



# Covid-19: Practical Guidance on Managing a Return to Work During the Pandemic

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## 1 Introduction

This guide will help you to think about the practical challenges that come with re-opening the workplace whilst the UK is still responding to the Covid-19 Pandemic.

This guide is to help you manage your business whilst at the same time support the needs of your employees and will cover:

- The importance in keeping risk assessments under review
- Returning to work – how to bring employees back
- Local lockdowns
- How to manage employees who must quarantine when returning to the UK
- How to support employee without childcare
- A Plan for Jobs
- Furlough and the Job Retention Bonus
- Redundancies
- Workplace Adaptations
- Managing and Recording Covid-19 absences
- Employees Refusing to Attend Work

## 2 The importance in keeping risk assessments under review

First of all, the guiding principal in managing people at work during the Pandemic is about taking care of your people and safeguarding their health and wellbeing. This is achieved through thorough risk assessments that are under continued review. Since Covid is still prevalent it means we must continue to monitor the risks that arise from the changing infection levels within the area in which we operate the business.

Under the Health & Safety at Work act 1974, risk assessments are a mandatory task that all employers have a legal duty to complete. The aim being to assess the risks to the health and safety of employees (and risks to the health and safety of persons not in your employment which would include visitors, guests, contractors and anyone entering the work place ) to which they are exposed while they are at work.

There are 5 steps in completing risk assessments with step 5 being to “review and update”.

The reasons for reviewing your risk assessment include:

- Annual reviews
- Changes in legislation
- Significant changes in the task
- Improvements you have made
- Problems arising from the task

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- Accidents or near misses
- New risks and hazards identified

Reviewing the risk assessments is an important task and one that needs to be completed at least annually, Why? Things change!

- You need to know what the new risks are so you can make adjustments and implement changes, improvements and any new control measures.
- Staff change and become complacent! It is important that all staff are aware of the risks and what the employer is doing to keep them safe whilst at work.

Promoting a good safety culture increases productivity, performance and workplace morale. Consider involving staff to undertake risk assessment reviews so they feel part of the process. Also consider a safety committee made up of different people from different teams so that all knowledge can be shared, and all risk assessments completed and reviewed.

At this time, it would be best practice to review all risk assessments after staff have not been at work and you are considering bringing them back. There would be no better time in completing this exercise and have the confidence in knowing that all practices and procedures have been reviewed and are in the best shape to welcome teams back.

### 3 Returning to work – how to bring employees back

#### How to unfurlough?

The act of furloughing/unfurloughing has never been used in the UK prior to Covid-19 so we do not have specific legislation or precedence around how to administer it, nor has it ever been tested in the courts. However, we do know that we have certain legal obligations stipulating how we should treat our employees, and this should guide us in how we manage unfurloughing.

There is an obligation to act in accordance with existing employment legislation. Whether it is the Equality Act 2010 which protects people from being discriminated against or the Employment Rights Act 1996 which protects people from being unfairly/constructively dismissed.

Determining an unfurlough strategy upfront will help you to ensure it is carried out fairly and objectively, and you will have a documented thought process to evidence the approach, should it ever be challenged.

So who do you unfurlough and how? Here are some thoughts...

- A more involved process could be undertaken focused on the skills and experience of those on Furlough. Grading employees on these attributes and the ones with the highest scores are brought back.

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- If you do not need everybody to return at once, you can ask for volunteers. This may seem the fairest but could present challenges. If people feel anxious about returning to work, they may not come forward. Equally you may have everybody come forward and so you then must apply a selection process.
- You could consider basing it on business need. Look at your work activity and your pipeline/business plans.
- You could consider personal circumstances bearing in mind not to use discriminatory criteria. For example, you have an employee who is shielding because of an underlying medical condition; you could decide to continue to furlough that employee to protect their health and safety.
- For those, whose role allows for working from home this should be considered, as it is one way to maintain social distancing and complies with Government advice.

### Notice of returning

Even if your furlough agreement allowed for an immediate recall to work you should still give employees reasonable notice requiring them to return to work.

This is particularly important given that many people will have additional childcare or other responsibilities which they may need to manage.

Crucially too, is that you ensure your payroll team/provider is aware that furlough will be ending and when staff are to resume normal pay.

## 4 Local lockdowns

We have now moved out of a national lockdown, and the Government's plan for responding to Covid-19 is to manage high infection levels through introducing local lockdowns.

Businesses will need to be prepared for how to deal with having to close again or revert back to working from home.

Consideration needs to be given to employees who may live in an area that is under local lockdown however, their workplace is not.

If the business cannot remain open, or can continue but at reduced capacity, consider the following options may be available:

- Working from home
- Short term lay off (contract clause required to implement it, otherwise consent and agreement is required)

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- Short time working (contract clause required to implement it, otherwise consent and agreement is required)
- Redundancies (see further on in this guide)

### 5 How to manage employees who must quarantine when returning to the UK from abroad

The UK's Coronavirus regulations require UK residents and visitors to the UK to quarantine on arriving to the UK by self-isolating for 14 calendar days, unless travelling from certain countries or territories. The regulations also have specific self-isolation rules and penalties relevant to England, Scotland, Wales, and Northern Ireland. So, it is important to remember that even if the Employee works in England but resides in one of these countries; they must adhere to all relevant regulations and advice.

Even if the employee is tested for Covid-19 on their return and it returns negative, the Health and Protection (Coronavirus, International Travel) England Regulations (and the equivalent for Wales, Scotland and Northern Ireland) imposes the quarantine rule and they still have to self-isolate for the 14 days.

#### Returning following holiday

In the situation where somebody is returning from holiday abroad, working from home would be the ideal solution, however this can only happen if it is practicable to do so or the role can operate away from the workplace. If this is not possible then the leave would be treated as unpaid leave.

Although you may wish to consider going beyond this to mitigate the financial burden for the employee, ensure you act consistently, so you do not face claims of discrimination through unfair treatment. The way in which you could manage the time could for example be to offer the employee to use a proportion of time of off in lieu that they may have owing, or a few additional days annual leave. Ensure though that not all their statutory annual leave entitlement is used in one period of absence overall, as they must have appropriate rest periods throughout the holiday year.

Whether you treat the leave as unpaid leave or whether you offer to mitigate the financial burden ensure you confirm in writing so the expectations are clear so there can be no disputes after the event.

#### Returning following a business trip

With lockdown, we have seen that the use of technology can help to make the conducting of business efficient and quick, with limited disruption to usual business. We therefore expect to see this continue even with businesses reopening. So, business trips may actually become less, although there could be some situations where travelling abroad on business is still necessary.

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If this is the case, ensure a risk assessment is conducted, and steps are put in place to ensure social distancing is maintained and risk is minimised or removed. On the return to the UK, working from home would be the ideal situation, but if this was not possible, then the period of self-isolation would need to be paid, given that it was a business requirement that they make a business trip.

### 6 How to support employees without childcare

Over the last six months, Employers have had to demonstrate flexibility in supporting working parents. With the challenge of local lockdowns and the impact these may have on schools and other childcare providers, Employers are urged to continue to exercise greater flexibility when managing their people and consider all options of support.

#### Furlough

So long as the employee has previously been furloughed on or before 30 June, then furlough is an option. The Government widened the eligibility of the Coronavirus Job Retention Scheme (CJRS) by allowing it to be used for those with caring responsibilities.

Whilst an employer is not compelled to accept a request from the employee, the decision rests with the employer taking account of business needs. The CJRS will close 31 October 2020, but for the remaining time it is an option, it may just give the employee that brief period of being able to deal with their childcare needs.

#### Flexible Working

The statutory right to ask for flexible working has existed since 2003. Whilst it is not a legal right to have flexible working, it is a legal right to request but there are certain obligations on the employer when considering any such request.

Flexible working can also prove beneficial to the business, and at a time where businesses need to rebuild stronger and become more agile in its response to Covid-19, implementing flexible working could help.

Employers can be creative about how to offer flexible working, so discussing the circumstances with your employee and understanding their childcare needs will be important. Examples of flexible working could include part time working, condensed hours (for example working your 5 days over 4 days), home working, job share or flexing the start and end times to allow the employee to take time out of the working day to provide childcare.

#### Parental Leave

Employees with over 1-year continuous service have a statutory right to apply for unpaid parental leave. The entitlement is for a maximum four weeks per child, per year (pro-rated for part time employees) and they must provide at least 21 days' notice. Even though it is unpaid, it is an option

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for employees to consider, and it is important for employers to be as flexible as possible, so given the pandemic, consider relaxing the requirement that they must give 21 days' notice and mutually agree a feasible day for it to start from.

### Time off for Dependants

All employees, regardless of length of service, have a statutory right to take reasonable unpaid time off work to undertake the necessary and unexpected care for a dependant. Whilst this is not a long-term measure to deal with childcare issues, it may become an option in an emergency.

However, even if it is appropriate because it begins as an emergency, the right for time off is only for a "reasonable" period of time, and what is "reasonable" is not defined in law. Although in most cases, we believe 1 or even 2 days off work may be sufficient to enable the employee to make alternative arrangements.

Further time off that is required after this initial emergency period, could then be covered by any of the options set out in this article.

### Career Break Schemes

If you offer career breaks in your organisation, these could be considered when an employee needs support in managing childcare. There is no statutory right to leave of this nature, so it is very much dependent upon whether your organisation offers this. If you do offer these, then just make sure the terms of the arrangement are clearly set out in writing so there can be no confusion or ambiguity around what happens to the contract whilst out of the business and the expected return to work date.

### Annual Leave

A further option is to allow an extended period of annual leave, clearly this can only be for a defined period because consideration must be given to the importance of keeping some annual leave aside for use throughout the holiday year. From a health and safety and working time regulations perspective it is a requirement for employees to have a rest break from work. To use all annual leave entitlement in one go is likely to go against the working time regulations, so careful thought and planning should go into agreeing how much time out of the office you can support.

### Unpaid Leave

A reasonable period of unpaid leave may provide the employee the time to provide the care, but also to find new alternative arrangements. Continuity of service remains, and the employee would need to agree to it.

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## 7 A Plan for Jobs

The Government announced on 8 July [A Plan for Jobs 2020](#) which aims to support young people; who it is believed to be the most vulnerable as a result of the pandemic due to their lack of skills and experience.

A Plan for Jobs 2020 aims introduces several measures to focus on young people by providing employment opportunities and by doing so, support the UK short and long term recovery.

### The Kickstart Scheme

The Government will fund the direct creation of high-quality jobs for young people by paying Employers to create jobs which will provide young people the chance to build confidence, build workplace skills and experience. All of which will improve their chances of going on to find long term sustainable work.

The scheme will be aimed at 16-24-year olds on universal credit and who are deemed to be at risk of long-term unemployment and the roles available will be high quality 6 month work placements, with the Government funding a maximum of 25 hours per week at the national minimum wage.

### Apprenticeships

In continuation of supporting young people, the Government also announced that business will receive further payments for hiring apprentices.

The Government have announced that they will pay Employers to hire apprentices between 1 August 2020 and 31 January 2021.

Employers will be awarded:

- £2,000 for each apprentice under the age of 25
- £1,500 for each apprentice aged 25 +

These payments will be in addition to the existing £1,000 already provided by the Government for new 16-18-year-old apprentices.

Further details on this scheme is due to be published by the Government.

### Traineeships

Also, as part of the Plan for Jobs, the Government announced it will be investing £111 million for traineeships in England. These will be high quality placements and training for 16-24-year olds and Employers will receive £1,000 per trainee for providing trainees with work experience.

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The Government will also look to improve provision and expand eligibility for traineeships to those with Level 3 qualifications and below.

Further details on this scheme is due to be published by the Government.

### 8 Furlough and the Job Retention Bonus

The aim of furlough was to prevent redundancies. Whilst employers do not have to use the scheme, serious consideration should be given to it before making employees redundant. The scheme is due to end on 31 October 2020, but employees can still be furloughed at any time, so long as the employee had previously been furloughed, before 30 June (exception to this, are those who have been on a period of parental leave).

From September, Employers will be contributing towards the cost of furloughing staff:

#### September:

70% funded by the government up to a cap of £2,187.50 for the hours the employee doesn't work. Employers will pay employers NI and pension contributions and 10% of wages to make up 80% of the total up to a cap of £2,500.

#### October:

60% funded by the government up to a cap of £1,875.00 for the hours the employee does not work. Employers will pay employers NI and pension contributions and 20% of wages to make up 80% of the total up to a cap of £2,500. The cap on the furlough grant will be proportional to the hours not worked.

#### Flexible Furlough

In order to help people get back to work, since the 1<sup>st</sup> July, Employers have been able to flexibly furlough employees by bringing them back part time. From September, the amount the Government pays will reduce from 80% of wage costs, to the 70%/60% as set out above, for any of the normal hours the employee does not work.

An example of how the Flexible Furlough Scheme could operate: a full time employee is brought back to work to resume their normal work on 2 days per week and will be paid for those 2 days as normal by the employer and they will be furloughed for the remaining 3 days per week for which they receive 80% of their wages, with the Employer claiming a grant in line with the figures noted above.

This is just an example; you can decide the hours and shift patterns that your employees will work on their return so long as you pay them in full for any hours they are working. There is no minimum time that you can furlough staff for.

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Any working hours arrangement that you agree with your employee must cover at least one week and be confirmed to the employee in writing.

If employees are unable to return to work or you do not have any work for them to do, they can remain on furlough and you can continue to claim the grant for their full hours under the existing rules.

### Job Retention Bonus

The Government will be awarding Employers a one-off payment of £1,000 for each employee they bring back from furlough and retain.

The employee must be continuously employed through to 31 January 2021 and earn at least £520 a month on average between 1 November 2020 and 31 January 2021.

## 9 Redundancies

A redundancy situation arises when:

- The employee ceases to carry on the business in which the employee was employed
- The employer ceases to carry on that business in the place where the employee was employed
- The needs of the business for employees to carry out work of a particular kind cease or diminish or
- The needs of the business for employees to carry out work of a particular kind in the place where the employee was employed cease or diminish.

If you are contemplating redundancies, then you need to be aware of the timescales for consulting and how these align alongside the furlough scheme.

The timescales for consultation are:

- If you have **100 or more** employees that you propose to dismiss as redundant within a 90-day period, there is a need for 45 days of consultation before the first dismissal.

This would require collective consultation and a need to notify BEIS and elect representatives (unless you have a union in place) which needs to happen prior to the first formal consultation meeting being held.

- If you have **20 or more but less than 100** employees that you propose to dismiss as redundant, there is a need for 30 days of consultation before the first dismissal.

With 20 or more at risk, as mentioned above you would need to notify BEIS and this would require collective consultation and a need to elect representatives (unless you have a union in place) which needs to happen prior to the formal consultation beginning.

- If it is **less than 20 employees** that you propose to dismiss as redundant, there is a need to have 'meaningful' consultation.

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## 10 Workplace Adaptations

With the need for social distancing you will need to review your workplace and consider how social distancing can be achieved. It is also recommended that you plan to have the minimum number of people needed on site, if possible, allowing for home working to continue. However, it is recognised that home working will not always be practicable for all businesses, meaning greater emphasis will be on how adaptations can be made to the working environment.

We know that social distancing will be a key part of life for some time. Before employees can return to work risk assessments will need to be completed. These must then be kept under review and updated as appropriate.

Under the Management of Health at Safety at Work Regulations 1999 all employers are required to make a "suitable and sufficient" assessment of risks to employees' health and safety to which they are exposed to whilst at work. Where more than 5 employees are employed, there must be a written record of the risk assessment covering the main findings and steps taken to minimise/remove risks to health and safety.

Here are some examples of how you can adapt the role, the hours, and the working environment to remain Covid-19 safe.

### The Role

- Continuing home working where possible
- Mix between working from home and being on site to limit on site time
- Change the way work is carried out, using technology to interaction in person
- Rotate groups of employees working from the office each day

### The working hours

- Staggered shifts and break times
- Adjust start and end times to avoid peak commute times – important for those relying on public transport
- Temporary flexible working arrangements to support those with caring responsibilities

### The working environment

- Plan to have the minimum number of people needed on site
- Having a staggered reintroduction
- Rethink the physical set up of the working environment
- Change seating layouts, tables so staff work further apart
- Regulate use of corridors, stairs and lifts, but particularly encourage use of stairs. Where lifts are used, keep lifts half empty
- Avoid hot desking

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- Reduce face to face interaction
- Face employees away from each other or side to side where possible so they are not face to face
- Have separate entry and exit points to the building
- Provide protective screening for staff in receptions or similar areas
- Review first aider equipment and provide additional PPE
- Use screens to create physical barriers between people
- Provide hand sanitizer at entrances, exits and in meeting rooms
- Use outside areas for breaks
- Posters around the workplace
- Workers bring their own food
- Employee declaration in advance
- Workplace temperature screening

### Employee Screening

You could consider asking employees, and visitors to complete a declaration form verifying they do not fall in the categories for self-isolating (for example, displaying symptoms or living with somebody who is).

You could consider whether temperature checks are reasonable as part of providing a safe place of work. For example, if you are limited to what other measures you can introduce. However, you must have employees' consent to this and be mindful of the Equality Act and data protection regulations. This screening should be applied consistently across the workplace to avoid claims of discrimination and harassment.

## 11 Managing and recording absences from work due to Covid-19

The Government announced in March that SSP would be paid from day 1 of absence for coronavirus related absences from work. They also announced that small businesses would be able to claim a refund on the SSP paid for the first 14 days of a covid-19 related absence.

It is for an employer to determine what evidence they require regarding covid-19 related absences. However, we would recommend that some form of record keeping is kept. You may be required to evidence SSP payments that you have made and claimed for through HMRC. You may also need to keep records for general absence management purposes. For instance, when managing somebody's absence record under your usual absence management procedures, it is important to be flexible in your approach and it would be reasonable to discount the absence record related directly to Covid-19.

Those employees who are absent directly related to Covid-19 can obtain an isolation note from NHS 111 online and those who live with someone that has symptoms can get a note from the NHS website.

A further consideration regarding record keeping of Covid-19 is in respect of RIDDOR reporting (The Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 2013). All employers are required to make a RIDDOR report when:

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- An unintended incident at work has led to someone's possible or actual exposure to the Coronavirus. This must be reported as a dangerous occurrence
- A worker has been diagnosed as having Covid-19 and there is reasonable evidence that it was caused by exposure at work. This must be reported as a case of disease
- A worker dies because of occupational exposure to coronavirus.

## 12 Employees refusing to return

### Legal Considerations

As the Management of Health at Safety at Work Regulations 1999 requires businesses to make a "suitable and sufficient" assessment of risks to employees' health and safety to which they are exposed to whilst at work. It will be necessary to revisit the risk assessment when an employee is refusing to return.

Under the Employment Rights Act 1996, employees are protected when acting to protect their own or others' safety. An employee has the right not to be subjected to any detriment or be unfairly dismissed where the employee reasonably believed the danger to be so serious and imminent and chose to leave or refused work. Covid-19 has the potential to be considered as a serious and imminent risk.

Furthermore, an employee must show that there were circumstances of danger which the employee reasonably believed to be serious and imminent. It will not matter what the employer thought, what matters is what the employee reasonably believed at the time they acted (i.e. refused to work).

Unlike general dismissal claims, an employee who brings a claim relating to health and safety does not need the usual two-year service to bring a claim. Dismissals on health and safety grounds are automatically unfair.

Another part of the Employment Rights Act (section 43A to 43L) relates to employees who make protected disclosures (whistleblowing) in that they are protected from dismissal, selection for redundancy or from being made subject to a detriment.

If you have a situation where one of your employee's is refusing to work then it is critical that you first listen to their reasons to understand their concerns and work with them to explore further and taking appropriate steps as necessary. It is critical that as part of these conversations you review and update your risk assessment. You need to establish the risks and determine what steps can be taken if any to minimise or avoid their perceived concerns.

### Employee Refusing to Attend Work

If you are unable to reassure the employee, and you firmly believe through having completed a thorough risk assessment that the workplace is safe, then consider if you can allow the employee a reasonable period of leave, or allow them to take annual leave.

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This would be seen by a tribunal, as taking the middle ground. Whether this leave is unpaid or paid is a grey area legally; so, you may wish to make a commercial decision. We will not have a definitive position on pay, until it is tested in court, which legal commentators are predicting to be around 18 months to 2 years away.

Using the disciplinary process to manage the refusal to attend work would be a risky approach given Covid-19 has the potential to be deemed by a tribunal to be "such a serious and imminent risk to people's health". We would recommend you seek HR advice on a situation whereby you have a refusal to attend work.

What also needs to be considered is that if an employee feels they are being forced to work in an unsafe workplace, they have protection for raising these concerns as they would be raising protected disclosures under the Employment rights act and could lead to whistleblowing claims.