



CRISIS PRACTICE

Coronavirus

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New Guidance for Living (and Working) with COVID-19 and Employment Rate Changes Effective from April 2022

Labour & Employment – April Client Alert

Following the removal of all domestic COVID restrictions and regulations, on 1 April 2022 the government issued new workplace public health guidance as part of its “Living with COVID” strategy. The guidance sets out new principles for reducing the spread of respiratory infections in the workplace (including COVID-19) and complements further guidance issued to the public on living safely with respiratory infections. With many employers now full-swing into phasing a return to the office, our April client alert considers the key messages for employers.

We also set out the new rates which apply to employee statutory benefits, minimum wages and Employment Tribunal awards.

ASK EMPLOYEES WITH COVID-19 OR ANY OF THE MAIN COVID-19 SYMPTOMS NOT TO COME INTO THE OFFICE

The legal requirement to self-isolate has been dropped but the government still advises people with any of the main symptoms of COVID-19 or a positive test result to stay at home and avoid contact with others. If an employee tests positive or experiences symptoms, they are encouraged to follow the guidance for people with symptoms of a respiratory infection such as COVID-19.

Employers are told they “*may wish to consider how best to support and enable their workforce to follow this guidance as far as possible*”. The most effective way of ensuring that people stay away from the workplace when they are potentially infectious is to provide sick pay or allow them to work from home if they can. As of 24 March 2022, in England and Wales there are no longer any special rules entitling employees to Statutory Sick Pay from the first day of absence due to COVID-19 or for self-isolation. Employers may need to revisit their sickness absence policies to discourage symptomatic staff not to come into the workplace.



The language used in the new guidance is suggestive only. Employees are no longer legally required to notify their employers if they have COVID-19. The guidance has shifted the management of COVID-19 onto individuals to take personal responsibility for their actions. Employers are encouraged to think about how they can best “enable and support” their workforce to follow relevant guidance but no details are given as to what this actually means in practice.

TESTING IS NO LONGER RECOMMENDED

Free COVID testing for the general public has now finished. Tests may still be purchased privately and employers may choose to facilitate voluntary asymptomatic testing by paying for tests or having a free supply on hand. Government guidance no longer recommends symptomatic or asymptomatic testing.

If a member of staff does test positive, they are advised to stay at home for five days and avoid contact with other people. The guidance advises infected individuals to work from home if they can or talk to their employer about options available. If they do go out, they are encouraged to avoid crowded or enclosed places and where a face mask. They are also advised to avoid meeting people at higher risk of becoming seriously unwell from COVID-19 (especially those at risk due to their immune system), for 10 days after taking the test.

COMPLETE A HEALTH AND SAFETY RISK ASSESSMENT THAT INCLUDES THE RISK FROM COVID-19 (IF YOU LIKE)

There is no longer a legal requirement for all employers to explicitly consider COVID-19 in their health and safety risk assessments. However, they may choose to do so. Employers should continue to consult with their employees and their representatives on any changes they make that might affect health and safety.

Given case numbers remain high, our view is that the safest approach to ensuring health and safety obligations are complied with is to continue to address COVID-19 in risk assessments for the time being.

TAKE ACTIONS TO REDUCE THE SPREAD OF RESPIRATORY INFECTIONS IN THE WORKPLACE

The new guidance suggests that employers should take the following actions to reduce the spread of respiratory infections in the workplace:

- a. Encourage vaccination;
- b. Provide adequate ventilation; and
- c. Clean often, in particular surfaces that people touch a lot.

The guidance clarifies that there is no longer a requirement to report workplace outbreaks. However, if high levels of employees experience respiratory symptoms, the above actions should be “promoted and applied more rigorously.”

Face masks do not get a mention in the workplace guidance. However, those with symptoms of a respiratory infection are encouraged to wear a face mask in shared areas in the guidance for people with symptoms.

REMEMBER YOUR VULNERABLE STAFF

The workplace guidance says employers “may wish” to consider the needs of high risk individuals. The government has issued separate guidance for people whose immune system means they are at higher risk. This guidance states that the requirement for identifying people as ‘clinically extremely vulnerable’ is no longer necessary due to the success of the COVID-19 vaccination programme. These people can now follow the same guidance as everyone else on staying safe.

However, there remains a small number of people whose immune systems mean that they are at higher risk of serious illness from COVID-19, despite vaccination. This includes people with weakened immune systems due to a particular health condition or because they are on medication or treatment that is suppressing their immune system. These



individuals are advised to work from home if that feels right for them or otherwise speak to their employer about what arrangements can be made to reduce their risk.

The relaxation in COVID-19 regulations may cause concerns for high risk employees or those who live with a high risk individual. Employers should speak to people in this group about any arrangements that can be made to reduce the risk of infection.

There is no guidance on what employers should do for high risk employees who cannot work from home. Employers will need to consider their obligations to make any reasonable adjustments under the Equality Act 2010.

REVIEW YOUR DATA RETENTION POLICIES

The Information Commissioner’s Office has released [new guidance](#) on key things organisations need to consider around the use of personal information with COVID-19 measures relaxing across the UK. Employers should assess any additional information which was collected and retained during the pandemic and consider whether the use of this data is still relevant and necessary, and also whether there is still a lawful basis for processing.

INCREASES TO MINIMUM WAGE RATES, STATUTORY PAYMENTS AND TRIBUNAL AWARDS

Each year in April, we see an increase in various employment related rates and limits. We have set out a summary of the key changes to come into force this month:

<p>Increases to the National Minimum Wage and National Living Wage</p>	<p>From 1 April 2022, minimum rates are set to rise by between 4.1% and 9.8%, with new hourly rates as follows:</p> <ul style="list-style-type: none"> • For workers aged 23 + (i.e. the National Living Wage): £9.50 • For workers aged 21 – 22: £9.18 • For workers aged 18 – 20: £6.83 • For workers aged 16 – 17: £4.81 <p>The apprentice rate will increase by 11.9% from £4.30 per hour to £4.81 per hour.</p>
<p>Family related benefits</p>	<p>From 3 April 2022, the weekly rate of statutory maternity, adoption, paternity, shared parental and statutory bereavement pay will increase from £151.97 to £156.66.</p>
<p>Unfair dismissal / redundancy pay</p>	<p>From 6 April 2022, the statutory cap on a “week’s pay” used for calculating unfair dismissal awards and statutory redundancy pay will rise from £544 to £571. This means that the maximum statutory redundancy payment and basic award for unfair dismissal will increase from £16,320 to £17,130. The cap on the compensatory award will also increase from £89,493 to £93,878 (or one year’s pay, if that is lower).</p>
<p>Statutory sick pay (SSP)</p>	<p>SSP will also increase from 6 April 2022 to £99.35 per week (from £96.35).</p>
<p>Increase in the “Vento bands” for injury to feelings awards in</p>	<p>For claims presented on or after 6 April 2022 in Employment Tribunals in England or Wales, the new Vento bands will be as follows:</p> <ul style="list-style-type: none"> • Lower band: £990 – £9,900 (for less serious cases)



successful discrimination claims	<ul style="list-style-type: none"> • Middle band: £9,900 – £29,600; and • Upper band: £29,600 – £49,300 (for the most serious cases). <p>The Vento bands only provide guidance for these awards and the Tribunals have discretion to make awards in excess of £49,300 for the most exceptional cases.</p>
Introduction of social care levy	<p>The Health and Social Care levy will be introduced from 6 April 2022 and will be collected initially via a 1.25% increase in National Insurance contributions for the 2022 to 2023 tax year for working age employees, the self-employed and employers. After that, it will be separated from NICs. This will go directly to support the NHS and equivalent bodies across the UK.</p>

At the same time as employers are facing these increased employment costs, employees are facing rapidly rising living costs. Employers may face calls from employees for a cost of living pay rise to offset rising inflation and/or the additional levy. Some clients have asked us whether they are legally required to factor this into their annual pay reviews. The answer is generally no (unless there is a specific term to this effect in the employment contract). Employers are only legally required to increase wages if they fall below minimum wage. However, if an employer is considering giving a specific cost of living pay rise (rather than an increase based on performance), this should be given to all staff and not just those who bring it up in their pay review.

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