

RETURNING TO WORK: GOVERNMENT AND LEGAL GUIDELINES

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As the Government lifts lockdown measures and more employees are set to return to their places of work, people have numerous questions and anxieties.

What are the ramifications of returning to work for employees?

What are an employer's responsibilities in ensuring it is safe for their employees to return to work?



Government guidelines

<https://www.gov.uk/government/news/new-guidance-launched-to-help-get-brits-safely-back-to-work>

6 key points for employers:

1. Encourage employees to return to work if they can, otherwise they should continue to work from home.
2. A full risk assessment should be completed. If possible, the business should publish the risk assessment on their website. Businesses of 50 employees or more will be expected to do so.
3. Employers should re-design workspaces to maintain 2 metre distances between people and: stagger start times, create one-way walk-throughs, open more entrances and exits, change seating layouts in break rooms.
4. Where people cannot be 2 metres apart, manage transmission risk. Employers should look into putting barriers in shared spaces, creating workplace shift patterns or fixed teams minimising the number of people in contact with one another, or ensuring colleagues are facing away from each other.
5. Workplaces should be cleaned more frequently, with close attention paid to high-contact objects like door handles and keyboards. Employers should provide handwashing facilities or hand sanitisers at entry and exit points.

6. A downloadable notice is included on the government website above, which employers should display in their workplaces to show their employees, customers and other visitors to their workplace that they have followed the guidance.

Steps to be taken by Employers

Firstly, it is important that all employers adhere to the detailed Government guidance as set out for each individual industry. The website link has been supplied above.

Secondly a comprehensive risk assessment should be undertaken of the work place and this should be done in conjunction with employees and trade unions, if they are represented in the organisation. Together they can pinpoint the appropriate preventative measures to be taken in order to provide reassurance to employees upon their return to work as well as to the public that may engage with the business.

Employers should publish the risk assessment and where possible this should be published on their website. Businesses of 50 or more employees are required to do so.

Employees should be notified of the new rules and what is required of them to adhere to these rules. Clear directions and the reasons for the measures should be explained to employees e.g. putting up clear signs, showing one-way travel systems, stating what additional cleaning is required, how to interact with co-workers safely. If protective clothing is required, employees should be provided with this prior to the start of work.

It is important that employers understand that returning to work could cause immense stress and anxiety for their employees and it is vital that employees' views are taken into consideration. Employers should be sensitive, sensible and reasonable when discussing their return to work.

Considerations

If the physical presence of an employee is not needed at work, continued remote working should be considered as a long-term solution. For those who need to come into the office, employers should:

- Trial a group of employees returning to the workplace;
- Allow for staggered work times;



- Allow employees to travel on different days of the week;
- Reduce the number of days that employees spend in the office or workplace;
- Allow employees to do reduced hours in order to take public transport at off peak times;
- Encourage employees to cycle to work by providing adequate storage facilities and areas to shower/dress as needed.

Q & A for employers and employees

What if an employee is shielding, can we ask him/her to return to work?

The answer is no if the employee has received a notice from the government advising that they need to shield. The employee will remain on Statutory Sick Pay until the shielding notice has expired.

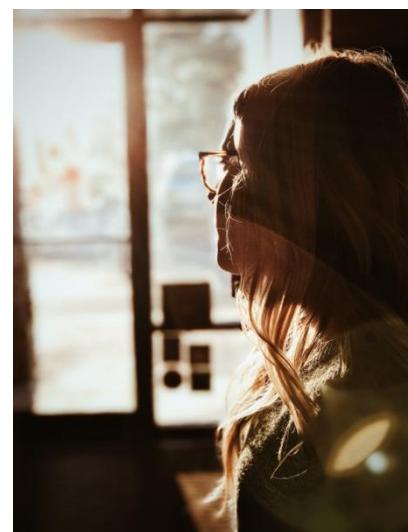
What happens if an employee refuses to return to work once their shielding notice has expired?

If an employee is refusing to return to work, due to stress or anxiety, the employer should have a meeting with the employee and ascertain what their specific concerns are. The employer should try their best to allay their fears and reassure them that the work place is safe and secure.

If the employee maintains their refusal to return to work, the employer should request a doctor's certificate and/ or occupational health certificate. Reasonable adjustments should then be considered and implemented as required. The reasonable adjustments could be short or long term as agreed by all parties.

What if an employee is too anxious to return to work?

The employer should have an honest and thoughtful dialogue with the employee and determine what their specific concerns are. Both parties should try and see if there are any alternative working arrangements that would be suitable, e.g. continuing with remote working. If a suitable compromise cannot be reached, the employer will have to ask for a doctor's report and consider reasonable adjustments.



Can an employee refuse to return to work?

The short answer is yes. An employee can refuse to return if they have a real belief that there is a clear and imminent danger to themselves.

Section 44 of the Employment Act 1996 provides for this:

(d)in circumstances of danger which the employee reasonably believes to be serious and imminent and which he could not reasonably have been expected to avert, he left (or proposed to leave) or (while the danger persisted) refused to return to his place of work or any dangerous part of his place of work, or (e)in circumstances of danger which the employee reasonably believed to be serious and imminent, he took (or proposed to take) appropriate steps to protect himself or other persons from the danger.

The employee should speak to their employer and register their concerns and take advice from their union if they belong to one. A full risk assessment should be done of the workplace and the results shared with all parties.

Again, reasonable alternative solutions to returning to the workplace can be agreed between the parties until the perceived imminent danger has been resolved and the employee feels reassured to return to the workplace.

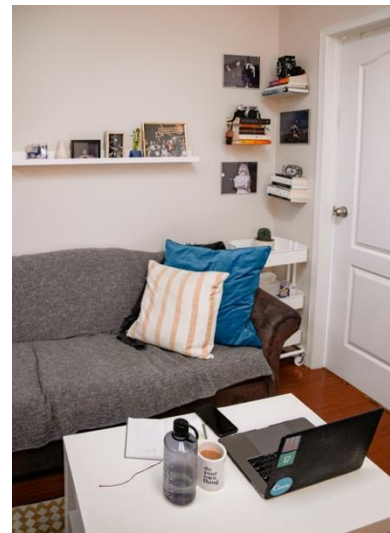
What if an employee refuses to return to work and no reasonable reasons are given?

The employee will be treated as if he/she is absconding from work. An investigation will be instigated and the normal disciplinary rules and procedure will be followed.

What if an employee feels they cannot return because they are living with someone who is shielding?

The Government guidance states that the whole house is not required to shield but the employer should take a sensitive view about the employee's return to work. A consultation should be arranged with the employee to assess their particular fears or uncertainties. Together the parties should agree suitable alternative work arrangements that would satisfy both parties, until the situation resolves itself or abates.

It should be stated that this is not a permanent change to the employee's contract of employment but an accommodation for the time stated.



What if an employee has a suppressed or compromised immune system and doesn't want to return to work?

If the individual is extremely clinically vulnerable, then they are shielding and entitled to Statutory Sick Pay. If the individual is clinically vulnerable, but can work remotely, they are not entitled to Statutory Sick Pay.

The employer should consider whether the employee is disabled within the meaning of the Equality Act 2010 and if so, reasonable adjustments should be considered after taking a GP's report and Occupation Health Advisor's report into consideration. A reasonable adjustment may be that the employee continues to work from home. Requiring an employee to return to an office may be indirectly discriminatory.

As with all reasonable adjustments, the parties should have meaningful discussions and all decisions should be documented.

Alternative provisions to consider may be:

- Lay off / furlough
- Unpaid leave
- A reduced or suspended role (reduced pay will follow from this).



What if an employee's children are not going back to school until September and the employee has to stay at home to look after them?

This may indeed be the reality for a number of parents and the parties will need to have a meaningful conversation about this in order to:

- Look at alternatives - can the employee continue to work from home?
- Look at reduced hours/days
- Consider furlough
- Consider unpaid leave or sabbaticals
- Consider a period of holiday being taken or extended.

When implementing these alternatives bear in mind that there may be some resentment from other staff, who do not have children. It is a tricky situation and purposeful discussions will have to be had with all parties. Maybe a business wide approach could be adopted for the time being until lockdown measures have been fully lifted and normal life resumes.

Can an employee be made redundant while on furlough?

Yes, they can be made redundant while on furlough. If the business was in a precarious financial situation prior to the lockdown and it still finds itself financially vulnerable (and all alternatives have been considered), redundancy may be the only course of action.

The same applies to businesses that have been severely affected by the lockdown and are unable to remain trading unless they make a reduction in their workforce.

It is important that the normal redundancy regulations are followed and are in line with the business's redundancy policy. The employer will not be able to argue that meaningful consultation was not possible due to the Coronavirus. The employer will have to consult as normal, albeit in an alternative manner (for example, using Zoom calls.)

Some useful websites:

<https://www.acas.org.uk/manage-staff-redundancies>

<https://www.gov.uk/staff-redundant>

<https://www.gov.uk/calculate-employee-redundancy-pay>