

Returning to the office: 10 top tips for UK employers

On 19 July 2021, England moved into Step 4, the final step of the government's [roadmap out of lockdown](#). However, whilst the government has lifted its guidance to work from home where possible, it has cautioned that it expects and recommends a gradual return over the summer, emphasising employers' obligations to ensure a safe place of work. In addition, at the time of writing, the UK has been experiencing a so-called "pingdemic" (i.e. a proliferation of self-isolation notifications from the NHS COVID-19 app for suspected cases of close contact with someone who has tested positive for COVID-19). Although the Government has recently made the app less sensitive, and the number of "pings" has reportedly decreased, experience tells us that there remains significant potential for disruption.

Many organisations will have formulated full reopening plans in the summer of 2020, and many will have maintained some workplace presence throughout the UK's lockdowns. Valuable lessons will have been learned in this time and we have summarised these into 10 top tips for employers to remember as they progress their plans for "returning to normal".

1. Keep up-to-date with government and regulators' announcements and guidance

COVID-19 related government guidance can be found from the UK government's website but employers should also look to guidance from the Health and Safety Executive, the Information Commissioner's Office and Public Health England. There is tailored government guidance for different types of workplaces, and there may also be specific guidance for locations experiencing high infection rates. In addition, rules in Scotland, Wales and Northern Ireland can differ from those in England. Companies should ensure that they are aware of the latest guidance which is relevant to their business. We summarise the 19 July guidance for England [here](#). At the time of writing, the overall message to employers remains one of cautious unlocking. As COVID case numbers and self-isolation "pings" continue to be high and as we move towards autumn and re-opening of schools, however, it is clear that there is potential for a change to government guidance; as demonstrated, for example, by the unexpected announcement on 19 July of plans to require proof of double vaccination from September as a condition of entry to certain crowded, enclosed venues such as nightclubs. In addition, the government has stated that people who are fully vaccinated will not need to self-isolate from 16 August 2021 as a result of close contact with someone who has tested positive (unless they test positive for COVID themselves) - it remains to be seen what guidance for employers, if any, will be forthcoming on this development.

2. Make sure the workplace is safe

Despite the government's removal of social distancing legal requirements, in practice, some measures are likely to remain a feature of the workplace for some time, along with face coverings, particularly where employees work indoors in crowded spaces.

Employers have a duty of care to their workforce under both the common law and the Health and Safety at Work Act 1974 and must take reasonable precautions to protect the health and safety of employees. This includes taking reasonable steps to limit COVID-19 transmission. The government's Step 4 policy has in effect entirely shifted the responsibility to employers to decide whether risk persists in their workplaces and what measures are necessary to mitigate those risks.

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The latest guidance puts a strong emphasis on good ventilation, as well as the continued message of good cleaning and hygiene practices. In addition, employers should consider whether some other measures that have become familiar in the last 16 months remain appropriate, including:

- social distancing and limiting contact between colleagues and any other visitors
- providing/ requiring the use of PPE or face coverings
- delaying returning to the office / limiting numbers / flexible working patterns (see next section)
- limiting business travel, whether within or outside the UK
- reminding employees to stay at home if they are unwell or are required to self-isolate having been in contact with someone who has tested positive
- implementing or refreshing training for employees on any new health and safety procedures

The guidance highlights that additional precautions may be needed in respect of employees who are clinically extremely vulnerable and recommends that employers discuss this with the employees and take account of any medical advice. The HSE guidance suggests that this could include continued home working, where possible, or assigning different tasks. See also section 6. Similar measures might be required for pregnant employees. The guidance also states that regular testing could help to identify more positive cases (see section 4 below).

Employers will be familiar with the obligation to carry out a health and safety assessment in the workplace and many will have already undertaken a COVID-19 risk assessment, but employers should ensure that they update these in the light of changing guidance and circumstances and ensure that they remain current and optimal.

The government guidance expressly advises there to be a single point of contact for COVID outbreaks where possible and for any positive cases in the workplace to be notified to the local authority public health team. Moreover, the guidance provides that employers should immediately identify any close workplace contacts and ask them to self-isolate without waiting for NHS Test and Trace so as reduce the risk of a workplace outbreak. .

A final, non-COVID issue, highlighted in the government guidance is to check the air conditioning system for Legionnaire's disease if the workplace has been unused for some time.

3. Get your timing right

Whilst the guidance to work from home has been lifted, the government does not expect that "the whole country will return to their desks immediately"; instead, it recommends a gradual return over the summer.

Regarding the right time to reopen workplaces, whether with a phased re-opening, return of certain functions only, staggered shift patterns, or workplace "bubbles", one size will not fit for all employers. Considerations on the timing of employees returning to the workplace will include location, sector, business type or size, and the health status of workers. This is becoming particularly relevant for some employers due to the "pingdemic". Staggering shift patterns and limiting contact between employees will help limit the number of employees being "pinged" as a result of a positive COVID case being identified in the workplace. In addition, altering start and finish times could help reduce employees' chances of coming into contact with a positive COVID case on public transport.

It is worth remembering that a self-isolation notification from the NHS COVID-19 app is not legally binding, but clearly, in the light of the need to maintain a safe workplace, such notifications must be taken seriously, by both the employer and employee.

Another factor to bear in mind is that many employers will have made use of the Coronavirus Job Retention Scheme, and will have employees on furlough. Employers will need to give notice to employees returning to work from furlough - how much will depend on what the employer has said or agreed with the employee at the time when the furlough was agreed.

4. Carefully consider vaccination and COVID-19 testing requirements

With the successful roll out of COVID vaccines and the accessibility of COVID testing, employers may understandably look to those as being an important part of reopening the workplace.



Under the General Data Protection Regulation (GDPR), employees' medical information is special category personal data. In order to collect or process this data, the employer will need to ensure that there is a legal basis for doing so, which may be the need to comply with health and safety obligations, a substantial public interest, or a public interest in the area of public health.

As the law currently stands, a requirement for employees to have had the COVID vaccine before they can return to the workplace is unlikely to be justifiable in most workplaces in the UK. There is currently no general obligation for anyone to have the vaccine, although Parliament has voted to make it mandatory for care home workers to be vaccinated from October 2021 and the government will consult about a similar obligation for workers in the National Health Service. Similarly, it is now proposed to make proof of double vaccination a requirement of entry to some crowded, indoor venues, such as nightclubs. In the absence of a general vaccine requirement, imposing one will likely give rise to a number of potential legal risks including discrimination, data protection and privacy, personal injury and unfair dismissal claims.

The approach currently **endorsed by the government** is to encourage employees and workers to have the vaccine when it is their turn and there are a number of ways that employers can do that, for example, by giving paid time off to have the vaccine, providing company sick pay if an employee experiences side effects after the vaccine, and ignoring any sick days taken for vaccine related reasons.

With respect to COVID testing, currently, all individuals are entitled to a COVID test. Indeed, the government is actively encouraging individuals to regularly test for COVID on a voluntary basis and the government guidance states that regular testing can help to identify more positive cases of COVID in the workplace. There are legal risks with implementing mandatory, employer-led testing, as well as practical ones (e.g. do you have the time and space for everyone to be tested and then wait, safely, for the result before entering the building?). Encouraging voluntary testing and self-reporting of a positive test is therefore easier and lower risk. Nonetheless, some form of mandatory testing is more likely to be justifiable in workplace settings where other preventative measures such as social distancing or ventilation may be less practical. These types of judgement call will be led by health and safety risk assessments. Employers should remember that test results will amount to medical information and therefore special category data for which there are more stringent data protection obligations.

The government guidance states that it is necessary to take steps to reduce the risk of COVID transmission, even if workers have been vaccinated, have natural immunity or have had a negative test.

5. Engage and consult with your workforce

Employers have certain obligations to consult with the workforce on health and safety matters. Current **government guidance** expressly recommends that employers should consult with their workers or trade unions on the risk assessment to establish what guidelines need to be put in place. Further **guidance** is provided by HSE. The government guidance also encourages employers to publish the results of their risk assessments on their website and expects businesses with over 50 employees to do so.

Employee communications have become all the more important over the course of the pandemic, when workforces are physically separated. They remain so as employees return to their workplaces, or return in greater numbers, particularly given that plans may change at short notice in response to developments in the pandemic.

For some employees, this will be the first time that they will be returning to the daily commute and workplace since March 2020. For staff on furlough, they may have not worked at all for some time. Understandably therefore, there will be a mix of reactions to reopening the workplace. Some employees may feel quite anxious about returning to work, the use of public transport, and the proximity to other people. Others may be very enthusiastic about returning to work. Employers should therefore be sensitive to the different opinions and carefully manage the situation.

If you don't have one already, some businesses will find it useful to have a working group dealing with the transition back to the workplace, and to manage queries from employees. Virtual town hall meetings are likely to remain popular with many employers even after workplaces re-open, utilising all of the new technologies that have become so prominent in recent months, as a means to give employees information while limiting physical contact. Employers should make sure that information available for employees on intranet sites is accurate, up to date and accessible.

As well as communications to the workforce as a whole, individual contact will remain important and managers should continue to maintain regular communication with their teams to ensure they are kept up to date with any new procedures, leave entitlements, and to allow employees to share concerns whether about work or their personal circumstances. It would also be a good time to ensure that the company's whistleblowing policy is up to date, and that managers and HR are aware of procedures to be followed under it.



6. Consider the need to make reasonable adjustments

Notwithstanding the high level of vaccination in the UK, there will still be employees with particular, genuine concerns for their health and safety, especially if they or a member of their household have a continuing vulnerability to serious illness if they catch COVID. The government no longer advises shielding for people who are clinically extremely vulnerable to COVID, but encourages employers to make allowances and adjustments for them.

If an employee has a health condition that makes them vulnerable, they may be disabled under the Equality Act 2010. If so, an employer is required to make reasonable adjustments which may include continuing working from home arrangements for a further period.

There is also increasing evidence of the prevalence of 'Long-COVID' where individuals continue to experience the effects of COVID for more than 12 weeks, which can in some cases be very debilitating. Employers should treat long COVID as they would with any other sickness. In some cases, Long-COVID may amount to a disability giving rise to the obligation to make reasonable adjustments.

Employers should ensure that their HR team and managers are sensitive to reports about Long-COVID and prepared to make reasonable adjustments with occupational health's advice. A flexible approach to reasonable adjustments will also be useful.

7. Don't forget your pre-existing obligations

In the midst of planning how to ensure a safe place of work, it could be easy to overlook some of the pre-existing legal obligations on employers. By way of example, staggering shift times to have less people in a business premises at one time to facilitate social distancing may not be as simple as telling employees their new hours if these are already set out in the employment contract. Consent from employees to change these types of terms and conditions may be required. Where a workforce is unionised, consultation obligations cannot be overlooked. These considerations will feed into timing and communications strategies already discussed above.

8. Increase in hybrid and flexible working

It is old news now that enforced home working during the pandemic has galvanised a shift to plan for long-term hybrid and flexible working models. However, whilst remote working has succeeded for so many out of necessity, long-term remote or hybrid working might require consultation of the workforce or employee consent in some circumstances. Employers may also need to provide written notification to employees of a change to their work location and update contracts for new starters. In addition, employers will want to ensure such working models fit with their post-pandemic objectives, and it will generally be advisable to build in flexibility to pivot away from remote working should business needs require it.

Organisations that don't have remote working plans as yet may nevertheless face flexible working requests from employees, who now know that they can work from home effectively, seeking remote or hybrid arrangements. It is a statutory right for an employee with at least 26 weeks' of continuous employment to make a request for flexible working for any reason. The request for a change to terms and conditions can take many different forms, for example a change to working hours, a request for compressed hours or a request to change from full-time to part-time working. These requests need to be dealt with in a 'reasonable manner', and it is recommended that there is a policy in place detailing the process which will be followed. This may also include a more informal way for employees to have discussions with managers or HR regarding changes to their working arrangements. HR teams and decision makers should be ready to deal with these requests and be familiar with the Acas guidance on this.

Employers' health and safety obligations extend to homeworking and employers who implement long-term remote or hybrid working will need to decide whether to provide homeworking equipment (if they haven't done so already) and take measures to ensure that adequate risk assessments and insurance are in place. Employers will also need to review their IT, bring your own, and data protection and privacy company policies to ensure they are fit for homeworking, and that any new obligations and expectations around homeworking are clearly communicated to employees.



9. Take care of employee health and wellbeing

While there is a continued emphasis on physical health and safety, it is important to remember that employees' health and wellbeing goes further than the physical. During lockdown, employees have faced many different challenges which might have included grief, loneliness, stress or anxiety. Victims of domestic abuse have also found it much more difficult to seek support and advice. As the country unlocks, some employees might experience anxiety about the prospect of returning to the workplace, after so many months of avoiding or limiting contact with others.

Employers will be keen to ensure that their employees are being supported as best possible, and benefits that are available to employees such as employee assistance programmes should be highlighted to the workforce.

10. Remain flexible

Whilst the hope remains that the roadmap out of lockdown will be 'irreversible', the experience of the last 16 months have shown just how unpredictable the pandemic is. Prudent employers should therefore be prepared to flex and adapt their approach during these uncertain times.

This article is based on our article "[Easing of the UK lockdown: 10 top tips for employers](#)" for Compliance and Risk Journal, (May / June 2020 edition).

Contact Us



James Brown
Knowledge Lawyer
james.m.brown@bakermckenzie.com



Rachel Farr
Knowledge Lawyer
rachel.farr@bakermckenzie.com



Mandy Li
Knowledge Lawyer
mandy.li@bakermckenzie.com

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