



PENINSULA

REOPENING YOUR WORKPLACE AFTER LOCKDOWN

Guidance Notes and FAQ

Respective Governments in England, Scotland and Wales have set out plans for lifting COVID restrictions and permitting businesses to re-open.

Employees across these nations are still advised to work from home where possible despite the easing of other restrictions; further reviews on this will take place over coming months.

This guidance has been prepared to help employers manage the 'return to work' process.

As the COVID-19 restrictions are lifted, business recovery will be paramount. Employers face many decisions around assessing business operations, bringing employees back to work, and ensuring the workplace is safe.

The principal challenge which should be factored into all decisions will be ensuring that workers have full confidence that their health will be protected.

Employers may be able to rely on, or learn from, procedures put in place during previous re-opening exercises when restrictions were eased.

To help you meet this challenge head on we've prepared the following replies to frequently asked questions on the general safety guidelines to follow, but you should ensure that you take sector specific advice on health and safety requirements.

This guidance note contains considerations from both an employment law and health & safety point of view. Currently, the specific health and safety advice in this document is based on guidance relating to England. Please call the

relevant advisory service if you have further questions on the points below:

Call 0844 892 2772 and press option 1 for Employment Law advice and option 2 for Health and Safety advice.

WHAT'S THE RIGHT THING TO DO FOR MY BUSINESS WHEN IT COMES TO RE-OPENING?

Re-opening a business should be done with care. You may still be exposed to legal liability if sufficient precautions are not taken.

Employees may be hesitant to return to work if they have concerns that overall conditions are not sufficiently safe. Employees who can work from home should continue to do so until the Government position on this is reviewed.

Your back-to-work plans will also depend on your location. Employers in rural areas and suburbs that saw fewer confirmed cases of coronavirus and resulting deaths may have an easier time convincing workers it's safe to return to the office than employers in cities such as London, Edinburgh or Cardiff.

The close quarters of city offices or public transport may add another barrier to a return to work for urban employers whose workspaces are not built for social distancing.

One major limitation on any reopening will be childcare. However, as schools are now open, this is likely to present less of an issue though it may still remain when employees have very small children and normal informal childcare arrangements are not permitted due to social distancing measures.



These are all factors you will need to consider before deciding to reopen.

WHICH EMPLOYEES SHOULD RETURN TO WORK FIRST?

It is unlikely for most businesses that all employees will be able to return to the workplace at once and the Government has set out specific requirements for employers to adhere to on social distancing and what you can do if social distancing is not possible. You should consider what employees, departments, groups, or units should return first based on business needs, compliance with ongoing restrictions for specific sectors such as the hospitality sector and compliance with health precautions such as social distancing. The legitimate business reasons behind your selection of what employees return to work first should be documented to provide evidence of non-discriminatory selection criteria if later challenged.

WHAT SOCIAL DISTANCING PROTOCOLS DO I NEED TO IMPLEMENT?

You will need to comply with all government directives on social distancing as your workplace reopens.

Staggering work hours and alternating days of work for different groups, shifts or teams of employees to reduce the number of employees on site may also be needed.

Below is a list of precautions that businesses may consider implementing:

- reduce hot-desking.
- evaluate workplace layouts and consider making certain stairways and hallways one way if social distancing guidelines cannot otherwise be met.
- use plexiglass shields, tables or other barriers to block airborne particles and ensure minimum distances in the workplace.
- develop protocols to ensure social distancing can be maintained in lifts.
- close or modify certain common areas, such as canteens so that employees can socially

distance and using floor tape to mark appropriate distances.

- erect physical barriers and implement rules to limit sharing equipment and supplies including pens. These rules might require you to be prepared with additional equipment and supplies before beginning to bring employees back onsite.
- provide hand sanitiser.
- consider changing latch-based door handles so doors open or close through use of an “electric eye” or with a push of the door or a button or push pad, which may also assist with ongoing deep cleaning protocols.
- provide more car parking spaces to avoid colleagues giving each other lifts to work

WILL MY CUSTOMER SERVICE DELIVERY METHODS BE AFFECTED?

Depending on the nature of your business, you may need to go to a drive-through or pick-up means of providing customer service and arrange for contactless or online pay options for customers. You also may be required to reserve certain hours of operation for high-risk customers only.

WHAT EMPLOYEE GUIDELINES WILL BE REQUIRED?

Your employees must comply with prevailing social distancing rules in the workplace and guidelines should be prepared for distribution to staff.

Social distancing rules should be communicated electronically and/or in hardcopy at workstations and common areas. These materials should be easy to understand and available in the appropriate language and literacy level for all workers.

You may want to provide video training to returning employees to introduce them to any new workplace rules. Employees should acknowledge receipt of rules and training. Employers should train supervisors on how best to enforce social distancing rules. Employees may



also be required to wash their hands at specified frequencies, following recommended practice.

CAN I ALLOW EMPLOYEES TO CONTINUE TO WORK REMOTELY?

Yes. Despite several changes in stance in England, the Government guidance for businesses in England is currently that employees should work from home where they can. Other employees whose roles cannot be done at home should still attend the workplace.

In Scotland and Wales, the default position remains that employees should work from home where possible.

One of the main employment law consequences to come from the temporary homeworking period is an increase in flexible working requests from employees wishing to make it a permanent measure. Employees with at least 26 weeks' continuous service can make a request for flexible working, which includes a move to working from home provided they have not made a request under the statutory scheme in the previous 12 months. A statutory code of practice applies to your handling of the request. Requests can be denied on the basis of prescribed reasons.

WHEN CAN WE RESUME PHYSICAL MEETINGS AND CONFERENCES?

Government guidance discourages face to face meetings unless absolutely necessary and you must ensure workers maintain social distancing guidelines (2m, or 1m with risk mitigation where 2m is not viable, is acceptable), wherever possible, avoid sharing pens or equipment and keep meeting rooms well ventilated. Digital methods which may have been put in place during a home working period, or seen increased usage, may need to continue even in the workplace for some time.

Digital meetings may continue to be the only appropriate method of 'meeting' with clients/customers/suppliers, whether in the UK or overseas, for the time being. The same applies to any employees that normally travel to other of branches or offices in the UK.

WE ARRANGE REGULAR OFFICE EVENTS AND CELEBRATIONS SUCH AS OFFICE BIRTHDAY PARTIES. CAN THESE CONTINUE?

Employers must comply with government advice regarding employee health & safety at gatherings, and should review the guidance often, as changes occur. If you normally hold regular workplace celebrations, they may need to be held virtually. Avoid any work-sponsored or workplace events that involve communal sharing of food, and gently communicate these expectations in advance to employees who may wish to celebrate their return to work by bringing in treats to share.

You should not provide beverage pitchers, food or sandwich trays, hot food buffets, or a utensil dispenser or basket. It is also recommended to indefinitely postpone in-person events such as company sporting games or team lunch outings due to the challenges of maintaining effective social distancing.

DO I NEED TO PUT NEW HEALTH AND SAFETY SYSTEMS IN PLACE BEFORE EMPLOYEES RETURN TO WORK?

There are certain logistical considerations you should consider when preparing for the physical return of your workforce.

You will need to consider what supplies may be needed to facilitate a smooth return to work, keeping in mind any issued government guidance. For example, you should pre-order (taking shipping time into consideration) products including hand sanitiser, sanitising wipes, bottled water, face masks, gloves, etc. Special anti-bacterial cleaners may need to be ordered, and personal protective equipment (gowns, gloves, masks, visors) may be needed for any individuals who clean or remove waste.

You should consider what supplies will allow employees to minimise time spent in common areas. Additionally, individual workspaces should be prepared with necessary supplies to eliminate



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the need for employees congregating in a supply room.

You may want to implement a bring-your-own-refrigerated-lunchbox policy to limit use of common refrigerators.

You will need to determine if changes need to be made regarding first aid rooms or other rooms used if employees do not feel well to ensure strict compliance with thorough sanitisation protocols. You may also have to consider adding additional hand washing stations.

You should prepare directional signage and other instructions for employees and visitors to avoid any confusion related to containment practices.

Since Monday 28th September 2020, workers in shops, restaurants, cafes and pubs have been required to wear face coverings.

ARE EMPLOYERS REQUIRED TO MODIFY THE PHYSICAL WORKPLACE?

You should reduce movement of people within a building or site where possible and where practicable, introduce one way systems on corridors and stairwells. You should assess whether certain workplace modifications are required to maintain social distancing and compliance with other government-issued guidelines, particularly for high traffic areas such as corridors, lifts and walkways. If returning a single department, unit or group is a priority, you need to consider whether you should implement new seating or work arrangements or if pairing is necessary.

Conduct a detailed evaluation of the physical workspace layout. If any employees work at stations that are within 2 metres of each other, make reassignments to different stations to ensure the minimum distancing — and for employees who work alongside each other on a regular basis, increase the gap to keep these workers 2 metres apart. If available space does not allow this much separation, evaluate options for staggering schedules as an alternative or if employees must work within 2m of each other,

you must show mitigating factors are in place to prevent the transmission risk such as screens, pairing systems or back to back working. Avoid sharing workstations and arrange for people to work side by side or facing away from each other, avoiding face to face working arrangements.

You should also consider whether furniture or work equipment can be reconfigured to facilitate social distancing. For example, removing tables and chairs in meeting, lunch or break rooms may facilitate social distancing. Pay special attention to areas where printers, copiers and other types of shared equipment are located, and consider moving the equipment or designating a single employee to operate that equipment, distribute print-outs, etc.

You might also consider locating different teams to a different area of the worksite; this may assist in providing backup in the event that any team member tests positive for the virus or reports a direct exposure event.

AM I REQUIRED TO MAINTAIN NEW CLEANING OR HYGIENE REGIMES?

Government guidance requires you to carry out a cleaning procedure, particularly of sites or parts of sites that have been closed, prior to re-opening. Hand sanitiser should also be in place prior to re-opening. If there is a skeleton crew in the workplace, try to contain those employees to a specific area while this cleaning process is underway so that the occupied area can be cleaned immediately prior to additional employees returning. Food should be removed from common areas and kitchen or break areas.

Increased levels of cleaning and sanitising of frequently touched surfaces such as door handles is recommended and additional precautions are required if you are cleaning after a suspected or known case of COVID-19. Track and trace measures should be followed at all times. You should provide disinfectants throughout the workspace for employee use for wiping down surfaces.

WHAT ARE INFECTION CONTROL PRACTICES?



Infection control practices, such as regular hand washing, following proper coughing and sneezing etiquette, and proper tissue usage and disposal is prudent and, during a pandemic, a basic compliance requirement under the Health and Safety at Work etc, Act 1974. It is good practice to provide tissues throughout occupied work areas, with disposal receptacles so that employees can discard their used tissues personally and immediately. You should consider increasing the number of hand washing stations, and provide breaks as necessary for employees to wash their hands for at least 20 seconds.

AM I OBLIGED TO PROVIDE PERSONAL PROTECTIVE EQUIPMENT TO EMPLOYEES?

Existing risk assessments may already identify the need for personal protective equipment for work purposes and this should continue to be used. You should not generally need additional PPE to reduce the risk of COVID-19 other than in clinical settings.

If an employee fails to bring the issued personal protective equipment several times over a relatively short time frame, you should document their behaviour and use your internal disciplinary procedures to ensure it doesn't continue.

If required for your normal work activities, you will have to provide personal protective equipment to all relevant staff and ensure no one receives different treatment. This is documented in your risk assessment.

Government guidance has identified some circumstances when wearing a face covering may be marginally beneficial as a precautionary measure against COVID-19. The evidence suggests that wearing a face covering does not protect the wearer, but it may protect others if you are infected but have not developed symptoms. Wearing a face covering is optional and is not required by law in the workplace.

HOW ARE MY HEALTH AND SAFETY OBLIGATIONS AFFECTED WHEN I OPEN BACK UP?

Employers have a duty under the Health and Safety at Work etc Act 1974 to make sure they provide a safe workplace. You must make sure that the risk assessment for your business addresses the risks of COVID-19. You should only restart operations with safe, secure and sanitised workplaces to protect all employees working in line with government guidance and, where relevant, with unions on the procedures. If you have 50 or more employees you must publish your COVID-19 risk assessment on your company website.

There's no one size fits all approach for the kinds of decisions involved in reopening a workplace during a pandemic, which range from workplace travel policies to how to monitor employees for coronavirus symptoms.

Each business has its own risks to consider. A meatpacking plant or a retail outlet needs people on the floor. These types of business face a different challenge to a tech company that has fully transitioned to a remote working model.

HOW DO I KNOW STAFF ARE FIT AND HEALTHY ENOUGH TO RETURN TO THE WORKPLACE?

This question highlights the sort of health & safety issues that will arise in the different world we now live in.

You should deal with employees on a one on one basis. You need to bear in mind that the Equality Act 2010 protects workers with a disability against discrimination by their employers.

Although there is no specific requirement, other than in specialist sectors, to carry out any form of health screening, some businesses have chosen to carry out temperature checks. Without a contractual right to check an employee's temperature, employers cannot force an employee to do this. If employees do not volunteer to have their temperature checked, or there is contractual right to rely on, employers are not permitted to require a test to be taken. Employers may wish to consider whether there is an implied contractual term to require an



employee to take a temperature test based on the fact that an employer has a duty of care to protect the health and safety of its workforce. This is a complicated area of law and advice should always be taken.

If employees do reveal medical information it is vital that you keep it confidential and in line with the Data Protection Act 2018.

When discussing these matters with employees, it's vital to be transparent and to reassure employees that you are doing everything do ensure their safety and health.

WHAT QUESTIONS CAN I ASK EMPLOYEES ABOUT THEIR SYMPTOMS?

You are permitted to ask employees whether they are experiencing any COVID-19 symptoms, such as a fever, chills, cough, shortness of breath, body aches, sore throat, loss of taste or smell or other symptoms identified by health authorities.

Employers may require that employees answer questions or provide certifications concerning their experience of any COVID-19 symptoms or their exposure to individuals with confirmed cases. This also forms part of the government's 'track and trace' programme, where employers should also record their employees' shift patterns and keep records for a minimum of 21 days. For some businesses, this is now a legal requirement.

Employers may do this on a daily basis or at other intervals, as well as when an employee calls in sick, and must maintain information as a confidential medical record. Employers should be careful not to ask health questions that are unrelated to COVID-19, including asking about underlying medical conditions or symptoms not associated with COVID-19. (For the purpose of determining whether an employee should be permitted to remain at home, employers can ask employees to certify as a general matter that they have an underlying health condition that heightens their risk of harm if they were to contract COVID-19.)

DO I NEED TO MONITOR EMPLOYEE HEALTH?

Although no specific health monitoring is required, it is good practise to keep an eye on the mental health and wellbeing of your staff, particularly during time of significant change.

You should develop communication and training materials for workers prior to returning to site, especially around any new procedures for arrival at work. You should also plan on training employees and demonstrating the new safety measures in place to protect them from the spread of the virus. The more employees understand about what safety measures are being taken, and why, the more likely there is to be employee buy-in, and the less likely that employees may make complaints to the HSE or other third parties regarding perceived risk in the workplace.

To be clear, employee complaints about perceived safety issues should be taken very seriously and investigated, and you should not take any retaliatory action against employees who make such claims in good faith.

In addition to offering training to your workforce, make it a habit to check in with employees as often as possible to ensure they are comfortable with their work environment and the changes associated with returning to the workplace.

WILL I NEED TO UPDATE MY RISK ASSESSMENT?

You must make sure that the risk assessment for your business addresses the risks of COVID-19 before allowing staff to return to work. It is vital that you establish whether there are adequate safeguards in place to reduce the risk of employees contracting the virus, particularly those employees who may be particularly vulnerable to contracting the virus (e.g. employees with pre-existing health issues, older employees, employees who are pregnant).



HOW DO I HANDLE WHICH EMPLOYEES COME BACK TO THE WORKPLACE AND WHO DOESN'T?

Social distancing requirements are likely to dictate how many employees can return at what stage. From an employment law perspective, there could be allegations of discrimination if your selection process for who returns to the workplace isn't objective.

Look at the question from a function or operations standpoint - different parts of your business might be able to bring back more employees on reduced hours.

Can you select employees by function? Can you operate a rolling staff rota?

If the hasty transition to remote working was successful, consider making it a permanent part of your work systems.

If remote working is set to become a long-term feature of your business model, you will need to draft an appropriate policy to cover all risks from health and safety to data protection and confidential information.

Employees classed as clinically extremely vulnerable to serious illness during the pandemic were advised to 'shield' which included advice to work from home or this was not possible, not to attend work. Where advice to shield is lifted, the employee can return to the workplace if working from home is not possible.

If some employees are to remain on furlough due to insufficient work once the business re-opens, employers may decide to continue to furlough those who had been under shielding advice as a priority over those who had not. It must be remembered that being clinically extremely vulnerable cannot be used as the single reason to furlough an employee in circumstances where shielding advice is lifted.

AM I REQUIRED TO MODIFY EMPLOYEE HOURS?

Staggered hours and shifts can help support social distancing measure, in particular at start and finish times. This will not only assist with social distancing at the entrance of the workplace but also ease congestion on public transport. There is no requirement to do this, however, it has been strongly encouraged by the Government.

Similarly, alternating days of work for different groups or teams of employees may assist with social distancing requirements.

Employment laws require employee agreement when making amendments to employee terms and conditions, even on a temporary basis. It is advisable to speak to employees first and explain the changes you need to make and the reasons for the change. You may need to take employees' individual circumstances into consideration because a change to working hours may be difficult for some employees who have childcare responsibilities etc.

WHAT IF I OPEN BUT CANNOT OFFER FULL TIME HOURS TO ALL OF MY WORKFORCE?

If you have furloughed employees during your closure, you may be able to use the flexible furlough arrangement that has been available since 1 July 2020 which allows you to combine part-time work with furlough.

If you have not been able to furlough employees and need to amend working hours, however, as above, you should seek to agree with this staff via a change to terms and conditions.

I NEED TO RECRUIT STAFF. IS IT SAFE TO ARRANGE INTERVIEWS?

You should consider virtual interviews and onboarding to reduce the number of in-person interactions. If in-person interviews are conducted, we recommend you set certain parameters in place to ensure social distancing



(e.g., no handshakes, minimum distance of 2 metres where possible, etc.)

A MEMBER OF STAFF HAS COMPLAINED OF HARASSMENT RELATED TO COVID-19. HOW SHOULD THIS BE DEALT WITH?

Harassment is unlawful under the Equality Act 2010 and employers can be held liable for the harassing behaviour of its employees even if it was not aware of it. You should remind all employees of their obligations in this regard by reissuing policies contained in employee handbooks. It may be particularly helpful to advise supervisors and managers of their roles in watching for, stopping, and reporting any harassment or other discrimination. You can also remind all staff that you will immediately review any allegations of harassment or discrimination and take appropriate disciplinary action.

When dealing with this particular allegation, you should follow your grievance or personal harassment procedure.

WHAT DO I DO ABOUT ANXIOUS EMPLOYEES AND EMPLOYEES WHO REFUSE TO COME BACK TO WORK?

Employee safety has to be the priority during the initial return to work period. Where workers are coming in daily, you will need to reassure any nervous employees that you aren't putting them at risk by asking them to return to work. Requiring employees to work in an environment that put their health/safety at risk could breach the employer's duty of care.

Some employees may be cautious about returning to the workplace for fear that it puts them at a greater risk of contracting COVID-19. Although the COVID-19 vaccine provides security against serious illness, employees are likely to be at different stages in their vaccine 'journey' at the time of their intended return. Some may not have had both doses on their return; some may not have had the first dose. Some employees cannot have the vaccine due to existing medical

conditions, or for other reasons relating to religion, or simply choose not to have it.

You should speak to employees and try to allay their concerns by sharing the COVID-19 risk assessment with them to let them know all of the measures you are going to take to ensure a workplace which is as safe as it can be.

Any phased return to work and new workplace layouts will further demonstrate that you are prioritising employee health.

You should take the specific circumstances of an anxious employee into consideration. For example, an employee may fall into the clinically extremely vulnerable category, or their partner may fall into that category. If an employee still does not want to return to work, you may agree to allow a new or extended period of home working. You may also keep a previously shielding employee on furlough where the circumstances are appropriate for this.

Employees who have been shielding may require additional adjustments in order for them to feel confident that their safety is not compromised by returning to the workplace. Adjustments will need to be discussed with an employee in advance and will need to be tailored to their specific circumstances. Their actual role, working hours etc will need to be considered. Possible adjustments include:

- working from home (though if this was possible it's likely it will already have been in place)
- reallocation to another role to enable them to work from home though if this was possible it's likely it will already have been in place)
- adjusting working times to allow for public transport use outside of rush hour
- reallocation to another role to allow for public transport use outside of rush hour
- giving employee a parking space so they don't need to use public transport
- reallocation to another branch to reduce/remove time spent on public transport



- allowing employee a space on work-arranged transport if they wouldn't normally qualify for such e.g. a bus laid on by the employer
- reallocation to another role which requires less contact with others (despite social distancing etc rules)
- moving employee to a different location within the workplace which means less contact with others.

Employers may decide to make these adjustments on a temporary or permanent basis.

Some of those who have been shielding will qualify as disabled under the Equality Act 2010 so some adjustments may be seen as reasonable adjustments that employers are under a duty to make.

Implementing a system of regular workplace COVID-19 testing is likely to be another measure that gives employees more confidence in their safety in the workplace due to the ability to identify asymptomatic cases.

If an employee refuses to attend work without a valid reason, you may wish to consider disciplinary action though specific advice should always be taken here because employees are protected against dismissal or detriment (eg a warning) if they leave the premises, or do not attend work because they have a reasonable belief that the workplace poses a serious or imminent threat to their safety which they could not reasonably avert. Being proactive about removing the ability for the employee to form this reasonable belief is vital here. Integral to this is sharing the risk assessment with employees and being able to explain the adjustments made as well as the effect of the adjustment. Employers should continue to ensure that all of their health and safety rules are complied with by the workforce which may include taking action against those who do not comply.

I HAVE LOST A LOT OF BUSINESS FOLLOWING THE CRISIS. WHERE DO I START WHEN MAKING REDUNDANCIES?

The particular process you should take will depend on how many redundancies you propose to make. Remember that redundancy is a dismissal which can be deemed unfair if the employer has not followed the correct process. The Equality Act 2010 should also be considered so that no discriminatory decisions are made.

A business case is pivotal to a redundancy process. This is a document in which you set out why the need to make redundancies has arisen and what measures you have taken to try to avoid it.

If you need to select employees to be made redundant, you will need to define the criteria against which employees will be assessed. These criteria should be capable of being objectively determined.

Employees must be consulted from the early stages and throughout the process. A series of meetings should take place where employees are able to contribute and give feedback before final decisions are made.

Where 20 or more employees are to be made redundant in a period of 90 days or less, collective consultation requirements apply. Consultation must last at least 30 days where 20 – 99 redundancies are proposed; and at least 45 days where 100+ are proposed.

Specific advice should be taken on redundancies to ensure that a genuine redundancy situation exists and that the process is implemented correctly and in line with the legislation.

MY EMPLOYEES CAN'T GO TO WORK BECAUSE THEY HAVE NO CHILDCARE. WHAT DO I DO?

This is a common challenge facing employees and employers with childcare facilities closed and family carers unavailable. As schools and other childcare providers begin to open, this problem should become less frequent.

However, where circumstances are such that childcare remains a problem, you may agree that



the employee is to work from home where this is possible.

Where employees are unable to work from home, they should be encouraged to make alternative childcare arrangements but this will not be possible for all employees.

Employers should consider a temporary flexible working arrangement to adjust or reduce working hours and change working times to assist employees in managing work and increased childcare responsibilities.

Parental leave (unpaid) as well as paid annual leave, or another form of unpaid leave, may be solutions, at least in the short term.

Consistency is key to avoid setting unmanageable precedents and in the circumstances, where the situation is so uncertain, employees should be informed that all measures are temporary and cannot be maintained indefinitely.

HOW SHOULD I COMMUNICATE TO EMPLOYEES THAT THEY ARE TO RETURN TO THE WORKPLACE?

Even in circumstances where the decision to return to the workplace happens quickly, you should aim to give employees reasonable notice of the return. This should happen even where furloughed employees were made aware of an end date to the furlough. Employees may have childcare, or other caring, responsibilities and a return to the workplace may signify a need for them to make other arrangements.

The return date may not be the same for all employees where you are implementing a staged return.

You should also be aware that some employees may not be in a position to return to the workplace. This could include those who are on sick leave, are self-isolating or are shielding, where this is continuing. Shielding ends on 31 March 2021 in England/Wales and on 25 April 2021 in Scotland. You should stay in contact with these employees and make arrangements for their return, when it appropriate for them to do so.

You should also be aware that some employees may have experienced a recent bereavement and you should offer appropriate support to them on their return to the workplace.

It may be useful to set out in a letter the intended return date and all of the additional health and safety requirements that employees will have to adhere to in order to ensure a safe working environment. You should be able to explain to employees all of the measures you have taken to follow guidance on making your workplace COVID secure and share your COVID risk assessment with them.

When employees are returning from a period of shielding, you should also set out in writing any adjustments you have agreed will be put in place just for them in recognition of their individual circumstances.

To identify any potential issues with a return to work, or any adjustments or support that may need to be put in place on their return, managers should speak with employees prior to the return. It would be useful to ask all employees things like:

- whether the employee has any caring commitments which were affected by coronavirus, for which new arrangements will need to be made because of the return to work
- the method of transport the employee will use to get to work
- whether the employee understands the additional health and safety requirements.

Discussions around a temporary change to working hours may be needed if a staggered shift hours approach is to be adopted, or if this is being implemented on an individual basis for a clinically extremely vulnerable employee.

It may also be useful to provide employees who are returning to the workplace because they cannot work from home with a letter that they can produce for inspection, if asked, to explain why they are travelling. Although the general lockdown is being eased, those who are out and



about may still be questioned on their reason for being outside.

WHAT SHOULD I DO ON EMPLOYEES' FIRST DAY BACK?

On the return, managers should speak with employees to confirm any adjustments or support needed to enable the employee to carry out their role which had been identified in the 'returning to work after lockdown' conversation before the employee came back to work.

A 're-boarding' process may be appropriate, especially where employees have been out of the workplace for a long time, either on furlough and not working, or working from home.

Employers should remember that individuals will have reacted in varying ways to the lockdown depending on their personal circumstances and will have had different, sometimes particularly negative, experiences. If your employees have access to an Employee Assistance Programme, remind the employee that they have the opportunity to speak to a trained counsellor about any concerns they have.

Your approach to 're-boarding' should be inclusive to all employees. Whether they have been furloughed or have remained working from home, most will have experienced a change to their normal working life and may need support on returning. There may be an unequal set of experience across the workforce if some employees were furloughed on reduced pay and others were not.

Some refresher training in work tasks may be required, particularly for those who have been out of the workplace for a considerable amount of time.

HOW SHOULD I MANAGE ANNUAL LEAVE ON THE RETURN TO THE WORKPLACE?

Your approach to annual leave will depend on your specific circumstances and whether your employees have taken annual leave during furlough or have been able to take annual leave

as normal since the start of the pandemic. You should assess the current position with annual leave and your ability to allow employees to take it now that the workplace is back open. You may find that there is opportunity for your employees to take annual leave and encourage them to do so, or you may find that demand is such that no annual leave can be authorised.

In recognition of the fact that the pandemic may have had the effect, for various reasons, that employees could not take annual leave as normal, the Working Time Regulations 1998 were amended to allow carry over of the four weeks of annual leave that were previously exclusive to the year in which they were accrued. This means that, where it was not reasonably practicable for annual leave to be taken in this leave year because of COVID-19, it can be carried over into the next two leave years; this measure was taken to avoid a bottleneck situation towards the end of the leave year in which there was lots of leave remaining to be taken but little time in which to take it, meaning that it may otherwise be lost. It is already permissible to carry over the remaining 1.6 weeks of the statutory minimum annual leave entitlement into the following leave year provided there is a relevant agreement to this effect.

When considering whether it was not reasonably practicable for a worker to take leave as a result of COVID-19, so that they may carry untaken holiday into future leave years, an employer should consider various factors, such as:

- 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 COVID-19 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, COVID-19
- the ability of the remainder of the available workforce to provide cover for the worker going on leave.

Employers should do everything reasonably practicable to ensure that the worker is able to take as much of their leave as possible in the year to which it relates, and where leave is carried forward, it is best practice to give workers the opportunity to take holiday at the earliest practicable opportunity.

Government guidance states that it is not likely that the new rules on carry over will need to be utilised for employees on furlough. This presumably refers to the fact that employers are able to require employees to take annual leave and should take the opportunity to do so with employees who are on furlough. Employers should remember that annual leave must be paid at full pay, meaning that they will need to 'top up' furlough pay to 100% for time spent on annual leave.

All employers are able to enforce annual leave ie require employees to take it, provided the correct amount of notice is given. Employers must give notice that is double the amount of the time to be taken as annual leave eg 6 days' notice is to be given for 3 days of annual leave.

This should be a real consideration for employers; whether to enforce annual leave or not will clearly be dependent on demand for work at particular times but it does offer a way to take control over a continually increasing annual leave entitlement.

WILL MY WORKPLACE EVER GO BACK TO THE WAY IT WAS?

This is unlikely for the foreseeable future. Your work is not completed once you open your doors and welcome back your workers and others.

You will need to maintain routine cleaning and disinfection procedures after reopening to reduce the potential for exposure.

You should continue to monitor COVID-19 in your area, and if necessary, be prepared to close your facilities quickly if another outbreak occurs. Despite Government relaxations on the lockdown, employers ultimately will make the decision about when to bring their workers back to the office once guidance indicates this can happen, and what that looks like.