Covid-19:
Establishing a return to work plan – health and safety considerations

LEWIS SILKIN

Ius Laboris Global HR Lawyers
LEWIS SILKIN

Introduction

As the Covid-19 crisis begins to ease, employers need to think carefully about how to manage safely the process of returning employees to the workplace. This inbrief summarises the legal landscape and various considerations that employers will need to take into account.

The government has suggested that the relaxation of lockdown measures and any return to normal working life will be gradual and implemented on a phased basis. We have seen similar approaches being taken in those countries which are ahead of the UK and beginning to take such steps.

Companies have obligations to ensure the health and safety of both their employees and visitors to their premises. They will also have to comply with any continuing government guidelines, including in relation to social distancing. Implementing a carefully considered return to work plan will be critical.

The legal landscape

The Health and Safety at Work etc. Act 1974 sets out an employer's obligations. In summary these are to:

- ensure employees are provided with training, information, instructions and supervision which allows them to work safely

- keep any place of work under the employer's control well maintained to ensure it is safe to work in and has safe routes for access and exit

- provide a safe working environment with adequate facilities for welfare at work

- provide and maintaining safe plant and systems of work

- ensure that articles and substances are safely used, handled, stored and transported

- prepare and regularly revise a written health and safety policy, and inform employees of its existence and of any changes to it

- not charge their employees for anything done or provided for the purposes of complying with health and safety law

There are also a plethora of regulations and approved codes of practice which cover specific aspects of workplace health and safety including:

- obligations to carry out risk assessments to identify health and safety risks to employees and take steps to remove or minimise any risks

- obligations to provide employees with information on any identified risks, the preventive/protective measures taken, and procedures in the event of an imminent danger to those at work and who is responsible for implementing them

- appointment of an officer responsible for assisting with compliance with health and safety

- manual handling

- protective equipment

- work equipment

- display screen equipment

Employers additionally owe a common law duty to employees to safeguard their health, safety and wellbeing. This encompasses obligations to provide:

- a safe place of work

- safe plant and equipment

- competent employees

- a safe system of work

Penalties for breach of the duty can be severe from fines to imprisonment. Employers will also generally be vicariously liable for the wrongful acts of their employees if committed in the course of their employment – meaning an employer may be liable if an employee's health is damaged due to a colleague's disregard of health and safety rules.

Devising a return to work plan

The health and safety risks arising from Covid-19 primarily arise from person to person contact, transmission through close proximity to infected individuals and surface transmission. This means it is vital that employers consider what steps can be taken to minimise the risk of the virus entering its premises and infecting its people and visitors and, if it does, having a quick response protocol to stop it spreading.

To get ahead and ensure readiness for staff returning to work it is essential for employers to engage now with their key stakeholders in order to devise a plan - which should include those individuals responsible for health and safety, facilities, trade unions if recognised and HR.

Step 1 – Risk assessments
Consider what risks are posed by the features of your premises and your business operations.

In relation to your premises consider the following.

- Cleaning – regularity and focus on high touch points such as door handles, equipment etc. Where health and safety regulations allow, could doors be left open?

- Hygiene facilities – hand sanitiser, hand-washing facilities, anti-bacterial wipes for surfaces and equipment

- Disposal of waste
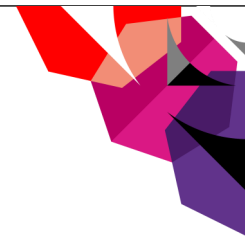
- Minimising the number of times staff can enter and exit your premises and where practicable designating one entry and one exit point

- Whether staff facilities such as canteens, gyms etc. should be closed

- Limiting the number of people who are able to enter confined spaces within your premises (e.g. lifts, stockrooms, copying rooms, toilets, kitchens etc.). Consider whether it would be appropriate to close off spaces which are too small to accommodate social distancing measures (e.g. small meeting rooms)

- Minimising non-essential visitors to your premises

- How operations which involve people can be undertaken in a way which minimises risk e.g. postal/courier deliveries and collections, catering etc.

- Requiring use of stairs rather than lifts, where possible

- Implementing a one-way system to minimise cross contamination

In relation to your people consider the following.

- Identifying vulnerable employees and how you will treat them – will they continue to be allowed to work from home and/or if they are returning to the workplace what extra measures do you need to take in respect of them?

- How person to person contact can be minimised:
  - fewer people in the workplace so that the 2-metre distance rule can be achieved
  - adjusting working hours
  - dividing staff into groups and rotating attendance at work
  - prohibiting physical contact e.g. handshaking
- Proximity of workstations
- Personal protective equipment – will you require staff to wear face masks, disposable shoe covers and gloves and if so, do you have bins to ensure safe disposal of them?

- Minimising in person meetings. If they are necessary, implement rules so that social distancing can be maintained

- Minimising handling of hard copy documents including post and parcels

- Whether use of certain facilities should be limited e.g. kitchens, fridges, beverage machines, crockery etc.

- Implementing protocols for visitors to your premises e.g. handwashing, no contact greetings, disposable shoe covers and social distancing in meetings etc.

- How the risks associated with travel can be minimised:
  - encouraging the use of methods of transport which involve minimum exposure to others where possible. If this is not possible, consider whether home working should continue
  - staggering start and end times so peak travel times can be avoided
  - prohibition of non-essential work travel

Finally, consider whether you have appropriate insurance in place in case anyone does become infected through attending the workplace.

Step 2 – Devise, revise or update appropriate policies and practices

Once you have established the risks draft and/or revise your policies and practices. Consider whether updates to your sickness, health and safety and disciplinary policies are required.

Draft new protocols for how staff should:

- conduct themselves so as to protect their own health and safety and that of others, for example, how to deal with employees travelling for personal reasons rather than for work

- monitor their own health and report any issues – if mandatory testing is required there will be contractual and data protection issues to work through

If a union is recognised or you have a staff consultative body, seek engagement and input on your proposals.

Set up a register of who has contracted or thinks they have contracted the Covid-19 virus. It will be important to identify if any individuals who perform health and safety functions (e.g. first-aider, fire chief etc.) are absent and need temporary replacement.

Provide a mechanism through which employees can raise questions or make suggestions.

Establish a plan for who will come back and when. Work through business-critical roles and those which are necessary to enable proper functioning of your workplace (e.g. facilities, IT, cleaning, post room, reprographics etc.). You may wish to exclude vulnerable employees and seek volunteers initially. You will need to designate named persons who will manage the process of which employees will be returning and in what teams so as to ensure social distancing can be maintained.

If you will require certain roles or numbers of people to return, it will be important to establish how selection will be carried out to avoid any discrimination or other issues of unfairness which could lead to claims. If preferential treatment is given to those with caring responsibilities or those who live in close proximity to vulnerable people, consider the impact this may have on those who are required to return to the workplace and who may end up shouldering the burden of increased work.

Step 3 – Train and communicate staff and visitors

This should involve:

- Devising training for managers and employees

- Delivering this to staff before they return to the workplace

- Holding return to work health and safety briefings by online meetings

- Displaying communications and reminders in the workplace in key places e.g. at hand washing points, at entrances and exits, in toilets etc.

Step 4 – Review

Review your plan in light of further government guidance.

Continue to monitor the effectiveness of the

policies and procedures you have developed and adapt and revise them as necessary.

Homeworking

With any return to work likely to be gradual and phased, it is anticipated that staff will continue to need to work from home for a prolonged period.

Employers have the same health and safety obligations to those who work from home as at their premises. Employers should consider:

- measures for keeping in touch and monitoring wellbeing

- type of work being undertaken and working hours

- whether the work can be done at home safely

- whether any control measures should be put in place in order to protect the homeworker

During the current crisis many employees, especially those who do not work from home regularly, will not be set up to do so appropriately. Whilst this may not pose a significant problem for a short period of time, the longer homeworking continues the more the risk increases. It is important that in the event of prolonged periods of homeworking, employers who require their employees to use display screen equipment should:

- ask employees to undertake display screen and desk risk assessments

- ensure employees take breaks from their display screens

- provide guidance and/or training on best practice and how to identify risks within their own environment

When staff return to work, employers may wish to provide updated eye tests for employees or offer them upon request.

How can we help

At Lewis Silkin, we have an experienced team available to provide comprehensive support with developing a return to work plan, adapting working arrangements, communicating with employees and providing training.

For further information on this subject please contact:

Shalina Crossley
Partner
+44 (0) 20 7074 8152
Shalina.crossley@lewissilkin.com

Vince Toman
Barrister
+44 (0) 20 7074 8171
vince.toman@lewissilkin.com