

# New COVID guidance: a checklist for employers





As part of the government's **'Living with COVID-19'** plan, the UK Health Security Agency (UKHSA) has published its updated guidance for employers, businesses, and organisations in England for managing the risks to their workforce from COVID-19 and other respiratory infections.



This guidance, called **'Reducing the spread of respiratory infections, including COVID, in the workplace'** replaces the **'Working safely through COVID-19'** guidance.

## More new guidance? What for?

This new guidance replaces the 'Working Safely during coronavirus (COVID-19)' guidance, which has steered employers on how to operate a COVID-secure workplace throughout the pandemic.

It's particularly important for you to reduce the spread of respiratory infections, such as COVID-19, if there are people in your workplace at higher risk of serious illness because of COVID-19.

The new guidance makes it clear that, for most businesses, whilst it's no longer a legal requirement to directly address COVID-19 in your risk assessments, you do still have Health & Safety obligations to consider, including respiratory health.

In practice, the best way to prove that you've considered these risks to your employees is to have a clear policy setting out how you will continue to manage respiratory illnesses, which is clearly communicated to your workers.

This new guidance for employers could be considered 'light touch' and doesn't give many definitive answers in terms of how employers are best placed to manage the continuing risk of COVID-19 in the workplace.

As the requirement to self-isolate for positive COVID cases has been removed, free universal testing has ended, special COVID provisions for statutory sick pay have been withdrawn and a greater emphasis has been placed on personal responsibility for people who develop symptoms of suspected COVID, business owners don't necessarily have a clear path forward.

We've pulled together some of the most pressing HR & Employment Law and Health & Safety questions you might have as an employer and provided some key points you need to consider to keep your business and your people safe and stay on the right side of the law.



# HR & Employment Law considerations

## SCENARIO ONE

“ Members of my team have expressed concerns about feeling unsafe if working alongside someone that has either tested positive for COVID or has symptoms. How do I set my stance as an employer?

It's likely that employers will come across people raising concerns about their personal safety and comfort level being in the workplace alongside someone with a case of COVID. Here are some key points you need to consider when setting out your stance:

### Things to consider:

- Do you have people in the workplace who are at higher risk from serious illness if they contract COVID?
- There are significant Employment Law protections in place for people who've been treated unfavourably, or dismissed, because they did something, or refused to do something, where they felt there was a serious and imminent danger to their own, or someone else's, Health & Safety.

It's therefore important to understand whether any concerns raised by your team relate to people who live in their household who may be at risk of serious illness from COVID.

**The best way to avoid these situations is to have control measures in place to reduce the risk:**

- ✓ Have you considered workers who may still be vulnerable (they may require an individual risk assessment)?
- ✓ Are you satisfied with the controls you've put in place?
- ✓ Have you communicated your respiratory illness policies with your people and are they familiar with retained hygiene measures?
- ✓ Could your company pay for some lateral flow tests for workers with symptoms to make sure that those more vulnerable workers are protected?
- ✓ How will you deal with situations where people have tested positive or are displaying COVID symptoms? Could they work from home? Will you be required to increase social distancing or provide PPE?



## SCENARIO TWO

“ I don't want people with symptoms to come into the workplace, but they can't do their job from home. Can I make them stay off sick, or do I have to pay them?

Since the COVID statutory sick pay provisions came to an end, statutory sick pay (SSP) is usually no longer payable for self-isolation.

If an employee is too unwell to work, SSP will be payable. But if an employee says that they're well enough to work but they can't work from home, you would have to pay them full pay if you want them to self-isolate for a period of time.

## SCENARIO THREE

“ I'd like people to test themselves before coming into the workplace - especially if they have symptoms of a respiratory infection. Do I have to pay for the tests, or can I make my employees pay for them?

Introducing a requirement to test would have cost consequences since the withdrawal of universal free testing. Plus, it's likely that it would be viewed as reasonable for an employer to be responsible for covering this cost.

If you wanted to implement testing, you would have to have a clear policy on when testing should be done, how tests will be provided and who will be responsible for the cost. It would also be necessary to consult with your employees regarding the introduction of such a policy.

This should also cover the data protection issues that would arise from implementing this type of policy.

### NEED HELP WITH WORKPLACE POLICIES?

If you're thinking about creating and implementing a testing policy in your workplace and would like the advice and guidance of our HR & Employment Law experts, simply give us a call today on **0345 844 1111** to chat through your business' needs.

## SCENARIO FOUR

“ How does this guidance affect my obligations to higher-risk employees - particularly those classed as disabled under the Equality Act 2010?

The guidance stresses that employers have lots of legal obligations to their employees and these rules do not affect those existing obligations. In particular, when dealing with employees with long-term conditions which fall within the definition of disability (and this is a very broad definition), you have a duty to make reasonable adjustments.

A recent employment tribunal found that an employer's failure to put in place adequate measures to protect their higher-risk employee from COVID was disability discrimination, on this basis.



# Health & Safety considerations

The government and the HSE have now explicitly said that a COVID-19 secure risk assessment is no longer a requirement in England, for most businesses - some guidelines remain in place for businesses that are likely to deal directly with COVID-19, such as laboratories.

The key question you need to ask yourself as a business owner is how confident you are about the measures you have in place to manage the risk of infection from respiratory diseases, including COVID.

## Some essential things for you to consider include:



What kind of policies do you have in place? Now that COVID-19 secure risk assessments are no longer necessary in England, a policy that outlines hygiene measures, ventilation requirements and expected behaviour from your people in relation to respiratory infections could stand your business in better stead.



How do you plan to communicate the measures you'll put in place, and expected behaviours, to control the risk of respiratory infections, including COVID?



How will you protect individuals in your workforce who are identified as vulnerable? While a general risk assessment is no longer required to control COVID risks, it would be best practice to perform an individual risk assessment for anyone considered vulnerable.



If people will be in the workplace who have tested positive for COVID, what additional measures will you have in place to reduce the likelihood of it spreading?



# How can Citation help?

When you partner with us, our teams of HR & Employment Law and Health & Safety experts become an extended part of your team. So we're on hand to make sure that you've got access to all the information, tools and templates you need to keep you compliant from day one.

If you want to make sure you're complying with this guidance and you want the help and advice of our expert team, you can call us on **0345 844 1111** for a chat about what you need and to get the ball rolling.