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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 1<sup>st</sup> 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:

## Health Protection (Coronavirus, Local COVID-19 Alert Level)(Medium)(England) Regulations 2020

- 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 3<sup>rd</sup> 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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