

Covid-19: When to make a report to the HSE

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Please note: the information contained in our legal updates are correct as of the original date of publication

We have all now experienced to some degree the pace at which change has occurred not only in our daily lives but in the workplace as well. Employers will have been familiar with their duties to report certain work place accidents and incidents under the Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 2013 (RIDDOR) before the outbreak of Covid-19. Now, employers must quickly get to grips with understanding when to report issues relating to Covid-19.

In the latest guidance from the HSE employers must now be aware of their obligations to report on the following:

- an unintended incident at work has led to someone's possible or actual exposure to coronavirus. This must be reported as a dangerous occurrence.
- or
- 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.

The HSE provides as an example of a dangerous occurrence a lab worker accidentally smashing a glass vial containing coronavirus, leading to people being exposed. An example of a work-related exposure to coronavirus would be a health care professional who is diagnosed with Covid-19 after treating patients with Covid-19.

In the examples cited the obligation seems straightforward and clear. But, the HSE has so far provided no guidance on how the obligation relates to those businesses where Covid-19 testing is not available or where employers and employees cannot easily distinguish when, where or how individuals might have contracted the disease.

For example, school teachers, delivery drivers and supermarket workers are regularly required to leave their homes and travel to work, perhaps using public transport. Some people may be carriers without showing any symptoms, in particular children who may even be super carriers of the disease, so who is to say that key worker parents were not just as likely to have contracted the disease from an asymptomatic family member than from exposure whilst at work?

There are similar difficulties with the interpretation of when workers have been diagnosed as having Covid-19. Other HSE guidance in relation to reporting of occupational diseases such as carpal tunnel syndrome suggests that this is diagnosis by a doctor. But in relation to Covid-19 we are being told not to attend at GP surgeries if we are showing any symptoms.

Employers have therefore been left to interpret when someone has been diagnosed with the disease and whether there is reasonable evidence that an employee was exposed to the disease whilst at work. There may yet be further clarity from the HSE and we will keep this under review.

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