

10 practical steps to re-opening offices safely

Until recently, no one thought that travelling to work in an office, sitting behind a desk, attending a meeting and chatting to colleagues at the water cooler were particularly hazardous activities.

But now everyone is worried that attendance at work might increase the risk of contracting Covid-19 presenting employers with the unprecedented challenge of working out how to they might open up their offices in a way that minimises this risk and provides reassurance to employees.

In this guide we set out ten steps that employers can take to achieve this and to ensure they are compliant with the relevant laws. We hope that it will serve as a useful route map for employers.

Step one - Learn from others, understand health and safety responsibilities and study official guidance

This is a new challenge for everyone and so we think it is worthwhile investing quite a lot of time at the outset in studying, in detail, the relevant government and public health guidance and finding out what is going on elsewhere. No one had a precedent for this, and everyone is having to work out the correct approach from scratch applying their common sense to managing an entirely new set of risks. Office-based employers are not in the first wave of employers to re-open their workplaces thereby giving them the opportunity to learn from the experience of those who have already re-opened.

We have embedded further on in this guide links to useful sources of guidance and advice.

The key point to understand about the responsibilities of an employer in relation to the health and safety of staff is that it's not an absolute responsibility. Employers are required to take all reasonable steps to safeguard their employees' health and safety but are not required to guarantee this.

The extent of their responsibilities is to be found in common law (case law) and in legislation. Case law requires employers to provide a safe place of work, a safe system of work, safe equipment, and safe staff.

Legislation has developed these statutory law duties:

- **Health and Safety at Work Act 1974:** requires employers to ensure, so far as reasonably practicable, the health, safety, and welfare of their employees, and to enact a written health and safety policy as to how this is to be achieved.
- **Management of Health and Safety at Work Regulations 1999:** includes a requirement to carry out risk assessments
- **Workplace (Health, Safety and Welfare) Regulations 1992:** include requirements to provide adequate lighting, heating, ventilation etc.

- **Provision and Use of Work Equipment Regulations 1998:** includes requirement to ensure the safety and suitability of work equipment and to provide information, instruction, and training on the use of equipment
- **Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 1995 (“RIDDOR”):** includes a requirement to report to HSE the death of any person and specified injuries including Covid-19.

Step two – Carry out a risk assessment

An accurate assessment of the risks facing employees in attending the workplace is the heart of the employer’s legal responsibilities. Employers now need to update their pre-existing risk assessment to take account of the new risks posed by Covid-19 to their employees and to determine the reasonable measures that need to be taken to manage these risks. There is a requirement to carry out a risk assessment irrespective of the size of the organisation.

The Health & Safety Executive suggests a five step processes to managing risks:

1. Identify hazards
2. Assess the risks
3. Control the risks
4. Record your findings
5. Review the controls

Further details on each step is available [here](#) along with a [risk assessment template and examples](#).

Step three – Update your health and safety policy

This needs to be updated to set out the risks identified in the risk assessment and the measures that will be implemented to address them. As we said above, employers are not required to guarantee the safety of their employees, but they are legally required to take reasonable measures to safeguard the health and safety of their employees.

Step four – Update your health and safety policy

As to what are the reasonable steps which should be taken, our advice is to follow government guidance closely. Specific guidance is now available for managing the return of those who work in or run offices or contact centres (see [here](#)). We consider it will be hard to criticise an employer who follows this guidance closely.

Employees have to get to their workplace and employers have to be mindful that a requirement to come to work in the office exposes an employee to the risk of catching the virus en route to work. Current government guidance is that, where possible, employees should travel to work avoiding public transport i.e. they should walk, cycle, or drive. The government’s safer travel guidance for passengers is available [here](#).

Some of the key points we have taken away from the government’s current guidance are:

- phase employees back into the workplace
- consider opening the workplace for those roles which cannot be performed remotely, and which are critical such as safe facility management, regulatory requirements, or operational continuity
- plan for the minimum number of people in the workplace (this may involve rotation of staff where possible)
- those who are advised to self-isolate should stay at home, whether they have Covid-19 symptoms or because other members of their household have symptoms
- protect workers who are clinically vulnerable (consider alternative roles where possible). Those who are shielding or are in the clinically vulnerable category should be provided with separate explanations as to what will be done to protect them, including working from home if necessary or carrying out tasks where social distancing can be followed.
- monitor the wellbeing of staff at home and in the office and, in so far as possible, provide support to aid their mental health and well-being
- treat everyone fairly in the workplace and be mindful of the different needs of different groups of workers or individuals
- display the Covid-19 secure notice in the workplace.
- increase frequency of handwashing and surface cleaning and clean the office before re-opening
- ensure, as far as reasonably possible, that employees can maintain two metre distance from others who are not in the same household
- PPE should be limited only to those settings where it is normally used. Face coverings are not mandatory and may only be marginally beneficial as a precautionary measure. This is an important point to keep under review as the guidance evolves.
- where two metre social distancing is not possible, take all mitigating actions and consider whether it is possible to implement the following:
 - split shifts into teams or shift groups
 - staggering working hours
 - limiting the time of activity
 - performing tasks without facing others
 - reducing number of people each person has contact with
 - providing screens or barriers and one-way systems
 - avoid sharing equipment or workstations
 - avoiding in-person meetings
 - keeping a list of all visitors.

Step five – Draft a Covid-19 testing, tracing, and disease management protocol

We recommend that employers draft a protocol for managing an outbreak of the disease in the office and their approach to testing and contact tracing. The protocol should deal with issues such as what to do in the event someone develops symptoms whilst in the office and what this means for those employees who work alongside the relevant individual. Clearly the best approach will be to send these individuals home and soon as possible and encourage them to get a test and self-isolate for 14 days if they may be infected.

The government has published guidance on testing and how testing kits work (see [here](#)) which is directed at the public, professional users and industry makers and manufacturers. This is a fast-evolving area and so this protocol will require regular updating.

Public Health England has also approved an antibody test manufactured by Roche as a reliable test as to the presence of antibodies indicating that someone has at some stage been infected with

Covid-19. This is potentially very useful to employers as it may serve to indicate which employees are immune from Covid-19. However, our understanding is that as of now, it is not known for certain whether everyone with antibodies is immune.

The government's test and tracing system is now up and running (albeit without the smart phone app which is not ready) and so employers should become fully familiar with this and take full account of it in drafting their protocol. They need to be ready to send employees home immediately if they are notified that they have been in contact with someone with Covid-19 or the symptoms of this illness.

Step six – Keep up to date

Ensure that an appropriately skilled member of staff is charged with monitoring government, Public Health England and WHO guidance and ensuring that risk assessments, health and safety policies and Covid-19 protocols are regularly updated and that all of the measures being adopted to manage Covid-19 risks are compliant with the official guidance in force at the time.

Step seven – Document everything!

Employers are strongly advised to invest the time and effort in producing and updating (as necessary) risk assessments, health and safety policies and testing, tracing and disease management protocols and to set out in writing their reasons for adopting a specific policy or measure by reference to the government guidance in force (or other reliable guidance) at the time.

Employers should keep every version of their key documents and a record of the dates on which they were in force. It will also be helpful to keep a hard copy or PDF record of the government guidance relied upon and the dates on which it was in force. If there are good reasons for departing from the guidance record these and the basis for your interpretation of aspects of the guidance. This will enable you to demonstrate after the event, if needed, that all reasonable steps were taken based on best advice available at the time.

Step eight – Consult staff and health and safety representatives

Consult and discuss working arrangements with employees. Employers should not underestimate the importance of keeping an open dialogue with their employees about the steps they are taking to protect the workforce against the virus. The Health & Safety Executive has produced [this guide](#) to help employers with these discussions.

Consult with health and safety employee representatives. The Health & Safety Executive has also published [this helpful short guide](#) to working safely during the coronavirus outbreak.

Many employers are preparing questionnaires to send to staff asking about their individual circumstances as a starting point for consulting with them about their return to the office.

Step nine – Train managers and staff

Make sure all workers understand Covid-19 health and safety protocols and procedures by providing clear and consistent guidance and training materials. Be mindful of the two metre social distancing rules if trying to deliver such training to the entire workforce. Online training might be the way to go.

Step ten – Focus on solutions to the difficult issues with other legal ramifications

Our list of these includes the following:

Staggered working hours

To relieve the pressure on public transport, particularly during rush hours, employers may wish to consider staggering working hours. Employers need to think carefully about how they implement such measures as a change to an employee's working hours may be in breach of their employment contract. In addition, changes to working hours, depending on how they are implemented, may unfairly disadvantage certain groups, such as women, who often take on the role as carers for children or family members.

Arrangements for travelling to work

Public transport creates a problem in terms of spreading the virus, but it is also a key enabler in terms of people returning to work. The government is keen to avoid overcrowding on trains and buses and has asked that those who can get to work without using public transport should do so. Employers may want to encourage employees, where possible, to drive or walk into the office or may consider promoting or implementing incentives such as the cycle to work scheme, which allows employees to benefit through a salary sacrifice arrangement to tax and National Insurance breaks (further guidance for employers on the cycle to work scheme is available [here](#)). Consultation with individual employees about how to travel to work will be important.

Younger workers returning first

This is not a measure recommended in the government guidance, but many employers are considering whether younger employees should return first. Employers need to be mindful that some of the younger workforce may still be vulnerable to the virus because of underlying health conditions. Employers need to ensure they have considered individual circumstances before implementing a blanket age-based policy. A measure such as this is discriminatory treatment on the grounds of age, but it may be capable of objective justification by reference to medical data. However, we advise great caution here as the medical data is constantly changing. Absent government guidance on dealing with at risk age categories employers will need to be careful where they draw the line in terms of the age groups and be clear as to the medical evidence on which they place reliance.

PPE equipment & social distancing

With PPE still in limited supply, employers will need to think carefully about how much PPE they will be able to readily access and how much PPE will be required as their workers return to the office. The government guidance notes that workplaces should not be encouraging the precautionary use of extra PPE and that PPE can be extremely limited in providing additional protection. Despite this, if following a risk assessment, it is shown that PPE is required for the employee to work safely then employers are required to provide PPE free of charge to all workers who need it.

Employers should strongly encourage two metre social distancing at all times in the workplace. Where this cannot be managed, face covering is highly encouraged to minimise the risk of transmission, but it should be acknowledged that this may only have a marginal effect.

Rotating staff with some at home and some in the office

One approach an employer may wish to consider is the rotation of employees. This not only limits the number of employees in the office at any one time but also means a smaller proportion of the workforce are exposed to the virus, either in the workplace or during their commute. This might be a good way of easing the workforce back to the office.

Contact us

If you have any questions about these issues in relation to your own organisation and wish to discuss instructing us to help you, please contact member of the Fox Williams team directly or use this [online form](#).



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