

FAQs - Employers Working With COVID-19

Is that it for COVID-19 and employers?

The government's regulations which give COVID-19 a special status putting additional public health measures in place and placing strong regulations are being dismantled almost completely. The underpinning legal powers to bring back restrictions are still in place, although it would take a major negative turn in the pandemic to bring back lockdowns etc. However:

- 1) The general duties of an employer to manage the health and safety of employees still exist;
- 2) In situations where working conditions are going to lead to higher exposure to COVID-19 than in everyday life, COVID-19 infection could, in some circumstances, also need to be controlled as a substance harmful to health in line with COSHH regulations;
- 3) The employer has a common law duty of care to employees and it would be a relatively easy case to prove if an employer was reckless or negligent in exposing workers to COVID-19 and they (or their immediate family) became ill as a consequence of workplace exposure;
- 4) Workers still have rights to withdraw their labour or seek protection where they have a genuine fear of being exposed to health hazards in the workplace.

So what does that mean that I have to do as an employer?

You don't have to do COVID-19 specific risk assessments, but you should assess the risk of COVID-19 to your workforce, bearing in mind particular vulnerabilities. This is sensible from a business continuity perspective, as well as a health perspective. COVID-19 can still have a negative impact on vaccinated staff.

Do we need to ask staff not to come into work?

For any seasonal respiratory illness, of which COVID-19 is one of the few that has documented long-lasting and/or serious effects, it is advisable to have a policy that encourages staff not to come into work to prevent infection being spread. This may be on a work from home basis or as sick leave. Typically, people are used to being signed off ill when not attending work, but most businesses have developed hybrid working practices, which enable some staff to work from home if showing mild symptoms, rather than needing to take sick leave.

How do we know that respiratory symptoms are COVID-19 or not?

It is probably sensible to regard COVID-19 as part of a range of respiratory illnesses, some of which may be more serious than others. In the absence of systematic testing, we will not know whether serious variants of COVID-19 are present in the population until quite late on in their transmission. It is probably sensible to avoid bringing any respiratory illness in the workplace if avoidable through working at home options.

Can we require workers to test for COVID-19?

If testing is made a requirement, then this is a result of the management of risks to health in the workplace. As such, the cost of testing should not be carried by the worker. Many businesses will not feel able to pay for COVID-19 testing because of the cost, especially in times of high respiratory infection. If testing is not required or practicable, then a precautionary approach of asking people with symptoms to work from home if possible will be an advisable course of action for business continuity reasons.

What if someone says they have tested positive for COVID-19?

There is not a requirement for people to self-isolate, but employers may still have liability and responsibility for management of COVID-19 if it breaks out or is spread through the workplace. The extent of this liability will vary from workplace to workplace, but an employer should be cautious about knowingly allowing someone into the workplace if they are known to be infected and should have plans in place to manage the risk. Doing nothing is an invitation to cause business continuity issues, workplace disruption and potential lawsuits if someone contracts the illness and is seriously ill as a result of workplace exposure.

What if we have to have people in the workplace who have/may have COVID-19?

Some jobs can't be done remotely and some workers cannot afford not to be at work. In these circumstances, employers should be aware of the rights of other workers and their own business interests in minimising risks. Evidence from workplace outbreaks show that:

- Working in close proximity to others and in poorly ventilated spaces creates a transmission risk (so workers could be redeployed to other areas if they show signs of infection)
- Use of face coverings is effective in reducing exposure risks, including the wearing of higher protection factor coverings (such as FFP2 or FFP3), especially in reducing the impact of infection on the wearer;
- Communal areas such as canteens and rest spaces are more common places for the transmission of infection. Without depriving people of breaks, separating potentially infectious workers from those areas at busy times could be effective.

Do we have a duty to tell staff if someone is in the workplace, who knowingly has COVID-19?

There is a balance between privacy rules and health and safety duties. It would be permissible to advise a workforce that a person is in work with COVID-19 or to have indicators of this (such as mask-wearing) where this will enable the management of risk of health to the workforce. It is important that the decision or policy, does consider the privacy of individual workers and is documented to meet GDPR requirements.

Can a person insist on coming in to work if they know they have COVID-19?

An employer can prevent a worker from attending work if they are infected if it is part of a duly considered and documented policy. One-off decisions would be an employment law risk. A breach of such a policy by an employee would be potentially a breach of the contract of employment.

Can a person refuse to work alongside someone else with COVID-19 or COVID-19 symptoms?

If a person genuinely fears for their safety and health (or those of people in their immediate care), they have a right to withdraw from the place of work with protections in the law of unfair dismissal, if there are no other appropriate steps they can take.

Can a person insist on wearing a face covering at work?

Unless there is strong operational or health and safety reason for not doing so, wearing a face covering at work probably should be permitted. In the case of refusal, it would be advisable to communicate how any perceived risk to health is being managed and for the health concerns of a worker to be taken seriously.

Who enforces the law around COVID-19?

As explained, there are still legal health and safety duties which can be enforced by the Health and Safety Executive (or other appropriate regulatory body) although active inspections and enforcement are not likely. However, employees still have rights which are enforceable through employment tribunals and which can put employers to considerable expense and time. In the absence of clear obligations in public health terms, employers should set out to protect their businesses and workers in good faith, using established good practice in the management of COVID-19 infection risks. This is the same as the management of any other risk in good employment law practice.

Do you have another question about Working With COVID-19? Please email it to admin@bohs.org and we will try and add an answer to the list.