



Employment law update

27th May 2021



- How can you move to hybrid working?
- How should you deal with an employee who refuses to attend work because of Covid-19?
- Can you make Covid-19 workplace testing compulsory?
- What should an employer do when absence is caused by stress at work?



Is home working appropriate?

- Is the job suitable?
 - Team-working
 - Supervision
 - Equipment
- Is the employee suitable?
 - Self-disciplined
 - Able to work unsupervised
 - Able to meet deadlines.
- Is the home suitable?
 - Safe
 - Secure
 - Private





What should a home working policy cover?

- Homeworking arrangements
- Conditions necessary for homeworking
- Management. Training. Workplace attendance
- Health and safety



How can you move to hybrid working? (3)



- Equipment and a suitable workspace
- Data protection
- Terminating the arrangement



How should you deal with an employee who refuses to attend work because of Covid-19?



Identify the reason

- Disability:
 - Seek medical advice on the risk
 - Obtain guidance on adjustments
 - Review their pay
- Pregnancy:
 - Assess the risk
 - Alter the working conditions
 - Consider alternative work
 - Suspend on full pay



How should you deal with an employee who refuses to attend work because of Covid-19? (2)



- Shielding relative
 - The law on associative discrimination does not protect the relative of a person with a protected characteristic
 - However, they are protected against direct discrimination, harassment and victimisation
- Other
 - Investigate for misconduct owing to refusing a reasonable management instruction
 - Consider the context of the refusal because a dismissal relating to raising health and safety concerns may be automatically unfair



Can you make Covid-19 workplace testing compulsory?



- Explore alternatives to testing
- Encourage testing by communicating reasons why it is necessary
- Explain consequences of a breach in policy
- Set clear rules on reporting the result of the test
- Carry out a data protection impact assessment on how the results are managed
- Decide whether to offer full pay to employees who test positive
- Criminal liability for employee failure to self isolate



What action can I take if a test is refused?



- Explore the reason for the refusal
- What are the alternatives to testing?
- Breach of contract for new starters
- Disciplinary investigation for failure to follow a management instruction
- Unfair dismissal if over two years
- Underlying medical conditions could result in disability discrimination
- Unlawful deduction from wages if sent home without pay



What are the risks from stress at work?



- Personal injury
- Constructive dismissal
- Unfair dismissal
- Discrimination
- Harassment under the Protection from Harassment Act 1997



What should an employer do when absence is caused by stress at work?



- Distinction between pressure, which can create a 'buzz' and be motivating, and stress, which occurs when the individual perceives the demand to be excessive
- Stress is the adverse reaction people have to demands placed on them
- The sooner the cause of stress is removed, the more likely the employee will return quickly
- Meet the employee as soon as possible to agree changes
- <https://www.hse.gov.uk/pubns/wbk01.pdf>
- HSE has identified the six causes of stress at work
- Appendix 6 sets out practical measures to manage stress as part of a risk assessment



Action to consider



- Counselling
- Buddying or mentoring
- Case tracker
- Project plan
- Improve communication
- One to one meetings
- Team meetings
- Redistributing work
- Transferring the employee



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