

OCTOBER 2020

THE NEW WORKING WORLD

Employment Issues You Might Encounter



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When the COVID-19 pandemic arrived on our doorstep many businesses had to find a new way of working ... and fast ... causing many to set up temporary solutions to keep their organisations operational. Following the government announcement on 22nd September to continue to work from home where possible, many are on the hunt for more permanent solutions as the need to work remotely becomes an ever-present challenge. We partnered with award-winning law firm, [Irwin Mitchell](#) to host a webinar addressing employment issues in the new working world.



“The pandemic is going to have a long-lasting effect on how we work, with a step-change in the proportion of people who work from home on a much more regular basis. This will disrupt some existing patterns of economic activity, for example, spending by office workers in town and city centres is likely to drop substantially over the long-term and we will see a further shift to online retail.”

- PETER CHEESE, CHIEF EXECUTIVE OF THE CIPD

RELUCTANT RETURNERS

WORKING WITH EMPLOYEES
WHO DON'T WANT TO RETURN
TO THE OFFICE.

Our attendees overwhelmingly reported that they have had employees working remotely since lockdown, with no changes following the change in guidance and additional restrictions that were imposed in September. However, there are growing reports of workers refusing to return to the workplace when requested. Glenn Hayes, Associate Partner at Irwin Mitchell, discussed the key areas employers need to be aware of when faced with this challenge.

Firstly, Glenn highlighted the [Employment Rights Act 1996](#) in which workers are protected against dismissal. If a worker genuinely believes that a workplace is not safe, they are entitled to refuse to attend. Whilst there must be tangible danger, the seriousness and imminence of that danger is a subjective matter, therefore

the employee's belief is the overriding factor.

It is worth noting however that this does not expressly deal with the risk of infection from other employees, or the use of public transport to attend the workplace. Regardless, all employers should take concerns seriously and make appropriate concessions in this circumstance.

Glenn advised that employers should carry out risk assessments on an individual basis and talk this through with the employee. It will allow them to communicate any concerns as well as give you opportunity to demonstrate how you have adapted the workplace to ensure it is COVID secure.

He also highlighted an area of concern regarding disability. There have been numerous reports regarding the rise of anxiety and depression during 2020, a direct impact of coronavirus on the country's mental state. COVID-specific causes of anxiety could be where shielding has been removed or where a cohabitor of your employee is considered vulnerable. Anxiety and depression are covered by the Disability Act, and you should be sure to give this consideration when asking a reluctant employee to return to their place of work.





HIGH RISK EMPLOYEES

Glenn began by reminding all attendees of the different risk categories and who would fall into the high-risk group. As the Prime Minister announced in September, all employees should work from home where possible. However, in some industries, this simply isn't a viable option.

High risk employees should be given the safest on-site role possible.

Perhaps you operate a retail store. Consider giving high risk workers a role in the stockroom where they can work in a socially distanced manner and avoid contact with customers.

Other options include adjustments in working patterns or even a temporary change in role.

If your high-risk employee is a pregnant woman, you need to be aware that they have very specific special protection. Should their needs not be met, they are

entitled to be suspended with full pay if it is not possible for them to fulfil their duties from home.

High Risk groups include:

- those who are considered clinically vulnerable
- Over-70s, regardless of any medical conditions.
- A BMI of 40 or above and therefore are considered severely obese
- Pregnant Women

Of course, anyone who has a high temperature or a persistent cough should be sent home immediately pending a COVID-19 test.

Anyone who has been in direct contact with this employee should also be sent home.

WORKING FROM HOME

INTERESTINGLY, ONLY 40% OF ATTENDEES HAD COMPLETED THE REQUIRED ASSESSMENTS, HOWEVER 100% HAD ALREADY PROVIDED IT EQUIPMENT AND 50% HAD SENT FURNITURE TO THEIR HOMEWORKERS.

The next section of our webinar focused on the physical aspects of working from home. Many workers in the UK had to create a new workspace quickly, and there have been many amusing stories covering the unusual places people have set up desks. As it becomes clear that remote working will be a long-term change for most companies, it is important that we re-address these temporary set ups and assess if they are fit for purpose.

HSE England requires a full DSE and workstation assessment for every employee, including those working at home. Sadly, a kitchen table is not adequate, and it is an employers' responsibility to provide the necessary equipment and control measures. Our recommendation is that the company purchases the equipment and retains ownership. This would mean that it must be returned if the worker leaves, but it avoids any tax implications that may arise for your employee.

Managers should also take this opportunity to remind their staff about the importance of regular breaks. Especially as the winter rolls in, taking a 5-minute break every hour will help combat eye strain during dull, dark days. You can also remind them to shift their focus regularly by blinking or looking out of the window into the distance if they are still struggling.

Why not share a desk yoga video with your team? Avoiding awkward, static postures is always important, however it becomes vital when using a temporary desk set up. Encouraging your employees to do a series of stretches every day could prevent neck and back issues further down the line.

LONE WORKING

It's very likely you already have a Lone Working Risk Assessment in place, but have you considered how this is affected by people working remotely? Lone workers are at a greater risk of hazards as they do not have the same levels of support. This could be physical risks as described above; however, you should bear in mind that there are mental risks associated with lone working too.

Is there a high-pressure environment in your business? When employees are lone working the level of stress is likely to increase as they do not have immediate support available. Increased stress levels can lead to anxiety and depression so you should consider if lone, remote working is the correct solution. It could be that your employees would benefit from being in an office environment. Those with little experience in their role or who have a disability may require additional support and your risk assessment will need to provide a solution for these employees as a priority.

HSE provide excellent guidance and support for managers to pre-emptively tackle stress within the work environment, which you can find [here](#).

Putting procedures in place for easy direct contact with line managers is key to managing stress remotely and remember, it's not just about work tasks.

Managers should be trained in confidently providing 360 support to your employees as part of your duty of care so they can intervene early if they suspect an employee is showing signs of stress.

SIGNS OF STRESS

A change in the way someone acts can be a sign of stress, for example they may:

- take more time off
- arrive for work later
- be more twitchy or nervous

A change in the way someone thinks or feels can also be a sign of stress, for example:

- mood swings
- being withdrawn
- Loss of motivation, commitment, confidence
- increased emotional reactions.

FLEXIBLE WORKING

Padma Tad, Senior Associate at Irwin Mitchell, talked us through how to manage the process.

These requests can cover anything from a change in hours, days or location, and there is a [statutory process](#) to follow, which keeps things simple. This is designed to keep the process fair for an employee, but it also acts as protection for the employer, especially if you have any doubts.

Padma suggested that if you don't need to follow the process because you are happy and confident in the decision, you can just deal with the formalities in regard to contract changes or use a variation letter.

YOU SHOULD ALWAYS SEEK ADVICE FROM A HR OR EMPLOYMENT LAW SPECIALIST BEFORE DOING SO.

If you believe you need to set extra conditions, the statutory process can help.

You will need to be justified in doing so, however, this could be as simple as making attending an annual conference a mandatory requirement or that an employee may have to travel to a different location due to client demands, like attend an on-site meeting.

Padma also covered reasons why you may wish to decline a request. Turning down requests needs to be done with careful consideration, but it is possible if you have a reasonable case to do so.

There are 8 statutory reasons such as cost, performance, and business demands, however these do need to be taken in the context of the individuals' circumstances.

For example, should an employees' productivity have been impaired due

to childcare issues, she suggests implementing a trial period rather than declining immediately. This will either disprove your own concerns or highlight to the employee clear evidence why you have opted to decline the request.

Already we are starting to see tribunal cases being brought in relation to direct or indirect discrimination so make sure you are clued up on what you can and can't do in relation to flexible working.

As well as the obvious cases such as direct discrimination against a protected characteristic, cases have been brought for indirect reasons.

As an example, Padma described an incident where women are always granted flexible working requests due to childcare arrangements. However, in a situation where a male colleague, doing the same job as his female counterpart, had applied for the same arrangement, the request was declined.

"Don't fall foul of those who sit in between the protected characteristics" or you may open yourself up to an unexpected tribunal case.



HEARINGS & GRIEVANCES



It is worth remembering that you can still investigate or hold hearings with people who are furloughed as it is not work. This means you can continue with any cases you already have in process, but also that any suspensions cannot be longer than necessary so be sure to continue within the same timescales as usual.

Hearings can take place remotely or as socially distanced face to face meetings if you have access to a suitable place. If you are holding them remotely, there are a few key things to keep in mind:

- Test your tech beforehand
- Ensure the meeting is private. Confidentiality still applies!
- Be cautious of data breaches such as recording the meeting. What if an employee's partner or child comes into the room? You will then be processing their image and will need to consider that under GDPR.
- No recording should take place without prior agreement of all involved parties. It is worth reminding anyone involved of this at the start of the meeting in case someone is recording without your knowledge.
- Lay down housekeeping rules such as avoiding loud environments, muting your microphone when not speaking and confirming no one else is witness who shouldn't be there.

THE END OF FURLOUGH

As the Job Retention Scheme winds down the government have announced additional support, however this only equates to a maximum contribution of 22%, leaving the employer to pay a minimum of 55% of pay, for a little as one third of their typical hours. In an attempt to encourage businesses to retain staff, a job retention bonus scheme has been created, giving the employer a grant of £1000 per employee.

This has been met with criticism though, leaving many leaders to look for commercially minded changes that can lessen the financial impact of COVID on their business.

WHAT CAN YOU DO?

1. Suggest changes to Terms & Conditions of employment. Making roles permanently remote could save on office lease costs. Reducing working hours could save on payroll costs.
2. Redundancies. No one wants to take this step, but you may not have a choice. Remember that minimum periods apply, so be sure to plan this process carefully.
3. Request employees take holiday before the end of furlough so you don't have an influx of annual leave when you are getting back up to full operational capacity.
4. Review all suppliers. Can you negotiate cost savings or even remove services completely that are no longer needed?




80% OF ATTENDEES
HAVE FURLOUGHED
STAFF AT SOME STAGE
IN 2020.

We Are Adam are passionate about helping businesses flourish; to support entrepreneurs wanting to do good, improve job opportunities, spread good practice, and create the resources that enable social development and improved welfare.

Therefore if you need support growing your business, we're here for you. Give us a call on **0161 359 3789** or email our Director, Vanessa Jackson, directly on vanessa@weareadam.com.

Irwin Mitchell are running webinars every week on different topics. Join them [here](#) to get expert insight into the legal issues that coronavirus is bringing to our daily lives.



This guide is intended as an overview of the event and should not be used as legal advice. Should you have any questions, please contact Irwin Mitchell directly who will be happy to help. They also offer a free service via their [Coronavirus Updates](#) page, where you can subscribe to be kept up to date with the latest legislation changes.