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# 3CS Newsletter

## Employment

### Government shifts its guidance away from home working - what you need to know

As the economy continues to suffer and jobs are very much on the line, the Government has changed its message these past few days on working from home, and is now encouraging employees to get back into the office.

Whereas previously it was 'work at home if you can', the advice is now 'return to work if it is safe to do so'. This gives the green light to employers to consider the plans for bringing employees back to the workplace, and how they can do so without risking both employee health and a raft of employment claims. Detailed and updated guidance is expected to be published in the next week.

From 01 August, employers will be able to ask their employees to come back to work, but only if they have consulted with their staff, conducted a Covid-19 risk assessment, and ensured that the workplace complies with social distancing guidelines.



This is a dilemma that employers whose staff cannot work from home have been facing over the past few months, and now all employers will need to assess their physical workspaces, implement measures to mitigate the risk of transmission, and develop and implement plans to bring back their staff according to both the needs of the business and employees' individual circumstances. And it is not going to be easy. A survey out today indicated that one in three employees wishes to continue to work from home, and the vast majority of others would like a balance of home and office working. In addition, most employers will struggle to facilitate a full return while social distancing measures remain in place.

Employers can continue to adopt a cautious approach and require staff to work from home. If this is the preferred route, then additional support for employees' well-being and mental health, and also with their home office equipment needs may well be necessary. Alternatively, optional working from the office could be implemented as a starting point, based on employee preferences for home versus office based work. This would be the safest option in terms of employment law claims, and would allow employers to accommodate their staff on an individual basis. The third possibility is a mandatory return to the office, whether that is part time or full time. This is legally possible, but may be difficult to justify if the business has continued as near as normally with employees working from home. We would strongly advise employers to consult with their staff to ascertain their individual needs before implementing any blanket policy. Things to consider with staff are as follows:

1. Individual vulnerability to the virus - do staff have underlying health conditions?
2. Staff living with those who are classified as clinically vulnerable - how can that be managed?
3. Public transport users - how can working hours be flexed to assist staff to travel at non-peak times?
4. Lack of care for dependents - how will staff cope with a return while childcare provision is not available or has been reduced?
5. Employees' fears - how to engage constructively with the 'worried well' and reassure them of their safety?

Employers who feel they cannot delay a return to the office should be prepared to take all reasonable steps to ensure that the workplace is safe, and that individual needs and circumstances have been properly considered. We advocate taking employment law advice on the 'difficult' cases, to avoid a surge in grievances and to ensure that the expected rise in flexible working requests are properly managed. Taking the right steps now and preparing both the physical workspace and your staff will provide a far more effective defence to future claims by employees. And don't forget to prepare for a possible resurgence in the virus come the Autumn. The key is to provide efficient and safe systems of work which can be adapted quickly according to the realities of the pandemic as it runs its course, and which allow the employer and their staff to rise to new challenges and opportunities in the Covid-19 world.

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