

30 October 2020

3CS Newsletter

EMPLOYMENT

HOMEWORKING AND EMPLOYERS' RESPONSIBILITIES

Employers are facing a range of employment law issues as the guidance on working safely during the Covid-19 pandemic develops. Many businesses face the challenge of employing a largely home-based work force for the first time.

Since 23 September 2020 government guidance has stated that:

"To help contain the virus, office workers who can work effectively from home should do so over the winter. Where an employer, in consultation with their employee, judges an employee can carry out their normal duties from home they should do so."

Do employers have any health and safety responsibilities for staff that are working from home?

Employers owe a duty to take steps that are reasonably necessary to ensure the health, safety and welfare of all their employees, and to provide and maintain a safe system of work. Employers' health and safety responsibilities are the same for those working from home as for those in the workplace, i.e. employers must do whatever is reasonably practicable to protect the health and safety of their staff. Failure to do so is a criminal offence, and may also result in employees bringing whistleblowing claims against their employer in the employment tribunal arising from breaches of health and safety legislation.



Do you need to carry out a risk assessment?

The employer has an obligation under health and safety legislation which will require it to perform a risk assessment of the homeworker's working environment, for instance, anyone working from home on a long-term basis should have a risk assessment of their workstation. There are also specific health and safety obligations in relation to the use of display screen equipment. Given that many people will have been working from home for several months and the latest government guidance states that this should continue through the winter months, businesses will need to consider carrying out risk assessments where they have not done so already. The purpose of completing a risk assessment is to identify the hazards relating to the homeworker's work activities and to ensure that sufficient steps are taken to prevent harm to the homeworker or anyone else who may be affected by their work.

Risk assessments in relation to the working environment of a homeworker may, depending on what approach is viewed as most appropriate by the employer, be carried out:

- by another employee or contractor on the employer's behalf (and, in order to facilitate this, the homeworker is required to provide access to their home); or
- as a self-assessment by the homeworker.

To reduce the risk of Covid-19 infection it seems likely that most employers will favour the self-assessment approach. Appropriate risk assessment training and advice will need to be provided to the homeworker so that they can carry out a basic risk assessment and share the results with the company. In turn, the homeworker will be expected to cooperate fully in training for and undertaking the assessment.

A clear and consistent homeworking policy should be in place setting out the responsibilities of the business and the employees. This assessment should address mental as well as physical wellbeing. It should also include information about reporting and administrative processes, data protection and equipment use:

CONTINUED BELOW

This newsletter is designed to provide general information only. It does not constitute legal or other professional advice and thus should not be relied on. Definitive advice can only be given with full knowledge of all relevant facts. If you would like to discuss any aspect further, please contact us.

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The registered office of 3CS Corporate Solicitors Ltd is 35 New Broad Street, London EC2M 1NH. Mainline Tel: 0207 194 8140 Web: www.3cslondon.com



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Reporting

Changing to homeworking may be a challenge for many. Employers should make sure that everyone working from home knows what's expected of them and provide support where necessary. Employers should aim to agree:

- how employees will keep in touch;
- how performance will be managed and measured, taking into account people's personal circumstances where necessary (e.g. child care arrangements); and
- who employees should contact if they have any problems or if their circumstances change.

If an employee is finding it hard to motivate or organise themselves at home, practical steps should be taken to address these issues and provide assistance where possible.

Data protection

Employers will need to take appropriate measures against unauthorised or unlawful processing of data and against accidental loss or destruction of personal data. Homeworkers may need specific training on their obligations and those of the employer in relation to data protection and confidentiality.

Employers should also carry out a data privacy impact assessment of the data protection implications of employees working from home. The Information Commissioner's Office (ICO) has the power to directly impose significant fines on data controllers for serious breaches of data protection regulations. The data privacy impact assessment should include the following:

- Who will have access to the employee's computer and the personal data stored on it?
- Does the employer's remote working system permit the employee to encrypt and/or password-protect information (sharing of passwords should be clearly forbidden)?
- Where paper files are kept, are there suitable systems for storage such as secure filing cabinets?
- Are there rules on the retention and proper disposal of documents (both physical and electronic)?
- Have staff been given training and guidance and are regular reminders sent to staff about their obligations to safeguard personal data and company confidential information?

Equipment

In certain situations, employers may want to allow employees to take office equipment home with them. Providing employees with the right equipment is an effective way of reducing the risks to employees' health e.g. by providing a desk or ergonomic chair, or IT equipment.

A common question is whether employers owe a duty to purchase equipment for employees working from home. There is no legal requirement for employers to fund purchases of suitable equipment for homeworkers. However, in the case of disabled employees the employer may have a duty to make reasonable adjustments. If a disabled employee reasonably requires an aid to perform their duties, this must be provided at the company's expense. Where possible the company should encourage disabled employees to borrow office equipment to assist them working from home.

As a result of the ongoing Covid-19 pandemic many employers will have found themselves in a situation where the majority of their staff are working from home wherever possible. It seems likely that this will continue into the foreseeable future. We are ready to support and advise your business on its health and safety obligations in these uncertain times.

If your company requires:

- a homeworking, IT, emails and communications or whistleblowing policy;
- training materials about how employees can conduct self-assessments of the home workspace; and/or
- a data privacy impact assessment.

please contact one of the members of our employment team.

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