

- “suitable and sufficient” risk assessment:
  - in writing if 5 or more employees
  - must be reviewed/updated when circumstances change
- Risk assess each difficult decision
Criminal H&S law obligations:

Health Protection (Coronavirus, restrictions)(self-isolation)(England) Regulations 2020

- Applies to NHS/T&T notification to self-isolate (excluding NHS app)
- Mandatory 10 days from +ve test or 14 days from ‘close contact’
- £1k fixed penalty notice for breach of self-isolation 1st offence
- Worker must notify employer of start and end dates
- Once aware, employer must not knowingly allow worker to leave home for work related purpose
Criminal H&S law obligations:


- Offence to “participate in a gathering in a Tier 1 area which consists of more than 6 people”
- “Gathering”: 2 or more persons present together in same place for any form of social interaction or any other activity with each other
- Exception 3(a): “gathering is reasonably necessary for work purposes”
Working from home – how far do our duties extend?

- Health and Safety (Display Screen Equipment) Regulations 1992
- Prioritise and balance risk of common musculo-skeletal disorders and DSE technicalities
- Consider lone worker issues
- Keeping in touch and psychological support
- Consult with insurers
Working from home – how far do our duties extend?

• HSE website:
  
  – *For those people who are working at home on a long-term basis, the risks associated with using display screen equipment (DSE) must be controlled. This includes them doing workstation assessments at home.*

  – *There is no increased risk from DSE work for those working at home temporarily. So in that situation employers do not need to ask them to carry out home workstation assessments.*

• But what does “temporarily” mean and can this reassurance be relied upon for > 6 months?
Working from home – how far do our duties extend?

• How far to go?
  • Keyboard and mouse
  • Laptop stand/holder
  • Adjustable chair (office chairs not necessarily compliant for home flammability)
• Table?
• Lighting?

• Consider 3rd party safety risks
What needs to be considered in your return to workplace plans?

- Consultation
  - questionnaires, emails, updates, data issues
  - accommodate age, gender, race, pregnancy and disability
    … but don’t discriminate against protected characteristics
  - also consider cohabitee vulnerability

- Deep cleaning vs ‘time will heal’?

- Face coverings
What needs to be considered in your return to workplace plans?

• ‘Exclusion from workplace’ rules to protect fellow employees:
  • Scenario planning
  • False negatives and false positives
  • How long to be excluded?
  • How to deal with people who have recovered?
Social distancing – how far do you have to go?

Guidance for Social Distancing (updated 7 Oct 2020)

• Where you cannot stay 2m apart, you should stay > 1m apart, as well as taking extra steps, eg:
  • Face covering
  • Move outdoors
  • If indoors, improve ventilation
Social distancing – how far do you have to go?

Guidance for contacts of people with confirmed Covid-19 infection who do not live with that person (updated 28 Sept 2020)

Indicates where Government regard contact with someone who has tested +ve to create risk of contagion:

- Face to face contact within 1m (including: 1min or longer, or face to face conversation, or skin to skin contact, or being coughed on)
- Within 2m for > 15mins
- Travelled together in small vehicle or nearby in large vehicle or plane
Social distancing – how far do you have to go?

DWP – Leeds Quarry House
- Aug 2020 whistleblower
- 2 Covid cases
- HSE Fee for Intervention Notice of Contravention:
  - walkways designated as 2 way travel despite only being 1m wide
  - walkways passed close to desks designated as usable
  - stairs designated as 2 way but not wide enough for 2m distancing
  - small tables and benches lacked ‘do not use’ signs

Importance of challenging notices if you consider them to be unfair
- Watch for 14 day time limit
Concluding comments:

Watch out for:

• Inadequate planning and updating
• Poor documentation of planning/risk assessment/balancing exercise
• Employees pressured into returning or views/consultation not being accommodated
• Social distancing at work arranged but not implemented
Questions?

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