

COVID-19: The ongoing safety of employees in the workplace

The Health and Safety at Work Act imposes on employers statutory duties to ensure the health, safety and welfare of employees, as well as the health and safety of others affected by the operation of a business. [Read more here.](#)

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In the face of this global pandemic employers will be concerned about the risks to their employees identified as essential workers who continue to attend the workplace.

How will the regulators respond and what are the ongoing duties on employers?

COVID-19 is not a reportable incident under RIDDOR and so it is extremely unlikely that the HSE will investigate an employer in connection with employees contracting the virus, not least because it is difficult to see how the regulator could prove that the employee contracted the virus from the workplace.

What we have all seen is the speed at which all businesses have had to adapt to the changing needs of their business. The response has been varied for businesses but has included for some: a significant reduction in the workforce; redeployment of employees to unfamiliar parts of the business; and/or large numbers of new starters being onboarded to the workplace.

The pace of these changes does bring additional risk. All employers have a continuing and ongoing statutory duty to protect the health and safety of not only their employees but anyone else affected by the way they operate their business.

The Management of Health and Safety at Work Regulations makes it clear that employers must assess those risks and either eliminate them or put in place control measures to effectively manage those risks. All businesses must ensure they review and where necessary amend their risk assessments and safe systems of work to protect their workforce and others.

Whilst we can be fairly confident that employers will not face an investigation or enforcement action as a result of an employee contracting COVID-19, we do know for certain that enforcement action is the likely outcome if employers do not continue to assess and manage risks in the workplace in these very challenging times.

How should you as an employer respond to the risks posed by COVID-19?

Whilst current thinking is that the risk of a workplace outbreak is low and that there is likely to be difficulty proving that an employee contracted the virus at work, employers owe a duty of care to keep their employees reasonably safe whilst at work.

That duty will be judged on sector based known risks. As such, a frontline health worker coming into contact with and providing medical treatment to those in the general public presenting with symptoms is likely to have a greater risk of exposure compared to a worker in the retail industry who is exposed to large numbers of the general population.

The Control of Substances Hazardous to Health Regulations 2002 (COSHH) provides the framework to help employers protect employees in the workplace and requires employers to prevent employees being exposed to substances hazardous to health, or if prevention is not reasonably practicable to adequately control exposure. The duty under COSHH includes biological agents which include; bacteria, fungi, parasites and viruses such as COVID-19.

Employers will need to:

- specifically, risk assess the likelihood of harm to decide how to prevent the risk to health;
- provide control measures to reduce the risk based on sector knowledge (e.g. distancing, wash facilities, PPE, screens);
- provide information, instruction and training (documented in personnel records, posters and hazard signs);
- keep all control measures in good working order; and
- enforce those measures.

For further government information see the links to the UK and Welsh government guidance [here](#) and [here](#).

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