LEWIS SILKIN

Ius Laboris UK Global HR Lawyers
LEWIS SILKIN

Staffing decisions when reopening workplaces – a flowchart

Do you want the employee to work from home?
- yes → Can continue to work from home unless inappropriate because of mental/physical health issues or particularly challenging home environment.
- no ↓

Is the employee happy to return to work?
- yes → **Is the employee pregnant or clinically vulnerable?**
  - no → Can return following risk assessment.
  - yes → Can attend work but address risks in your risk assessment (special rights to pregnancy risk assessment).
- no ↓

Is it because they have no childcare?
- yes → Unpaid parental or dependants leave.
- no ↓

Is it because they care for extremely vulnerable person?
- yes → Offer safest available on site roles or unpaid leave. Risk of claims if required to attend work.
- no ↓

Is it because of clinical anxiety or similar medical condition?
- yes → Paid sick leave (if signed off sick) or unpaid leave.
- no ↓

Is it because of travel concerns?
- yes → No right to pay if do not attend work for this reason unless reasonable belief in serious and imminent danger but make adjustments if possible, especially if pregnant or vulnerable.
- no ↓

Is it because of work dangers?
- no → Employee seems unlikely to have good reason to refuse to attend work – consider unpaid leave or even disciplinary action.
- yes ↓

Is the employee pregnant?
- yes → Needs special risk assessment: special statutory right to safe alternative work or full pay suspension if can't avoid risk.
- no ↓

Is the employee clinically vulnerable?
- yes → Can attend work but do a full risk assessment and consider adjustments. If employee does not wish to return consider continued home working (if possible) or unpaid leave. No right to pay if do not work or employee has a reasonable belief that they are in serious and imminent danger.
- no → Re-assure that you are controlling risks. Unpaid leave advisable in short term. In time, disciplinary action may be appropriate. No right to pay unless employee has a reasonable belief that they are in serious and imminent danger.