

14 May 2020

COVID 19 return to workplace advice: updates and your questions answered

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Health & Safety Legal Webinar for Posturite

Dr Simon Joyston-Bechal

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

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Speaker

Dr Simon Joyston-Bechal
Turnstone Law, Director
sjb@turnstonelaw.com
Mobile: 07880 684 781

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What was covered in 1 May 2020 webinar for Posturite

<https://www.posturite.co.uk/webinars/2020-webinars/planning-to-return-to-work-factors-to-be-considered>

- 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

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Reporting under RIDDOR

Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 2013 (RIDDOR)

Duty to report to HSE:

- “Where any person dies **as a result** of occupational exposure to a biological agent” (Reg 6(2))
- Where an employer “**receives a diagnosis** of any disease **attributed** to an occupational exposure to a biological agent” (Reg 9(b))
 - Office of Rail and Road interpretation: “*reliably attributed ... as verified by a registered medical practitioner’s statement... These instances are anticipated to be rare, especially as the prevalence of COVID-19 increases in the general population*”

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Could we be prosecuted for COVID-19 exposures?

Govt guidance - Working safely during COVID-19 (11 May 2020):

- *“should share the results of your risk assessment with your workforce. If possible, you should consider publishing the results on your website (and we would expect all employers with over 50 workers to do so.)”*

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Could we be prosecuted for COVID-19 exposures?

Govt guidance - Working safely during COVID-19 (11 May 2020):

- *“notice you should display in your workplace to show you have followed this guidance.”*

Staying COVID-19 Secure in 2020

We confirm we have complied with the government's guidance on managing the risk of COVID-19

FIVE STEPS TO SAFER WORKING TOGETHER

- ✓ We have carried out a **COVID-19 risk assessment** and shared the results with the people who work here
- ✓ We have **cleaning, handwashing and hygiene procedures** in line with guidance
- ✓ We have taken all reasonable steps to **help people work from home**
- ✓ We have taken all reasonable steps to **maintain a 2m distance** in the workplace
- ✓ Where people cannot be 2m apart, we have done everything practical to **manage transmission risk**

Employer _____ Date _____

Who to contact: _____ *Your Health and Safety Representative*
(or the Health and Safety Executive at www.hse.gov.uk or 0300 003 1647)

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Could we be prosecuted for COVID-19 exposures?

HSE gearing up for COVID-19

- HSE encouraging reporting by workers
- HSE budget increase by £14m
- HSE additional phone lines from 30 up to 200 to answer calls

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Could we be prosecuted for COVID-19 exposures?

Health and Safety at Work Act 1974

- *“For the purposes of this Part risks arising out of or in connection with the activities of persons at work **shall be treated as including risks attributable to the manner of conducting an undertaking, the plant or substances used for the purposes of an undertaking and the condition of premises so used or any part of them.**”* Section 1(3)
- Does HSWA include public health risks attributable to spread of a community-acquired virus amongst the non-healthcare/laboratory workforce?
- Leaves open to challenge:
 - Applicability of HSWA and all subordinate Regulations
 - HSE and EHO power of enforcement

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Managing difficult decisions relating to COVID-19

Some difficult decisions:

- Can we keep operating if we are struggling with social distancing?
- How far can we balance commercial losses against accepting shortfall from ideal H&S protection?
- Should we pay for an additional protective measure?
- Can we tell staff to return if their commute is crowded?
- Can we make staff share work vehicles?

Social distancing – how far do we have to go?

PHE Guidance for employers (updated 7 April 2020)

- “**where it is not possible** to remain 2 metres apart, staff should work side by side, or facing away from each other, rather than face to face if possible”
- “where face-to-face contact is **essential**, this should be kept to 15 minutes or less **wherever possible**”

Social distancing – how far do we have to go?

HSE comments at Work and Pensions Select Committee 11 May 2020:

“It isn’t as if there is a sort of bright shield of 2m that’s around everybody and if ever that’s breached then you are unsafe and as long as it’s in place then you’re definitely safe.” **Sarah Albon, Chief Exec, HSE**

Social distancing – how far do we have to go?

HSE comments at Work and Pensions Select Committee 11 May 2020:

“The 2m rule .. is not sort of like an immediate once you go below 2m that’s it, it’s a very dangerous situation. It’s a function of both distance and duration. So yes, the risk will increase if you get closer to someone. But if you’re close to somebody for a short period of time, then you can manage that risk. Similarly the orientation between people is quite important. So there is a big difference between two people facing each other and two people with their backs to each other.” **Prof Andrew Curran, Chief Scientific Adviser and Director of Research, HSE:**

Social distancing – how far do we have to go?

Govt guidance: Working safely during COVID-19 (11 May 2020)

- Work through steps in order
- *“Where the social distancing guidelines cannot be followed in full, in relation to a particular activity, businesses should consider whether that activity needs to continue for the business to operate, and if so, take all the mitigating actions possible to reduce the risk of transmission between their staff.”*
- *“if people must work face-to-face for a sustained period with more than a small group of fixed partners, then you will need to assess whether the activity can safely go ahead. No one is obliged to work in an unsafe work environment.” [page 5]*

Social distancing – how far do we have to go?

Risk assessment balancing exercise to consider:

- Latest guidelines (not just UK)
- Alternative means of operating
- Small fixed teams (“cohorting”)
- Duration and direction of exposure
- PPE or other barriers
- Feedback from consulting employees and/or their representatives
- Results of testing when available
- Necessity

Social distancing – how far do we have to go?

- **Balance 2m separation** against:
 - other mitigation measures (duration and direction of proximity, barriers, hand washing, fixed teams, PPE?)
 - necessity/alternatives
- **Face masks**
 - not currently recommended by Govt for Covid-19 outside clinical/care settings
 - if not being used, consider reflecting doubts about benefits in your risk assessment
 - may nonetheless be useful mitigation and reassurance

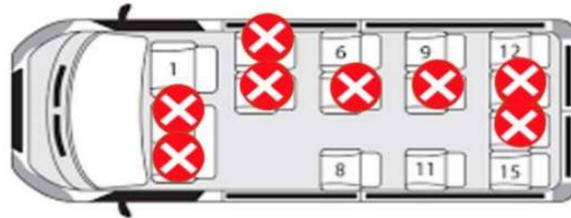
Social distancing – how far do we have to go?

- Govt guidance – Working safely during COVID-19 in or from a **vehicle** (11 May 2020) [page 12]
 - “Vehicles should not be shared if possible”
 - “If it is not possible to keep a 2m distance in a vehicle, consider additional safety measures”
 - “Steps that will usually be needed:”
 - e.g. physical screening, sitting side by side, open windows, fixed pairing, regular cleaning

Cleaning of common contact points



Social distancing – how far do we have to go?



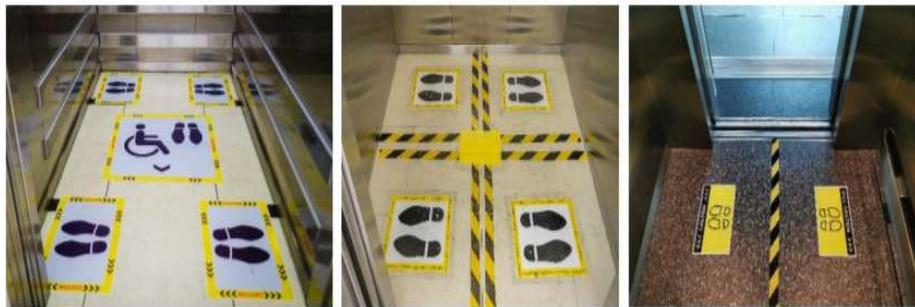
Seating arrangements to maximise distance between workers

Source: Govt guidance – Working safely during COVID-19 in construction and other outdoor work (11 May 2020) [page 27]

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Social distancing – how far do we have to go?

Example lift practices



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Source: Govt guidance – Working safely during COVID-19 in offices and contact centres (11 May 2020) [page 12]

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Social distancing – how far do we have to go?



Source: Govt guidance – Working safely during COVID-19 in offices and contact centres (11 May 2020) [page 13]

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Social distancing – how far do we have to go?

Social distancing in a factory



2m floor markings



Temporary board dividers



Perspex dividers with edge marking

Source: Govt guidance – Working safely during COVID-19 in factories, plants and warehouses (11 May 2020) [page 13]

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Social distancing – how far do we have to go?



Source: Govt guidance – Working safely during COVID-19 in labs and research facilities (11 May 2020) [page 15]

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Social distancing – how far do we have to go?



Social distancing during meetings outdoors

Source: Govt guidance – Working safely during COVID-19 in construction and other outdoor work (11 May 2020) [page 14]

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Statutory inspections – what if we are running behind?

Statutory inspections:

- Lifting Operations and Lifting Equipment Regulations 1998 (LOLER)
- Pressure Systems Safety Regulations 2000

Also consider other recurring safety checks:

- Legionella
- Fire risk assessments and checks
- Gas checks

Statutory inspections – what if we are running behind?

HSE website and guidance note:

- should get statutory inspections done complying with distancing even if workplace otherwise closed
- Only use equipment beyond inspection date if
 - critical for essential work; and
 - risk assessed as safe; and
 - can demonstrate all reasonable attempts to get tested

<https://www.hse.gov.uk/news/assets/docs/lole-pssr-during-outbreak.pdf>

- Consult with insurers
- Don't furlough whole facilities team
- MOT expiry date extended by 6 months if due on or after 30 March 2020 - but you must keep your vehicle safe to drive

Questions?

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