HOUSE OF COMMONS LIBRARY

BRIEFING PAPER

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Coronavirus: Returning to work

By Daniel Ferguson

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Summary

This is a fast-moving area and the paper should be read as correct at the time of publication (10.11.2020).

In late March 2020, the UK Government and devolved administrations made legislation to impose lockdowns in response to the Covid-19 pandemic. These rules prohibited people from going to work unless it was not reasonably possible to work from home.

Over the summer many of these rules were relaxed. However, stricter rules are now being re-introduced, either through legislation or through guidance.

Returning to work

There are now a number of circumstances in which a person may be required or advised not to go to work:

- Those who are able to work from home;
- Those who are required to self-isolate;
- Those who are required to quarantine (self-isolating after travel);
- Those who are extremely vulnerable to Covid-19 (shielding);
- Those whose workplace is required to close.

Those who are not able to go to work may be able to continue working from home.

These rules vary across the four nations of the UK.

In England, for example, during the temporary lockdown it is an offence for a person to go to work if they are able to work from home or if they are required to self-isolate.[1] There is also guidance advising extremely vulnerable people to shield and not go to work.

By contrast, in Scotland people are only *advised* not to go to work if they can work from home. There is no *legal obligation* to self-isolate and no general guidance on shielding.[2]

When deciding whether to ask workers to go to work, employers will also need to consider general legal obligations under health and safety and equality law.

Workers who are unable to go to work may be able to work from home or, alternatively, may be eligible to be furloughed under the Coronavirus Job Retention Scheme (CJRS), which has been extended until 31 March 2021.

Health and safety

Employers have to follow a vast and complex body of health and safety legislation. The Health and Safety Executive (HSE) publishes approved codes of practice and guidance on health and safety law. In summary, employers have to:

1 Undertake a risk assessment;

2 Set up safe systems of work, informed by the risk assessment;

3 Implement the safe systems of work; and

4 Keep the systems of work under review.

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1 *Health Protection (Coronavirus, Restrictions) (England) (No. 4) Regulations 2020 (SI 2020/1200)* and *Health Protection (Coronavirus, Restrictions) (Self-Isolation) (England) Regulations 2020 (SI 2020/1045)*

2 *Health Protection (Coronavirus) (Restrictions and Requirements) (Local Levels) (Scotland) Regulations 2020 (SSI 2020/344)*

The UK Government's guidance on working safely during Covid-19 does not replace existing law. Rather, it provides examples of the sorts of measures an employer might take in order to comply with existing legal obligations in the context of Covid-19. There is equivalent guidance in Scotland, Wales and Northern Ireland.

Refusing to go to work

All workers have an obligation to obey lawful and reasonable instructions given by their employer. However, employees who refuse to attend the workplace because they reasonably believe that there is a serious and imminent danger have certain protections under employment rights legislation. The protections also apply if an employee takes steps to protect others from such danger.

Whether an employee has a reasonable belief will always depend on the facts. The fact that an employer is complying with the Government's working safely guidance will be a relevant factor, although other factors, such as the employee's vulnerability to Covid-19 will also be relevant.

The Government's working safely guidance says that there are certain workers who should not be asked to attend the workplace, such as those required to self-isolate.

Employers must ensure that the measures they adopt do not discriminate on the basis of protected characteristics, including age, disability and pregnancy.

Health and safety law offers special protection to new and expectant mothers who must be suspended on full pay if they cannot be offered work that is safe.

Issues

Some issues have arisen with the approaches to returning to work, including:

- There is a prospect that disagreements will arise between employers and employees over whether it is safe to go to work. Workers who live with or care for vulnerable people may also be concerned for their safety. The Advisory, Conciliation and Arbitration Service (Acas) say that these disagreements will be best addressed by discussion between employers, employees and health and safety representatives.
- Employees who refuse to go to work because of reasonable fears about serious and imminent danger are protected from detriments or dismissal. However, it is unclear whether this covers those who have fears about the safety of their commute.
- As public health is devolved, businesses in Scotland, Wales and NI will need to operate in accordance with the relevant devolved lockdown regulations and government guidance. Meanwhile, health and safety law is not devolved in Scotland and Wales. Ultimately, employers must undertake their own risk assessments and take account of all available guidance.
- While schools have re-opened, parents may need time off to care for children who have to self-isolate. While employees do have a right to emergency time off for dependants, the time off does not need to be paid. While workers with caring responsibilities could ask to be furloughed, this is a decision for their employer.

Whistleblowing

Employment law offers a range of protections to whistleblowers who make 'protected disclosures'. However, there are detailed rules on what sorts of disclosures qualify for protection. The disclosure must relate to particular subject matter and must be made to one of a number of groups of people listed in legislation. This includes the Health and Safety Executive, local authorities and MPs. There are additional tests if a worker makes a disclosure to someone not listed in the legislation, like the press or on social media.

1. The lockdown

Throughout the course of the Covid-19 pandemic, the UK Government and devolved administrations have each had various rules surrounding who can and cannot go to work. Some of these rules took the form of legislation. Some were set out in guidance.

In March 2020, each of the four nations passed legislation to implement lockdowns. This was achieved by restrictions on movement, restrictions on gatherings and the closure of businesses in a range of sectors.

Over the course of the summer, many of these restrictions were lifted, although some were retained or re-imposed as part of local lockdowns.

In October 2020, each of the four nations began re-imposing stricter lockdown rules as rates of transmission began to increase.

An overview of the lockdown rules can be found in the Library Briefing, Coronavirus: the lockdown laws (CBP-8875).

The UK, Scottish, Welsh and Northern Ireland governments each have guidance on who should and should not be attending the workplace.

1.1 Who is allowed to go to work?

In certain circumstances, lockdown legislation prohibits people from leaving their home to go to work. In other circumstances, government guidance simply advises people to work from home if they can.

It is important to note that these categories are not clear cut. A person may be legally permitted to go to work under lockdown legislation but it would be a breach of health and safety law to require them to do so.

Summary of workers who can go to work (10 November 2020)

Type of worker	England	Scotland	Wales	NI
Those not able to work from home	✓	✓	✓	✓
Those able to work from home	×	▲	▲	▲
Those who are self-isolating	×	×	×	×
Those who are quarantining	×	×	×	×
Those who are clinically extremely vulnerable (shielding)	×	▲	▲	▲
Those whose workplace is closed	×	×	×	×

✓ Can go to work if the workplace is following Covid-secure guidelines

▲ Can go to work but advised to work from home if possible

× Offence to go to work / must not be asked to go to work for health and safety reasons

1.2 Workers who can work from home

Workers who are able to work from home may be prohibited from going to work by legislation or advised not to by guidance.

In **England**, under the temporary national lockdown that is in place from 5 November to 2 December 2020, people are prohibited from leaving their home without a reasonable excuse. It is a reasonable excuse to leave the home to go to work but only if it is "not reasonably possible" for the person to work from home.[3] UK Government guidance on these restrictions lists critical national infrastructure, construction and manufacturing as examples of jobs in which people may go to work.

The lockdown legislation in **Scotland**, **Wales**, and **Northern Ireland** does not currently prohibit people from leaving their home. However, the Scottish, Welsh and Northern Ireland governments have guidance which says that people should work from home where possible.

1.3 Workers who have to self-isolate

Workers who have to self-isolate may be required by legislation or guidance not to leave their home.

In **England**, a person who is told by NHS Test & Trace that they have tested positive for Covid-19 is legally required to self-isolate for 10 days. If they are told that they have been in close contact with a person who has tested positive they must self-isolate for 14 days.[4]

A person who is required to self-isolate may not go to work. It is also an offence for an employer to knowingly allow a self-isolating worker to leave their home for work-related reasons.[5]

The legal obligation to self-isolate does not apply if a person has been told to self-isolate via the NHS app. A person who only shows symptoms of Covid-19 is also not legally required to self-isolate. However, in both cases, the UK Government guidance is clear that the person must self-isolate. It may also be a breach of an employer's health and safety obligations to require or permit such a worker to go to work.

The parent of a child who has tested positive for Covid-19 will likely have to self-isolate themselves as they will have been in close contact with the child. By contrast, if the child is required to self-isolate because they came into close contact with someone who has tested positive, in school for example, the parent will not need to self-isolate.

These rules are covered in further detail in the Library Briefing, Coronavirus: Test and Trace Support Payments (CBP-9015).

In **Scotland**, there is no specific legal obligation to self-isolate. However, Scottish Government guidance says that anyone who has

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3 Regs. 5-6, *Health Protection (Coronavirus, Restrictions) (England) (No. 4) Regulations 2020 (SI 2020/1200)*

4 Regs. 2-3, *Health Protection (Coronavirus, Restrictions) (Self-Isolation) (England) Regulations 2020 (SI 2020/1045)*

5 Ibid., regs. 6-9

symptoms of Covid-19 must self-isolate for 10 days. Anyone in their household must self-isolate for 14 days. In addition, any close contacts notified by Test and Protect must isolate for 14 days.

While there is no specific legal obligation prohibiting a self-isolating worker from attending the workplace, it would likely be a breach of the employer's health and safety obligations to require or permit such a person to go to work.

In **Wales**, there is a legal obligation to self-isolate.[6] As in England, a person is required to self-isolate for 10 days if they are notified that they have tested positive for Covid-19 and 14 days if they are notified that they were in close contact with a person who has tested positive. The Welsh Government guidance provides a detailed overview of the rules.

In **Northern Ireland**, there is no specific legal obligation to self-isolate. However, the Northern Ireland government guidance also says that a person must self-isolate for 10 days if they show symptoms and for 14 days if they live with a symptomatic person or are identified as a close contact. Again, requiring or allowing a self-isolating worker to attend the workplace would likely be a breach of health and safety law.

1.4 Workers who have to quarantine

In all four nations, legislation requires anyone arriving in the UK from outside of the Common Travel Area to self-isolate at a specified address for 14 days (often called 'quarantine').[7] People arriving from certain exempt countries or workers coming to the UK for certain exempt reasons are not required to self-isolate.

It is an offence for a quarantining worker to leave to go to work. In England, it is also an offence for an employer to knowingly allow a quarantining worker to leave their address for work-related reasons.

A detailed overview of these rules can be found in the Library Briefing, Coronavirus: Quarantine and employment rights (CBP-8986).

1.5 Workers who are vulnerable to Covid-19

The UK Government and devolved administrations classify some people as 'clinically vulnerable' and 'clinically extremely vulnerable' to Covid-19.

Those who are clinically vulnerable include anyone over 70, anyone under 70 with certain health conditions and people who are pregnant.

Those who are clinically extremely vulnerable include people with certain health conditions and people who are told they are extremely vulnerable by their GP.

In **England**, the Government advises those who are clinically extremely vulnerable to 'shield' during the temporary national lockdown. This means they must not go to work, even if they cannot work from home.

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6 Regs. 10-17, *Health Protection (Coronavirus Restrictions) (No. 4) (Wales) Regulations 2020 (WSI 2020/1219)*

7 *Health Protection (Coronavirus, International Travel) (England) Regulations 2020 (SI 2020/568)*. See also *SSI 2020/169* (Scot); *WSI 2020/574* (Wales); *NISR 2020/90* (NI)

In **Scotland**, there is no general requirement to shield for clinically extremely vulnerable. In areas with Tier 4 restrictions, the highest level, those who are extremely vulnerable will be issued a letter by their GP saying they should not go to work if their workplace is unsafe.

In **Wales** and **Northern Ireland**, there is no general requirement to shield. Welsh and Northern Ireland government guidance says that workers who are clinically extremely vulnerable should work from home if possible and note that employers should pay particular attention to these groups when undertaking health and safety risk assessments.

1.6 Workers whose workplaces are closed

In all four nations, legislation requires various businesses to close their premises. The list of businesses required to close has varied over time.

In **England**, as part of the temporary national lockdown, businesses in a range of sectors are required to close, including hospitality, leisure and non-essential retail. In retail and hospitality, businesses can remain open for processing deliveries or takeaways. The UK Government maintains a list of businesses that are required to close.

In **Scotland**, the businesses that must close depend on which tier of restrictions an area is subject to. Only a handful of businesses are required to close nationally, including sexual entertainment venues and nightclubs. Under Tier 4 restrictions, the highest level, hospitality, leisure and non-essential retail must close. As in England, businesses can open for processing deliveries of takeaways. The Scottish Government has detailed guidance on the restrictions under each tier.

In **Wales**, only a handful of businesses are required to close, including sexual entertainment venues, nightclubs and theatres. The Welsh Government has a list of businesses required to close.

In **Northern Ireland**, businesses in a range of sectors are required to close as part of a national lockdown in place until 13 November. These include cinemas, hairdressers, gyms, nightclubs, theatres and more. The Northern Ireland government has a list of businesses required to close.

Workers whose workplace is required to close will, of course, be unable to go to work unless they able to process deliveries and takeaways.

1.7 Financial support for workers

A key question for many workers will be what pay or financial support they are entitled to if they are unable to attend the workplace.

Wages

An workers entitlement to wages is governed, principally, by the terms of their employment contract. As a general rule, workers are entitled to be paid if they are 'ready, able and willing' to work.[8] There is some debate over whether a worker who refuses to attend the workplace for health and safety reasons is entitled to pay.

[8] Recognised as an 'implied term' of the contract in *Beveridge v KLM* [2000] IRLR 765

If a worker is unable to attend the workplace, they may be able to work from home and be paid as normal. As a general rule, workers do not have a right to work from home, although some will have a right to request flexible working.[9] The Advisory, Conciliation and Arbitration Service (Acas) suggest that employers should talk to employees and consider making any changes that could facilitate home working.

Furlough

The Coronavirus Job Retention Scheme (CJRS) is the UK Government's main income support scheme. It was set to end on 31 October 2020 but has now been extended until 31 March 2021.

Under the CJRS, eligible employees can be 'furloughed'. This means employers can ask them to cease working or work any pattern and claim support from HMRC to cover any 'usual hours' they do not work. HMRC will provide a grant to cover 80% of an employee's wages for hours not worked (up to £2,500 per month).

Employees are eligible if they were employed on 30 October 2020 on a PAYE payroll notified to HMRC on or before that date. HMRC guidance says employees can be furloughed for a number of reasons, including those who are shielding and those who have caring responsibilities. The guidance says the CJRS should not be used for short-term absences like self-isolation but this is not a formal rule.

The CJRS only covers those who are 'employees' for tax purposes. As such, many workers in the gig economy cannot be furloughed. They also have no entitlement to statutory sick pay (discussed below).[10]

Further information on the CJRS can be found in the Library Briefing, FAQs: Coronavirus Job Retention Scheme (CBP-8880).

Statutory Sick Pay

Statutory Sick Pay (SSP) is available to employees who are 'incapable for work' for four or more consecutive days. The employee must earn at least £120 per week on average.

In some circumstances employees are 'deemed incapable for work'. Anyone who is self-isolating in line with official guidance and anyone who has been notified to shield is deemed incapable for work.[11]

Employees can be furloughed instead of being put on SSP, which is paid at the rate of £95.85 per week. Employers can reclaim two weeks' worth of SSP from the Statutory Sick Pay Rebate Scheme.

Test and Trace Support Payments

Where a person who is in receipt of certain benefit payments is required to self-isolate, they may be entitled to Test and Trace Support Payments, or a similar payment under devolved schemes.

Further detail on these payments can be found in the Library Briefing, Coronavirus: Test and Trace Support Payments (CBP-9015).

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9 See Flexible Working, Commons Library Briefing Paper SN-1086, 3 October 2018
10 *R. (on the application of Adiatu) v HM Treasury [2020] EWHC 1554* (Admin)
11 Schedules 1-2, *Statutory Sick Pay (General) Regulations 1982 (SI 1982/894)*

2. Health and safety at work

2.1 Legal framework

Health and safety law is vast and complex. It is made up of common law duties, primary and secondary legislation and EU legislation, as well as numerous codes of practice and pieces of guidance.

This section will set out the some of the key principles of health and safety law and highlight the most relevant pieces of legislation in the context of Covid-19.

Sources of law

The key piece of legislation in the UK is the *Health and Safety at Work etc. Act 1974* (HSWA). The HSWA is supplemented by a large number of pieces of secondary legislation.

In many areas of health and safety law, UK legislation gives effect to EU law. The key piece of EU legislation is the *Framework Directive* (Directive 89/391/EEC) which is also supplemented more detailed Directives.

The Health and Safety Executive (HSE) issues Approved Codes of Practice (ACOPs) as well as health and safety guidance. ACOPs have a special legal status. If in criminal proceedings it is shown that an employer did not follow a relevant APOC, the employer must prove it complied with its health and safety obligations.[12] HSE guidance does not have legal force but the HSE does note that employers who follow the guidance will "normally be doing enough to comply with the law."[13]

Guidance on working safely during Covid-19

On 11 May 2020, the Department for Business, Energy and Industrial Strategy (BEIS) published guidance for working safely during Covid-19. There is guidance for eight different types of working environments.

As with HSE guidance, this new guidance has no specific legal status. Rather, it is guidance for employers on how they can fulfil existing legal obligations in the context of Covid-19.

Employer's general obligations

An employer's general health and safety obligations are set out in section 2 of the HSWA. Employers must "so far as is reasonably practicable" provide and maintain safe places of work, safe systems of work and adequate facilities for welfare. In addition, employers must provide employees with sufficient information and training.

Employers only need to take steps that are reasonably practicable. HSE guidance on risk assessment explains:

> Generally, you need to do everything 'reasonably practicable' to protect people from harm. This means balancing the level of risk against the measures needed to control the real risk in terms of

12 s. 17, *Health and Safety at Work etc. Act 1974* ('HSWA')
13 HSE, Legal status of HSE guidance and ACOPs

> money, time or trouble. However, you do not need to take action if it would be grossly disproportionate to the level of risk.

Barristers at Cloisters chambers summarised the employer's obligations in the following terms:

1 Assessing risks;

2 Setting up a safe system of work;

3 Implementing these system;

4 Reviewing these system.[14]

Risk assessment

A central feature of an employer's obligation is risk assessment. This is a specific obligation under many pieces of secondary legislation.

The Supreme Court, citing Smith LJ in an earlier Court of Appeal judgment, explained the importance of these assessments:

> Judicial decisions had tended to focus on the breach of duty which led directly to the injury. But to focus on the adequacy of the precautions actually taken without first considering the adequacy of the risk assessment was, she suggested, putting the cart before the horse. Risk assessments were meant to be an exercise by which the employer examined and evaluated all the risks entailed in his operations and took steps to remove or minimise those risks. They should, she said, be a blueprint for action. She added at para 59, cited by the Lord Ordinary in the present case, that the most logical way to approach a question as to the adequacy of the precautions taken by an employer was through a consideration of the suitability and sufficiency of the risk assessment. We respectfully agree.[15]

HSE has produced basic guidance on risk assessment.

As noted, employers must also implement all the steps that it finds are necessary and reasonably practicable in light of its risk assessment.

Health and safety policies

Employers with five or more employees are obliged to prepare and, when appropriate, revise a written health and safety policy.[16]

HSE guidance on preparing health and safety policies says it should cover:

1 Statement of intent: an employer's general policy on health and safety in the workplace;

2 Responsibility: listing the names and positions of persons responsible for health and safety in the workplace;

3 Arrangements: listing practical steps that are being taken to ensure health and safety policies are satisfied.

An employer must bring the health and safety policy to the notice of all its employees.

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14 Cloisters – Employment, Ninth edition released of Cloisters Toolkit: Returning to work in the time of Coronavirus, Cloisters, 9 October 2020

15 *Kennedy v Cordia LLP* [2016] UKSC 6 at para. 89

16 Reg. 2, *The Employers' Health and Safety Policy Statements (Exception) Regulations 1975 (SI 1975/1584)*

Consultation of safety representatives

Employers have a duty to consult safety representatives. There are separate rules depending on whether there is a recognised trade union that represents employees.[17]

Employers must consult representatives about the introduction of any measures that could substantially affect the health and safety of employees and while undertaking any risk assessments.

HSE has guidance and an APOC on consulting safety representatives.

Consultation in the context of Covid-19 is discussed further below.

Employee's obligations

Health and safety law also applies to employees. Employees are required to take reasonable care of their health and safety and that of others. In particular, employees must cooperate with employers to enable them to fulfil their health and safety obligations.[18]

Criminal and civil liability

It is a criminal offence to fail to comply with health and safety law. On conviction on indictment an employer could face an unlimited fine.[19]

An employer's failure to comply with health and safety legislation does not give rise to civil liability.[20] A worker seeking to bring a claim against an employer would need to bring a personal injury claim and prove that the employer acted negligently.

The HSE provides an overview of criminal and civil liability on its website.

Enforcement of health and safety law

The enforcement of health and safety law is shared between the HSE and local authorities. The HSE covers sectors including factories and building sites. Local authorities cover sectors such as retail, offices and the hospitality industry. The HSE website has a list setting out which body is the appropriate enforcing authority.

Safety inspectors have a range of powers provided by the HSWA. This includes the power to enter and inspect premises and the power to take samples. Safety inspectors can issue 'improvement and prohibition notices' if they believe that an employer is failing to comply with its health and safety obligations.[21] In addition, if a safety inspector finds that an employer has failed to comply with its legal obligations, the HSE can charge the employer a fee for intervention (FFI).[22]

HSE's Enforcement Policy Statement and the National Local Authority Enforcement Code set out the HSE and LAs approaches to regulation.

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17 Unionised workplaces: *The Safety Representatives and Safety Committees Regulations 1977 (SI 1977/500)*; or non-unionised workplaces: *The Health and Safety (Consultation with Employees) Regulations 1996 (SI 1996/1513)*

18 Section 7, *Health and Safety at Work etc. Act 1974* ('HSWA')

19 Section 33, *HSWA*

20 Section 47(2) and 47(2A), *HSWA*

21 Sections 20 to 22, *HSWA*

22 *Health and Safety (Fees) Regulations 2012 (SI 2012/1652)*

2.2 Regulations relevant to Covid-19

There are a number of key health and safety regulations that will be relevant in the context of Covid-19. They include

- The Management of Health and Safety at Work Regulations 1999
- The Workplaces (Health, Safety and Welfare) Regulations 1992
- The Control of Substances Hazardous to Health Regulations 2002
- The Personal Protective Equipment at Work Regulations 1992
- The Safety Representatives and Safety Committees Regulations 1977

Barristers at Cloisters chambers have published a detailed guide to returning to work that, among other things, considers the obligations employers have under these regulations in the context of Covid-19.

Management of health and safety at work

The Management of Health and Safety at Work Regulations 1999 (MHSW Regulations) set out general rules for the arrangements employers must put in place to manage health and safety risks in the workplace.

Key obligations under the Regulations include:

- Undertaking risk assessments;
- Implementing preventative and protective measures;
- Carrying out health surveillance;
- Appointing employees to assist in applying safe systems of work;
- Providing employees information about any the risk assessment preventative measures being taken.

Schedule 1 to the Regulations sets out a hierarchy of preventative and protective measures that can be taken, starting with avoiding a risk entirely and moving down through other measures such as seeking out less-dangerous options or prioritising collective protective measures.

The Regulations also require specific risk assessments to be made for new and expectant mothers. If there are risks cannot be avoided through alterations, new and expectant mothers must be offered a suitable alternative job or, failing that, be suspended on full pay.[23]

The HSE has produced detailed guidance on the MHSW Regulations.

Workplace health, safety and welfare

The Workplace (Health, Safety and Welfare) Regulations 1992 (WHSW Regulations) are concerned with the physical aspects of the workplace.

The key obligations under the Regulations include:

- Maintaining and cleaning the workplace;

[23] See Maternity Action, Health and safety during pregnancy and on return to work, March 2019

- Ventilating the workplace;
- Providing rooms that are sufficiently big to work in safely;
- Providing suitable workstations and seating;
- Enabling safe circulation of people within the workplace;
- Providing suitable sanitary and washing facilities.

The HSE has an APOC and guidance on the WHSW Regulations.

Control of hazardous substances

The Control of Substances Hazardous to Health Regulations 2002 (COSHH Regulations) concern the spread of hazardous substances, including bacteria and viruses, within the workplace.

The key obligations under the Regulations include:

- Undertaking risk assessments;
- Preventing or controlling exposure to hazardous substances;
- Monitoring exposure in the workplace;
- Carrying out health surveillance.

In the context of Covid-19 it will be unlikely that an employer will be able to prevent exposure to the virus. Instead, it will need to control exposure.

The Regulations set out a hierarchy of measures that can be taken to control exposure to hazardous substances. The HSE APOC explains:

> There is a broad hierarchy of control options available, based on inherent reliability and likely effectiveness. COSHH regulation 7 refers to many of these options. They include:
>
> - elimination of the hazardous substance;
> - modification of the substance, process and/or workplace;
> - applying controls to the process, such as enclosures, splashguards and LEV;
> - working in ways that minimise exposure, such as using a safe working distance to avoid skin exposure;
> - equipment or devices worn by exposed individuals.[24]

If exposure to the hazardous substance cannot be adequately controlled, employers must provide employees with adequate PPE.[25]

Personal protective equipment (PPE)

The Personal Protective Equipment at Work Regulations 1992 (PPE Regulations) set out rules about the provision of PPE.

As noted above, the provision of PPE should be a last resort. Employers are expected to first take other measures to prevent or control risks.

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[24] HSE, The Control of Substances Hazardous to Health Regulations 2002. Approved Code of Practice and guidance, L5 (Sixth edition), 2013, para. 108

[25] Reg. 7(3)(c), *The Control of Substances Hazardous to Health Regulations 2002 (SI 2002/2677)*

HSE guidance on the PPE Regulations explains:

> In controlling risks the following principles should be applied, if possible in the following order:
>
> (a) Try a less risky option, for example use lower voltage tools.
>
> (b) Prevent access to the hazard, for example by guarding.
>
> (c) Organise work to reduce exposure to the hazard, for example if there is a risk of falling objects, ensure restricted entry to that area if possible.
>
> (d) If after all the above steps have been followed there is still a residual risk, you may be required to provide PPE, but only if it will further minimise the risk, for example the provision of head protection where there is a risk from falling objects, such as carrying out construction work or providing appropriate PPE where chemicals are handled.[26]

Where PPE is provided it must fit and must, so far as possible, effectively control the risk. PPE must be maintained and replaced as necessary. Further, employees must be given training in the use of the PPE.

Employers must ensure that they do not discriminate in the provision of PPE, in particular by taking account of different body types. Dee Masters and Jen Danvers, barristers at Cloisters chambers, have highlighted that employers who provide larger PPE, more suitable for men, could face claims of indirect discrimination.[27]

Consultation

As noted above, employers have a duty to consult safety representatives on health and safety issues. There are separate rules depending on whether an employer has recognised a union for the purposes of collective bargaining.

The legislation does not place any restrictions on the nature of the consultation. Further, employers are not required to give effect to recommendations made by safety representatives. However, the consultation must be genuine.

HSE guidance outlines how employers should consult representatives:

> Consultation involves you not only giving information to your employees but also listening to them and taking account of what they say before making any health and safety decisions.
>
> The law does not state when you must consult, or for how long, but does say it must be 'in good time'. In practice, this means you have to allow enough time for your employees to consider the matters being raised and provide them with informed responses.
>
> Consultation does not remove your right to manage. You will still make the final decision, but talking to your employees is an important part of successfully managing health and safety.

The HSE has produced specific guidance on the issues employers will need to discuss with safety representatives in the context of Covid-19.

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26 HSE, Personal protective equipment at work, L25 (Third edition), 2015, para. 27

27 Dee Masters and Jen Danvers, PPE & sex discrimination claims, Cloisters, 29 April 2020 (accessed 13 May 2020)

2.3 Government guidance on working safely

On 11 May 2020, the Department for Business, Energy and Industrial Strategy (BEIS) published guidance for working safely during Covid-19.

The Government's guidance on working safely initially covered eight places of work: offices, factories and warehouses, shops, construction sites, laboratories, restaurants, homes and vehicles.

On 23 and 24 June, the Government published four new guides: close contact services, visitor economy, hotels and heritage sites.

On 9 July, the Government published two further guides: gyms / leisure facilities and performing arts.

The guides are broadly similar, albeit with modifications to reflect different settings. There are some significant differences around social distancing and PPE, especially for close contact services. The guidance on performing arts also contains a five-stage roadmap for re-opening.

Status of the guidance

As noted above, the guidance is not law. Each of the 14 pieces of guidance explains at the outset:

> This guidance does not supersede any legal obligations relating to health and safety, employment or equalities and it is important that as a business or an employer you continue to comply with your existing obligations, including those relating to individuals with protected characteristics. It contains non-statutory guidance to take into account when complying with these existing obligations. When considering how to apply this guidance, take into account agency workers, contractors and other people, as well as your employees.[28]

Ultimately it is for employers to undertake their own risk assessments and to determine what steps they must take to comply with the legislation discussed above.

The guidance says that the Government "expects" employers with more than 50 employees to publish their risk assessments. The TUC has called for this to be made a mandatory legal obligation.

Core health and safety principles

The guides are based on the same core risk management principles set out in the Government's 5 steps to working safely:

1. Carry out a COVID-19 risk assessment
2. Develop cleaning, handwashing and hygiene procedures
3. Help people to work from home
4. Maintain 2m social distancing, where possible
5. Where people cannot be 2m apart, manage transmission risk

Each of the guides provides detail on how these principles can be put into practice in different work contexts. This includes suggestions on managing arrivals at work, moving around the building, workstations,

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[28] HM Government, Working safely during COVID-19 in offices and contact centres, 9 November 2020, (replicated in the other guidance documents)

meetings, common areas, cleaning the workplace and accidents. Most of the guides discuss managing contractors and visitors and some of the guides include steps to keeping customers safe.

Who can attend the workplace?

The guidance links to the new restrictions imposed as part of the temporary national lockdown on 5 November. It highlights that people should not go to work if they are able to work from home.

In addition, the guidance says that those who are clinically extremely vulnerable should not be asked to come to work. It also notes that employers should pay particular attention to protected characteristics, including disability, age and pregnancy, when deciding who to ask to attend the workplace.

In particular, the guidance highlights the health and safety obligations owed to new and expectant mothers, discussed above.

Social distancing in the workplace

On 24 June, the UK Government revised the guidance to say that that employers should maintain 2m social distancing "or 1m with risk mitigation where 2m is not viable."

Under the old guidance employers were only expected to maintain 2m distancing where reasonably possible. The old guidance already recognised that where 2m distancing was not possible employers should take risk mitigation measures such as using screens, side-by-side working, fixed-team working and reduced contact time.

The new rule could, however, have a significant impact on customer-facing businesses by allowing more customers onto the premises. When announcing the new "1-metre-plus" rule, the Prime Minister specifically noted the economic difficulties faced by the hospitality industry.

The Government has published guidance on the 'mitigating measures' that can be taken alongside 1m distancing.

Personal protective equipment

The position the guidance takes on an employer's duty to provide PPE has been a particular point of contention.

13 out of the 14 guides state PPE should be reserved for workers in the health and social care sectors. The guidance suggests that PPE is not required for other workers and that social distancing is sufficient:

> At the start of this document we described the steps you need to take to manage COVID-19 risk in the workplace. This includes working from home and staying 2m away from each other in the workplace if at all possible. When managing the risk of COVID-19, additional PPE beyond what you usually wear is not beneficial. This is because COVID-19 is a different type of risk to the risks you normally face in a workplace, and needs to be managed through social distancing, hygiene and fixed teams or partnering, not through the use of PPE.[29]

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[29] HM Government, Working safely during COVID-19 in offices and contact centres, 9 November 2020, Section 6.1 (replicated in twelve other guidance documents)

The guidance says that there is growing evidence that wearing face coverings in enclosed spaces can help prevent transmission. It notes the legal requirement to wear coverings in shops and on public transport.

The only situation in which the guidance says PPE is required is close contact services such as hairdressers, beauticians or tattoo artists. The guidance notes that these services require prolonged close contact and that workers should be provided with masks and plastic visors.

Barristers at Cloisters chambers note that the issue of PPE is "particularly controversial". While noting that the Government may wish to reduce demand on PPE from non-clinical settings, they argue that employers could be under a legal obligation to provide PPE in certain contexts:

> If an employer wants to restart their business and that business must carry out work involving, for instance, high numbers of people in a poorly ventilated enclosed space who are densely packed then it may be that only high quality PPE can adequately control that risk. In this scenario, an employer would need to consider whether the Government guidance adequately ensures the safety of employees so far as is reasonably practicable and may well need to consider the use of Covid-19 PPE.[30]

This issue was raised by Lord Hendy QC, an employment barrister and Labour peer, in a debate in the House of Lords on 13 May 2020:

> That advice is surely contrary to the clear statutory duty set out in the Personal Protective Equipment at Work Regulations 1992 to provide PPE to any employee in respect of whom risk has not been eliminated by other measures. The importance of this duty is magnified in the light of the Office for National Statistics report to which my noble friend Lord Stevenson referred, which identifies various occupations at an increased risk of death from Covid-19.[31]

Lord Callanan, the Parliamentary Under-Secretary for BEIS, responded:

> Where workers already wear PPE for protection against non-Covid risks such as dust, they should of course continue to wear this. In relation to Covid-19 specifically, we have worked very closely with the medical community to develop this guidance and we will of course be guided by the science so that we do not put lives at risk in future.

The guidance does note that if an employer's risk assessment shows that PPE is necessary in the workplace, they have a legal obligation to provide that PPE free of charge.

Health monitoring

The Government guidance does not address health motoring. While all 14 guides do say that employers should retain data of shift patterns to assist with NHS track and trace, they do not address issues such as temperature checks or the collection of health employee data.

Lawyers at Farrer & Co., have said that this will mean employers may struggle to justify using such measures:

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30 Cloisters – Employment, Ninth edition released of Cloisters Toolkit: Returning to work in the time of Coronavirus, Cloisters, 9 October 2020

31 HL Deb 13 May 2020 vol. 803 c781

> So far there is no requirement or expectation (as in some other countries) that employers should take steps to monitor employee health, such as requiring temperature checks before employees or visitors are allowed into the office. Without this, it will be very difficult to justify implementing such measures.[32]

The Information Commissioner's Office (ICO) has issued guidance on data protection and workplace health monitoring. It says that employers must ensure that they have a lawful basis for processing the health data, and take account of the fact that it is 'special category data'.

2.4 Additional Covid-19 legislation

In addition to general health and safety law and guidance specific to Covid-19, the UK Government has made a number of regulations that place additional obligations on certain businesses. These include:

- Employers in the retail, hospitality and leisure sectors must ensure that staff wear face coverings if they are likely to come into close contact with members of the public (unless they are exempt).[33]
- Employers in the hospitality sector (restaurants, pubs, cafes etc.) must collect staff and customer data for NHS Test & Trace.[34]
- Employers must display signs to remind people of their obligation to wear face coverings.[35]
- Employers must not knowingly allow a self-isolating employee to leave their home for work-related reasons.[36]

2.5 Devolution

Health and safety law is a reserved matter for Scotland and Wales. While health and safety law, and employment law as a whole, is devolved in Northern Ireland, its health and safety law is substantively similar to health and safety law in Great Britain.

By contrast, as noted above, public health is devolved in Scotland, Wales and Northern Ireland. The devolved administrations have adopted public health guidance which differs in places from the guidance in England. They also each have their own lockdown legislation. In some places the legislation is similar to the legislation in England, in other places it is different. For example, in Wales there is a legal obligation to self-isolate while in Scotland and Northern Ireland there is only guidance.

The Scottish, Welsh and Northern Ireland governments have each published their own set of guidance on working safely during Covid-19.

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32 Kathleen Heycock and Amy Wren, Coronavirus: the government has published new guidance on making workplaces safe for employees told they "should go to work" - 10 key takeaways, Farrer & Co., 12 May 2020

33 Reg. 3(2A), *Health Protection (Coronavirus, Wearing of Face Coverings in a Relevant Place) (England) Regulations 2020 (SI 2020/791)*

34 Regs. 7-11, *Health Protection (Coronavirus, Collection of Contact Details etc and Related Requirements) Regulations 2020 (SI 2020/1005)*

35 Reg. 2A, *Health Protection (Coronavirus, Restrictions) (Obligations of Undertakings) (England) Regulations 2020 (SI 2020/1008)*

36 Regs. 6-9, *Health Protection (Coronavirus, Restrictions) (Self-Isolation) (England) Regulations 2020 (SI 2020/1045)*

Scotland and Wales have legislated to require businesses to take all reasonably steps to maintain 2m social distancing on their premises.[37]

Ultimately, employers must undertake their own risk assessments and take account of any relevant guidance. For employers in Scotland and Wales, the UK Government's working safely guidance may be relevant to the extent that it provides examples of the sorts of measures that can be taken to comply with health and safety legislation. Equally, employers will need to take account of devolved governments' laws and guidance as it will be based on their assessment of the public health situation in that part of the UK.

[37] Para. 3 of Schedule 1, *Health Protection (Coronavirus) (Restrictions and Requirements) (Local Levels) (Scotland) Regulations 2020 (SSI 2020/344)*; Regs. 21-24, *Health Protection (Coronavirus Restrictions) (No. 4) (Wales) Regulations 2020 (WSI 2020/1219)*

3. Refusing to attend work

3.1 Refusing to attend work for health and safety reasons

The number of people working from home has changed throughout the course of the Covid-19 pandemic. The Office of National Statistics' Opinions and Lifestyle Survey from 28 October to 1 November shows that 37% of people worked from home because of Covid-19. This is up from 27% between 26 August and 30 August but still down from 44% between 17 and 27 April.

There are a number of reasons why a person may not wish to go to the workplace. In particular, those who are vulnerable to Covid-19, or who live with a vulnerable person, may fear for their health and safety.

Duty to obey lawful and reasonable instructions

It is an implied term in every employment contract that the employee will obey lawful and reasonable instructions given by their employer.

However, employees have certain protections when they refuse to attend the workplace because of a reasonable fear of serious and imminent danger (discussed below). Schona Jolly QC, a barrister at Cloisters chambers, has highlighted that there could be difficult situations where an employer's instruction to attend the workplace is lawful and reasonable but the employee may have grounds to refuse:

> So, in essence, we may find ourselves extraordinarily in the situation where the employer's instruction is likely to be reasonable, and the employee's refusal to attend the place of work fearing serious and imminent danger may also be reasonable. In employment law terms, that leaves both decent employers and fearful employees with difficult questions about what steps they take in such circumstances. If an impasse is reached, both sides need a solution.[38]

Employers may need to find solutions on an ad hoc basis, such as putting workers on furlough and claiming under the CJRS.

Protections from detriments and dismissal

Sections 44 and 100 of the *Employment Rights Act 1996* protect employees from detriments or dismissal if they leave or refuse to attend the workplace for health and safety reasons. Detriment usually includes loss of pay, although some employment lawyers disagree in this context.

The protections under sections 44 and 100 apply if:

- The employee left or refused to attend the workplace because they reasonably believed there was a serious and imminent danger that they could not reasonably avoid; or
- The employee took appropriate steps to protect themselves or others because they reasonably believed there was such danger.

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38 Schona Jolly QC, Covid-19: Critical workers refusing work – What if everyone is being reasonable?, Cloisters, 26 March 2020

Who is protected?

The protections in section 44 and 100 apply to 'employees' as defined in the 1996 Act. This definition would exclude those who are 'limb (b)' workers, including many agency workers, zero-hours workers and gig economy workers. However, as this right gives effect EU law, it could be argued that it must extend to all those who are 'workers' under EU law (which includes many 'limb (b)' workers). The IWGB, the union, is seeking to bring legal action against the UK Government on this issue.

Employees do not need to have worked for their employer for any specified length of time in order to be covered by these protections.

Scope of the protection

The protections apply if an employee has a reasonable belief that there is a serious and imminent danger that they cannot reasonably avoid.

Gus Baker, a barrister at Outer Temple Chambers, has written a detailed paper on health and safety dismissals. There are a number of key points.

First, courts and tribunals have interpreted the term 'danger' broadly. It is clear that the danger can arise from another employee, which could be relevant if an employee believes that a colleague is symptomatic.[39]

Second, the key question is whether an employee's belief was reasonable. The fact that an employer disagrees with this assessment does not matter.[40] As noted above, even if an employer's instruction to attend work was reasonable, an employee may be able to show that they have a reasonable fear. However, it is for the employee to prove, on the facts, that their belief was reasonable.[41]

Third, employees can take steps to protect 'others' from serious and imminent danger. This is not confined to other workers.[42] Stuart Brittenden, a barrister at Old Square Chambers, has suggested that this might extend to steps taken to protecting family members.[43]

Health and safety during the commute

The Department for Transport has published guidance on safe travelling which says workers should only use public transport if truly necessary.

It is unclear whether an employee's protection from detriment covers dangers arising from a commute or whether it is limited to dangers in the workplace. Lewis Silkin LLP, the law firm, highlight that the case law is not settled and that employers would be best advised to assess the circumstances of each employee individually and provide support for alternative means of travel if possible.[44]

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39 *Harvest Press Ltd v McCaffrey* [1999] IRLR 778
40 *Oudahar v Esporta Group Ltd* [2011] IRLR 730
41 *Akintola v Capita Symonds Ltd* [2010] EWCA Civ. 405
42 *Masiak v City Restaurants* [1999] IRLR 780
43 Stuart Brittenden, The Coronavirus: Rights to Leave the Workplace and Strikes, UK Labour Law Blog, 27 March 2020
44 Shalina Crossly and Lucy Lewis, Does an employer's duty of care extend to commuting to work?, Lewis Silkin LLP, 21 May 2020 (accessed 4 August 2020)

Application to specific categories of workers

What constitutes a serious and imminent danger will differ from one employee to another. For example, employees who are clinically vulnerable or who have family who are clinically vulnerable may be in a different position from employees who are less at risk from Covid-19.

3.2 Discrimination law

As noted above, when undertaking risk assessments and implementing safe systems of work employers must take account of their obligations under equality legislation. In light of the Government's guidance on extremely vulnerable and vulnerable individuals, employers will need to take particular account of the protected characteristics of age, disability and pregnancy. On 2 June 2020, Public Health England published a report on the disparities of risk in the context of Covid-19, finding increased risk on the basis of age, ethnicity and existing health conditions, among other things.

The *Equality Act 2010* prohibits discrimination on the basis of a protected characteristic. If an employee is particularly vulnerable to Covid-19 because of a protected characteristic, they may be able to bring a claim for discrimination if they suffer a detriment for refusing to attend the workplace.[45]

The Equality and Human Rights Commission has published guidance for employers in the context of Covid-19. It gives an example of how blanket return to work policies might constitute indirect discrimination:

> Requiring all employees to continue to work in front line, key worker roles. This would have a greater impact on those who need to self-isolate or follow the social distancing guidance more strictly, such as disabled, older or pregnant employees. If you cannot objectively justify this approach, it is likely to be unlawful indirect discrimination against those employees.

The term 'employee' has a broad meaning under the 2010 Act and includes those who are 'limb (b)' workers.[46]

Barristers at Cloisters chambers have highlighted the specific protections that are available for disabled employees. This includes the protection from discrimination arising from a disability (e.g. discrimination because they are shielding) and the duty to make reasonable adjustments.[47]

3.3 Employees with caring responsibilities

A particular area of concern has been employees who are unable to go to work because they have caring responsibilities.

Caring for children

Across the UK, schools have now re-opened. However, parents may still be need to care for children who are required to self-isolate. This could occur either because the child has tested positive for Covid-19 or

45 Section 39, *Equality Act 2010*
46 Section 83, *Equality Act 2010*
47 Cloisters – Employment, Ninth edition released of Cloisters Toolkit: Returning to work in the time of Coronavirus, Cloisters, 9 October 2020, Qs. 2.14 and 2.15

because they have been in close contact with someone who has tested positive, such as someone in their school class.

As noted above, if a child tests positive for Covid-19 their parent will likely also have to self-isolate as they will have been in close contact.[48] In such cases, the parent would be prohibited from going to work and would need to either be furloughed or claim statutory sick pay (SSP).

If the child has been in close contact with someone who has tested positive, the parent must ensure the child self-isolates but does not need to self-isolate themselves.[49]

Employees do not have a general statutory right to refuse to attend work because they have childcare responsibilities. Employees do have a right to a reasonable amount of time off for dependants and a right to four weeks of parental leave per child but both of these are unpaid.

Parents who need to time off to care for a child could be furloughed under the Coronavirus Job Retention Scheme (CJRS) if they are eligible. This is at the discretion of their employer. Alternatively, a parent could request to take paid annual leave. However, employers can refuse such requests by giving sufficient notice.

Acas guidance on Covid-19 and caring responsibility says employers should consider options that can provide support to parents.

Employers will also need take note of the fact that caring responsibilities disproportionately fall on women and ensure that their policies are not indirectly discriminating against female employees.[50]

Caring for people who are vulnerable to Covid-19

A person may have concerns about going to work because they care for a person who is vulnerable to Covid-19.

As noted above, the protection from health and safety detriments does cover employees who take steps to protect 'others' from serious and imminent danger. Barristers at Cloisters chambers have suggested that this might provide protection to a person who refuses to go to work because they live with a vulnerable or extremely vulnerable person.[51]

However, in this context it should be noted that the Government's guidance on shielding says that those who live with an extremely vulnerable person can continue to go to work. The Government has also produced guidance on how to safely care for a friend or family member who is vulnerable to Covid-19.

Ultimately these issues will turn on the facts of an individual case.

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48 Reg. 2(1)(a)(ii), *Health Protection (Coronavirus, Restrictions) (Self-Isolation) (England) Regulations 2020 (SI 2020/1045)*

49 Ibid., Reg. 2(2)(c)

50 Rachel Crasnow QC, Covid-19: Pay for working parents forced to look after their children, Cloisters, 27 March 2020

51 Cloisters – Employment, Ninth edition released of Cloisters Toolkit: Returning to work in the time of Coronavirus, Cloisters, 9 October 2020, Q. 2.26

4. Whistleblowing

In light of the Covid-19 pandemic, a number of workers have raised concerns about their workplace. For example, on 6 May 2020 the Guardian reported that 170 care workers had called a whistleblowing hotline to raise concerns about health and safety issues.[52]

Protected disclosures

The law on whistleblowing is found in the *Employment Rights Act 1996*. Under the 1996 Act, workers who make "protected disclosures" are protected from suffering any detriment or being dismissed.[53] This is also supplemented by the right to freedom of expression.[54]

The rules on protected disclosures apply to both employees and 'limb (b)' workers, including agency and zero-hours workers. However, with some exception for the NHS, it does not cover to job applicants.

There are two broad requirements that a disclosure must satisfy in order for it to be protected.[55]

First, it must be a 'qualifying disclosure'. This means that the worker must have a reasonable belief that the disclosure shows one of the things listed in the legislation, such as the breach of a legal obligation. The worker must also believe that disclosure is in the public interest.

Second, if a disclosure is a 'qualifying disclosure' it must be made to one of the groups of people listed in the legislation.

Qualifying disclosures

A disclosure can be a 'qualifying disclosure' if it tends to show, among other things, a breach of a legal obligation or that an individual's health and safety is being endangered.

Schona Jolly QC and Dee Masters, barristers at Cloisters chambers, highlight that the test is whether a worker had a reasonable belief that the disclosure showed that one of these things was happening:

> Importantly, it is not necessary for a whistleblower to show that a legal obligation has been breached; they must only show that they reasonably believed this to be the case. This is important because ordinary people at the front-line will not necessarily know, and should not be expected to know, the intricacies of complex health and safety law and other legal obligations.[56]

The term 'public interest' is interpreted broadly and the test can be satisfied even if the disclosure is partially motivated by self-interest.[57]

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52 "170 care workers call UK whistleblower helpline during Covid-19 crisis" *Guardian* [online], 6 May 2020

53 Sections 47B and 103A, *Employment Rights Act 1996*

54 See George Letsas and Virginia Mantouvalou, Is Gagging NHS Workers Lawful? Coronavirus and Freedom of Speech, UK Labour Law Blog, 14 April 2020

55 Part 4A, *Employment Rights Act 1996*

56 Schona Jolly QC and Dee Masters, How effective is whistleblowing protection for workers at the centre of the Covid-19 pandemic?, UK Labour Law Blog, 4 May 2020

57 *Chesterton Global Limited (t/a Chestertons) v Nurmohamed (Public Concern at Work intervening)* [2017] EWCA Civ. 979

Method of disclosure

If a disclosure is a qualifying disclosure, it must be disclosed in a certain way in order to be protected.

The legislation lists a number of different groups of people to whom workers can make disclosures. This includes their employer, a legal adviser and a prescribed person. A full list of prescribed persons can be found on the GOV.UK website. In the context of health and safety prescribed persons include the HSE, local authorities and MPs.

The HSE has an online portal though which workers can make protected disclosures, including disclosures related to Covid-19.

There are only certain circumstances in which a worker can make a disclosure to a person that is not specifically listed in the legislation, such as a journalist. This includes where they believe they will suffer a detriment if they make the disclosure to their employer or where there is no prescribed person and they believe that evidence would be destroyed if they made the disclosure to their employer.[58]

In addition, there are a number of onerous tests that must be satisfied:

- The worker must believe that the information disclosed is substantially true;
- The worker does not make the disclosure for personal gain; and
- It was reasonable in the circumstances for the worker to make the disclosure.

Protect, the whistleblowing organisation, has issued specific guidance on making Covid-related disclosures on social media, noting that the rules are "stringent" and "not straight forward".

The Employment Lawyers Association's Covid-19 Working Party has said that the law on protected disclosures is "broadly sufficient" but that the Government should take steps to increase awareness among workers and to provide clear paths for raising concerns about health and safety.[59]

Further information on protected disclosures can be found in Section 29 of the Library Briefing, Key Employment Rights (CBP-7245).

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58 Section 43G and 43H, *Employment Rights Act 1996*

59 ELA Covid-19 Working Party, Issues in respect of which guidance is required to assist employers and employees/workers coming out of lockdown, relating to health and safety concerns and data privacy, ELA, 1 May 2020

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