

1 May 2020

**COVID 19 and returning to work
What is expected in health & safety criminal law
and how can you avoid prosecution?**

turnstonelaw

Health & Safety Legal Webinar for Posturite

Dr Simon Joyston-Bechal

The law firm for health, safety, environmental
and regulatory defence

Overview

- What are your health & safety criminal law obligations?
- What do you have to do?
- Are H&S criminal laws going to be enforced for Covid-19?
- What needs to be considered in your return to work risk assessment?
- Q&A

Criminal H&S law obligations

Health and Safety at Work Act 1974

All reasonably practicable steps to safeguard employees and non-employees, includes:

- keeping up to date with Covid-19
- planning and implementing all reasonably practicable risk reduction measures

Criminal H&S law obligations

Management of Health and Safety at Work Regulations 1999

“suitable and sufficient” risk assessment:

- in writing if 5 or more employees
- must be reviewed/updated when circumstances change

Criminal H&S law obligations

HSWA Personal Protective Equipment at Work Regulations 1992

Duty to provide suitable PPE, which must be:

- appropriate for risks and conditions
- capable of fitting correctly
- assessed as suitable and effective, so far as reasonably practicable, to prevent or adequately control the risk
- maintained, cleaned and replaced as appropriate
- adequate information, instruction and training
- take all reasonable steps to ensure PPE properly used

What do you have to do?

- Follow Government rules and relaxation steps for your sector
- Revise/renew/create relevant risk assessments for Covid-19 to deal with return to work
- Plans must identify hazards and set out mitigation measures

Are H&S criminal laws going to be enforced for Covid-19?

- HSE website: *“take a flexible and proportionate account of the risks and challenges arising from the pandemic”*
- Can you assume everyone in same boat so won't be prosecuted?
 - Consider fear, anxiety of staff and household members
 - What if resumption of operations accelerated without adequate mitigation?

Are H&S criminal laws going to be enforced for Covid-19?

TUC report on returning to work (27 April 2020):

“The HSE must act quickly to apply sanctions to employers that do not risk assess for Covid-19 or fail to provide safe working arrangements. Employers must be made aware of the consequences of refusing or failing in their health and safety responsibilities – including prosecution and the forced closure of businesses.”

What needs to be considered in your return to work risk assessment?

- Depends on sector, workforce, premises
- Appreciate worker anxiety
- Accommodate workforce demographics and individual vulnerabilities (incl. age, pregnancy, mental health, relevant illness, BAME vulnerability??)
- Worker questionnaire (consider confidentiality)

What needs to be considered in your return to work risk assessment?

- Workstation layout
- Lifts, canteens, kitchens, toilets, copying rooms, ventilation, signage, cleaning
- Commuting options
- Shared vehicles
- Shift patterns and phased return
- Balance 2 metre separation against:
 - other mitigation measures (PPE, barriers, duration of proximity)
 - Necessity/alternatives

Concluding comments:

Watch out for:

- Inadequate planning
- Poor documentation of planning/risk assessment/balancing exercise
- Employees pressured into returning
- Social distancing at work arranged but not enforced
- Adequate PPE not provided and replenished

Can you be reassured that it will be hard to prove that infected workers contracted the virus in the workplace rather than elsewhere?

Questions?

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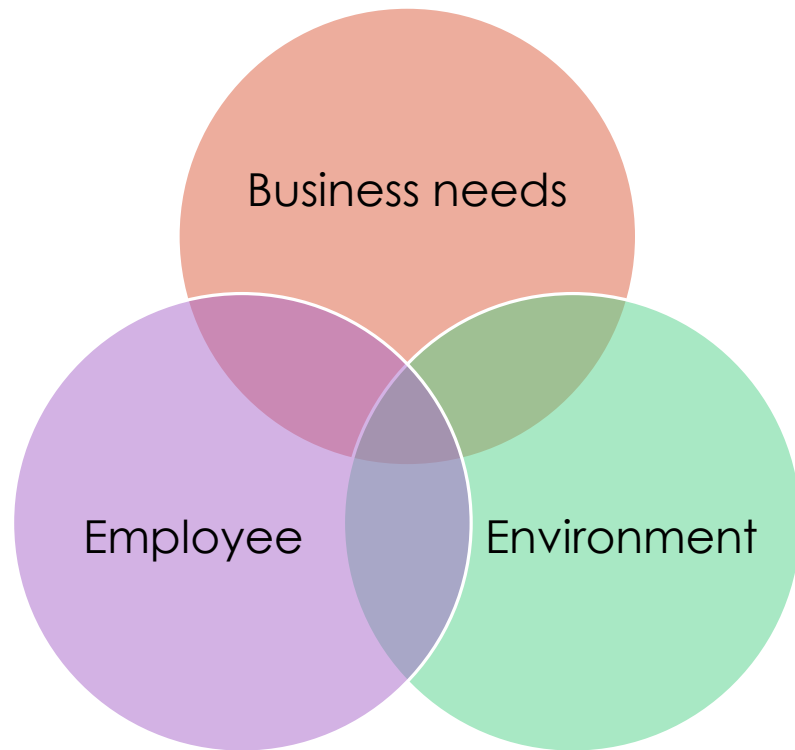
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Planning to return to office- factors to be considered

Katharine Metters

C.ErgHF CREE MCSP CMIOSH

The areas we need to consider to plan



- Business needs
 - What activities are not working well at home and need to be bought back into the office
 - What activities can't be performed off site
 - Activities that need site facilities/team approach?
- Employee issues
 - Which employees need to be shielded
 - What is the risk status of employees if they were to return to work
- Environmental Issues
 - How do we keep social distancing
 - How do we prevent touch/droplet spread

Business needs

- This will be different for all businesses and may indicate what sort of phased return is required
- This crisis appears to have bought forward some changes in work practices that were going to happen but just much sooner.
- It is likely we will see
 - Less travel overall
 - More remote meetings
 - More Agile working

NB - just because we have managed does not mean we do not need to ensure social and face to face activities

- When temporary becomes longer term/more permanent changes may need to be made e.g. DSE

Employee issues

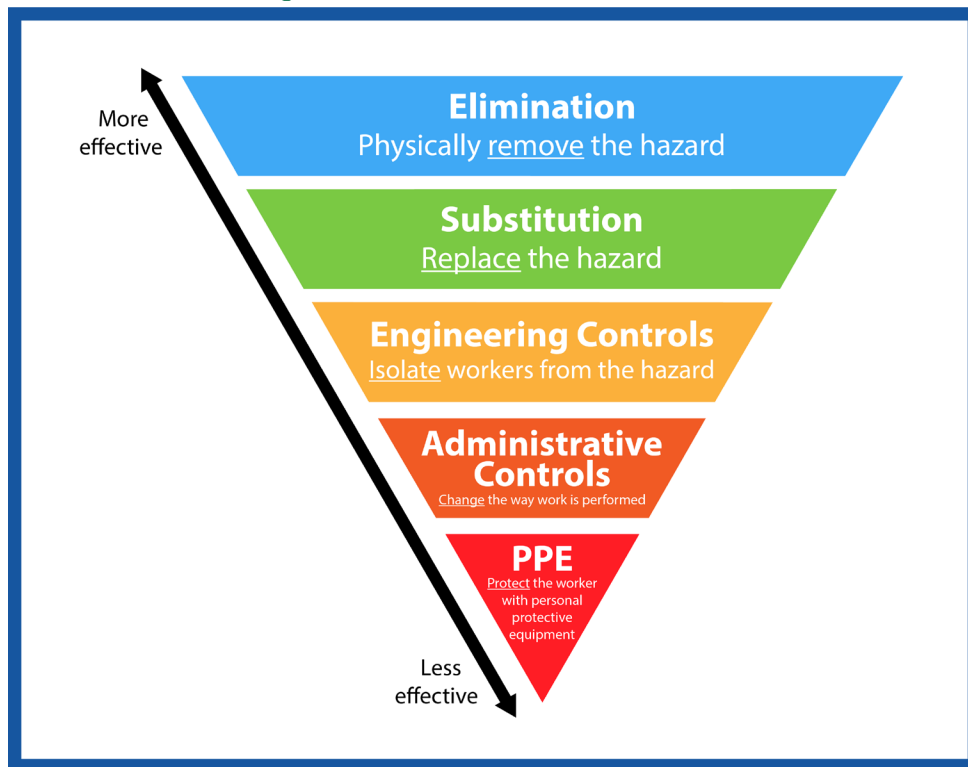
What we need to know:

- Current status of the employee and dependants
- Risk level of the employee and dependants
- Is there homeworking set up suitable and working for them
- Employees who have specific needs that are usually accommodated but the changes may have affected them
- Commuting risks- public transport/ car parking
- Employee risk perception/fear

Environmental site issues we need to plan for- there will be more!

- Workstation separation/barriers
- Limiting numbers on site and in areas
- Toilet use
- Passageways
- Kitchen use, food and drinks
- Lifts
- Doors and other touch points
- Provision of sanitiser and wipes
- Ventilation
- Cleaning
- Waste disposal
- First aid and fire warden provision
- Fire alarm testing, PEEPs, evacuations, assembly points- re do FRA

Hierarchy of control when we have identified our risk areas



- Elimination: not completely possible but lock down partially achieved, cleaning, home working
- Substitution not relevant
- Engineering controls- separation, ventilation
- Administration- phased return, homeworking, increased cleaning, employee behaviour
- PPE- masks, gloves etc..

Basics for decisions

The virus seems to be transmitted mainly via small respiratory droplets through sneezing, coughing, or when people interact with each other for some time in close proximity.

Appears they can be in air for up to 3 hrs

Droplets can be inhaled, or they can land on surfaces that others may come into contact with, who can then get infected when they touch their nose, mouth or eyes.

Study found that the COVID-19 can survive up to four hours on copper, up to 24 hours on cardboard, and up to two to three days on plastic and stainless steel.

However, the amount of viable virus declines over time and may not always be present in sufficient numbers to cause infection.

CORONAVIRUS

Protective measures



Maintain social distancing



Avoid touching eyes, nose and mouth



Wash your hands frequently



Practice respiratory hygiene



If you have symptoms seek medical care early

Ideas for environments

Workstations options

- Every other desk is vacant - remove chairs and monitors, or tape off
- Desks are physically repositioned to increase distances
- Adding barriers on or between desks
- Establishing cleaning rules after every use

Recording who uses which workstation and equipment will be needed for tracking

Meeting rooms options

- Small meeting rooms to be used for individuals or allocated to the more vulnerable.
- Set capacity limits on larger meeting rooms and enforce by removing chairs, or demarcating where chairs can be.
- Establish meeting etiquette while entering and leaving to ensure distancing, cleaning after use.

Record users and times in case tracking required.

Canteens and social spaces options

- Small canteens and social areas may need to stay closed.
- Larger areas may be able to be segregated and distanced
- Access slots may need to be introduced and cleaning after each slot.
- Separate entrances and exits may be required
- Ask employees to bring their own food and eat at their desks- cool blocks maybe required

Kitchen areas options

- Create queuing system to allow for distancing
- Mark spacing on floor or use barriers
- Increase cleaning, including by all employees
- Close off fridges?
- How are people to make drinks safely? – may need increased cleaning and ongoing reminders
- Disposable items only to be used or employees have own items and keep them on desks and put in dishwasher at end of the day.
- Disposable towels only to be used

Ideas for environments

Internal doors

- Where possible, could some of these be propped open to reduce the need for touch (fire prevention measures must be continued to be adhered to).
- Nominate an employee to clean touch points throughout the day

Entrance and exits

- One-way system marked with distancing.
- Staggered starting and finishing times
- Wipes and sanitizer available at both sides
- Limit numbers in lifts or allocate a lift for those who need to use it and suggest that lifts are used for going up and stairs for down

1st aid and FRA should be reviewed

- If rotation/phasing is required then adequate cover for 1st aiders and fire wardens must be provided.
- Testing of fire alarm systems should continue

Fire evacuation practices

- You should consider the familiarity of your occupants with the procedures and the results of the last fire drill it may be appropriate to postpone a drill for a time.
- New employees must have general and specific site training but this may be able to be carried out via a desktop exercise.
- Personal Emergency Evacuation Plans (PEEPs) must continue to be put in place as part of your overall Emergency Evacuation Procedures and fire risk assessment.

First aid

- Ensure first aiders are briefed as to how to manage suspected case of Covid-19 cases as per government advice.
- Provide PPE: face masks and shields, gloves, clothes coverings.
- Method to dispose of clinical or suspect Covid-19 waste.
- Increase cleaning of the first aid room.
- Provide sanitizers and wipes with first aiders and first aid kits

Ventilation advice

REHVA COVID-19 guidance document (April 3 2020) guidance for ventilation:

1. Secure ventilation of spaces with outdoor air
2. Switch ventilation to nominal speed at least 2 hours before the building usage time and switch to lower speed 2 hours after the building usage time
3. At nights and weekends, do not switch ventilation off, but keep systems running at lower speed
4. Ensure regular airing with windows (even in mechanically ventilated buildings)
5. Keep toilet ventilation 24/7 in operation
6. Avoid open windows in toilets to assure the right direction of ventilation
7. Instruct building occupants to flush toilets with closed lid
8. Switch air handling units with recirculation to 100% outdoor air
9. Inspect heat recovery equipment to be sure that leakages are under control

Other issues

- Communication
- Track and trace
- Be aware of your employees who have particular needs and make sure they are considered
- Training in new procedures
- Visitors and contractors
- Other field based staff

Let's not forget those who will continue to work at home



Summary

- This will be the start of a longer process and will need careful monitoring and updates
- Communication is vital as we need employees to be engaged, complaint and coming up with ideas
- When making alternative arrangements consider all staff and consult to make sure they work for all
- Great information available from professional and trade bodies
- It is up to everyone make this work and keep infection rates low

Any Questions?

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WHEN TO USE A MASK

For healthy people wear a mask **only if you are taking care of a person with suspected 2019-nCoV infection**

Wear a mask, **if you are coughing or sneezing**

Masks are effective only when used **in combination with frequent hand-cleaning with alcohol-based hand rub or soap and water**

If you wear a mask then you **must know how to use it and dispose of it properly**



World Health
Organization

