

Employment Law Update

Covid-19 - Return to Work Issues

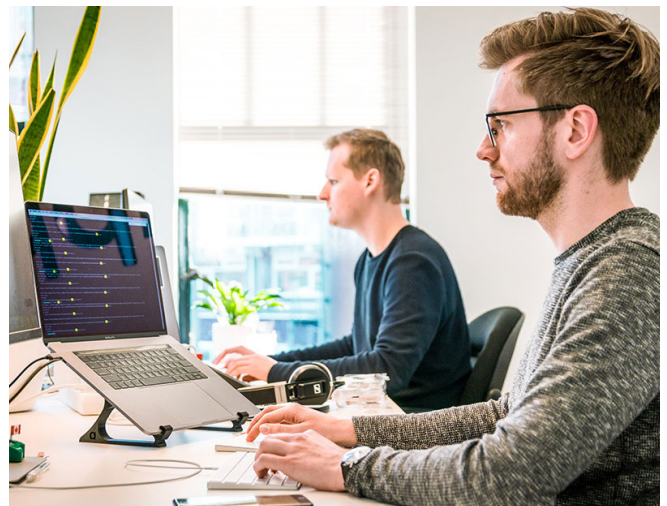
Despite the removal of all Covid restrictions, getting staff back to the office remains problematic with many companies opting for hybrid working (part office, part home) rather than full time attendance in the office. Although employers are no longer required to consider Covid in any risk assessment, health and safety obligations still apply. This update covers the key issues.

What steps do employers have to take to ensure a safe working environment?

Following the lifting of all Covid restrictions, the Health and Safety Executive (HSE) no longer requires employers to consider Covid-19 in their risk assessments or to have specific Covid measures in place.

Covid is now being treated in a similar way to other infectious diseases. Whilst Covid will remain a public health issue, the previous guidance for workplaces is being replaced with public health advice. There is, however, still an obligation to consider vulnerable employees who are at higher risk from Covid.

There is new HSE guidance for reducing the spread of respiratory infections such as Covid and flu in the workplace. This recommends measures such as a clean working environment, encouraging and enabling staff to get vaccinated and considering ventilation.



General health and safety obligations continue to apply. This includes providing a safe working environment and consultation with staff on any health and safety changes.

Are employees entitled to full pay if they contract Covid and are asked to self-isolate?



There is no longer a legal requirement to self-isolate if a person has Covid symptoms or tests positive. They are, however, expected to follow Government guidance on self-isolation for 5 days. However, the guidance states that it is up to employers to decide how best to

support and enable their workforce to follow this guidance. Although not specified, this would include payment of salary if they are asked not to attend the office or providing free tests to prove negative before they can return.

There is no longer any Government financial support for absence due to Covid so the normal Statutory Sick Pay (SSP) rules apply. These provide support from day 4 of any absence at £99.35 per week. It is up to employers if they provide any company sick pay over and above SSP.

Alternatively, if employees are able to work from home whilst self-isolating, then they are entitled to be paid their normal salary.

Can employers insist that staff are fully vaccinated before returning to the office?

Vaccines are no longer compulsory for any sector including the health and social care sector. The previous regulations which required all care home staff to be vaccinated have now been abolished and were not introduced in the NHS. Whilst the Government is asking employers to encourage staff to get vaccinated and allow time off for doing so, there is no obligation to do so. Any vaccine policy is up to the employers.

However, as the vaccine is no longer mandatory for any sector and in view of the removal of all restrictions, it would be difficult to justify such a policy on health and safety grounds.

There are also data protection requirements in obtaining vaccine information from staff as the employer will be processing “sensitive personal data”. The Information Commissioner’s Office has issued specific

guidance for employers emphasising that the use of such data must be “fair, relevant and necessary” and for a specific purpose. A “just in case” basis is unlikely to be justified. Fines for breach of data protection are high.

Any dismissal for non-vaccination is likely to result in Tribunal claims for unfair dismissal (minimum 2 years’ service required) which would be difficult to defend and potential discrimination cases.



Can employers require their employees to return to the office?

In theory, yes. Employers have the right to require their employees to attend for work in the office. ie their place of work. The previous Government stipulation of “work from home if you can” no longer applies. Unless an employee is clinically vulnerable or suffering from long Covid, it would be difficult for most employees to maintain they are unable to attend due to concerns about Covid. In any event, the preference for hybrid working now seems to be more of a lifestyle choice and it is becoming common practice for employers to offer one or two days working from home as a perk.

If an employee refuses to attend the office (without genuine medical reasons), then employers would have to consider disciplinary proceedings and ultimately, termination. Alternatively, some companies have reduced pay by 20% for employees who want to work from home full time taking into account that the employees are no longer incurring the time and expense of travel.



Reducing salary would be a variation of the employment contract for which consent is required. Provided this is handled correctly and full time attendance with full salary offered as an alternative, then it is unlikely to result in a successful constructive dismissal claim (but legal advice should be sought before taking any action).

Do employees have the right to work from home or is that something that may happen in the future?

All employees who have been employed for at least six months have the right to request flexible working including working from home under the Flexible Working Regulations. There are certain procedural requirements which must be followed but ultimately, it is up to the employer to decide provided one of the specified grounds for refusal apply, if rejected.

The Government previously indicated that it may give employees a right to work from home and for the right to request flexible working to apply from day 1. However, this now seems unlikely and the law has not changed.



Comment

With the lifting of Covid restrictions and life returning to “normal”, office attendance is expected to increase. If staff are not willing to return voluntarily and insist on working from home, then measures such as reducing pay or disciplinary proceedings leading to termination may become more common.

It does seem that working from home is now a lifestyle choice, rather than concerns about Covid. It is up to employers whether to agree to this, subject to any legal requirements.

Contact details:

For further information or advice, please contact:

Tessa Fry

Head of Employment

tessa@solts.co.uk

DDI: 020 7317 8698

Disclaimer – This update is intended to provide readers with information on recent legal developments. It should not be construed as legal advice or guidance on a particular matter.

© Solomon Taylor & Shaw LLP

Solomon Taylor & Shaw LLP
Solicitors

3 Coach House Yard
Hampstead High Street
London NW3 1QF

Tel: **020 7431 1912**
Fax: **020 7794 7485**
DX: **144580 Hampstead 2**
www.solts.co.uk
mail@solts.co.uk

Solomon Taylor & Shaw LLP is a limited liability partnership registered in England no OC434716. It is authorised and regulated by the Solicitors Regulation Authority SRA (SRA No. 837943). A list of members is open to inspection at its registered office at 3 Coach House Yard, Hampstead High Street, London NW3 1QF.
