



Returning to Work: Practical guidance for employers

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1 Introduction

This guide will help you to think about the sort of issues all businesses will need to consider as lockdown restrictions are relaxed and to help you plan for your employees return to work. The guiding principal in managing a return to work should be how you take care of your people and safeguard their health and wellbeing.

Many people will be concerned and anxious about being at work and/or travelling to and from it. Equally, many employers will feel nervous in opening their workplace during Covid-19.

This guide is to help you support the needs of your employee as well as those of the business and will cover:

- An update on the current situation
- Resource planning
- How to unfurlough your employees
- Employee communication
 - Strategy
 - The emotional impact of Covid-19
 - Training
- Practical considerations for returning to work
 - Adaptations to the role, working hours, workplace
 - Employee declaration
 - Managing and recording absences from work
 - Refusal to work
- Health and Safety

This guide does not deal in detail with redundancy, short term lay off or short time working which may arise as a result of Covid-19.

You can access our webinar [Return to Work: Practical Guidance for Employers](#), which complements this guide which also includes further information from a Health and Safety expert.

2 Current Situation

On 10 May, the Prime Minister announced detail of how the UK would release lockdown which included detail about a new Covid-19 alert system. This alert system will classify at which level the UK is operating at in its response to Covid-19.

The level at which the UK will be classified will be determined by the R rating (the infection rate) and number of infections and this level will dictate what measures are to be put in place. The UK has to prepare to move back and forth between the levels, and therefore, if the number of infections and the R rating increases, it could risk the UK closing its workplaces again.

The UK is currently at level 4 and this new phase is "stay alert, control the virus, save lives". Being at level 4 means that not all sectors of the economy can re-open. Those that can include:

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- Construction
- Manufacturing
- Logistics
- Food production
- Distribution
- Scientific research and laboratories

Whilst these sectors can re-open, the current advice is still to work from home wherever possible. However, anyone who cannot work from home should be actively encouraged to attend work.

Any return to work must be safe. To help employers, the Government have introduced a set of guidance documents for each sector, that can help to make workplaces Covid19 secure. These guides have been created in consultation with the Health and Safety Executive (HSE), trade unions, and professional bodies and are available at <https://www.gov.uk/guidance/working-safely-during-coronavirus-covid-19>

To help enforce these safe working practices, the Government are investing £14 million in the HSE to enable them to resource their contact centre operation as well as enabling them to conduct additional spot checks and inspections of workplaces across the country.

Furthermore, to support the transition out of lockdown, the Government announced on 29th May the details of the more flexible arrangements to allow part time working and furlough from July. More detail on this will be provided further on in this guide.

Latest advice for staying Covid-19 safe

The current Governmental advice is:

- Work from home wherever possible; however, anyone who cannot do so, should be actively encouraged to attend work
- Avoid public transport if possible and encourage car, walking or cycling
- Obey the rules on social distancing
- Keep a distance from people outside your household by maintaining at least 2 meters
- Keep hands and face as clean as possible, washing hands regularly
- Reduce the number of people you spend time with, in a work setting
- Avoid crowds
- Do not gather in groups of more than 2
- If you have to travel think about how and when you travel
- Wash your clothes regularly
- Keep indoor places well ventilated
- If possible, wear face coverings when in an enclosed space where social distancing is not possible, or when you come in to contact with people you do not normally meet. For example, when using public transport
- Follow the advice given by your employer
- People entering the UK (with the exception of France) must self-isolate for 14 days
- Those who are shielding should continue to do so

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3 Resource requirements and options available

Given the impact of Covid-19, reviewing business plans and operating models will be vital to ensure your business' continued operation. Here are some areas to consider in your review:

- Does your operating model remain the same or do you need to make changes to it?
- What roles do you need in the structure moving forward? Has the company diversified and therefore needs to consider upskilling or recruiting staff with different skills?
- Are any roles currently furloughed, in which case which roles do you need to bring back?
- When do you need the roles back at work?
- Are you able to utilise the Furlough scheme to enable you to operate for longer? Could the extra financial support and time help you to keep operating that bit longer? This would ultimately mean either delaying redundancies, or perhaps even avoiding them.
- Can you support all your employees coming back? For example, is there enough work and can you afford to pay all employees?

These are all very challenging questions, and this review process may result in some difficult steps needing to be taken.

Remember when planning, that the Government have announced measures to help businesses during Covid-19, which we summarised in our [Guidance on Support for Businesses](#).

There are a number of options available for you to consider:

Utilise Furlough – Flexible Furlough

The aim of furlough was to prevent redundancies. Whilst employers do not have to use the scheme, serious consideration should be given to it before making employees redundant.

The Government's Coronavirus Job Retention Scheme (CJRS) which was due to end 30 June has been extended. The scheme will now remain open until October and furloughed employees will still receive 80% of their pay as a minimum, but employers will increasingly have to help fund the scheme. In addition, from 1st July a new Flexible Furlough option will be available to employers to enable them to bring employees back to work on a part-time basis while furloughing them for the rest of their normal hours.

The employer funding of the scheme is introduced as follows:

June and July

The scheme will continue as before with the government paying 80% of wages up to a cap of £2,500 as well as employer National Insurance and pension contributions for the hours the employee doesn't work. Employers will have to pay employees for any hours they work (in July).

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August

80% of pay will still be subsidised by the government up to a cap of £2,500, but employers will be asked to pay **employers NI and pension contributions** ie for the average claim approximately 5% of total employment costs they would have incurred had the employee not been furloughed.

September and October

Employers to start paying towards cost of furloughed wages:

September: 70% funded by the government up to a cap of £2,187.50 for the hours the employee doesn't work. Employers will **pay employers NI and pension contributions and 10% of wages** to make up 80% of the total up to a cap of £2,500

October: 60% funded by the government up to a cap of £1,875.00 for the hours the employee doesn't work. Employers will pay **employers NI and pension contributions and 20% of wages** to make up 80% of the total up to a cap of £2,500

The cap on the furlough grant will be proportional to the hours not worked.

The scheme will end on 31st October 2020.

Flexible Furlough

In order to help people get back to work, from **1st July** you will now have the flexibility to bring ***previously furloughed employees**** back to work part-time, with the government continuing to pay 80% of wages for any of their normal hours they do not work up until the end of August.

*The furlough scheme will be **closed to NEW entrants on 30th June 2020**. Therefore, the final date you can furlough an employee **for the first time** is **10th June 2020** (to ensure the 3-week minimum for a claim is established).

For example: a full time employee is brought back to work to resume their normal work on 2 days per week and will be paid for those 2 days as normal by the employer and they will be furloughed for the remaining 3 days per week for which 80% grant can be claimed from the government (subject to pro rata capping).

This is just an example; you can decide the hours and shift patterns that your employees will work on their return as long as you pay them in full for any hours they are working. There is no minimum time that you can furlough staff for.

Any working hours arrangement that you agree with your employee must cover at least one week and be confirmed to the employee in writing.

If employees are unable to return to work or you do not have any work for them to do, they can remain on furlough and you can continue to claim the grant for their full hours under the existing rules.

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Claiming

Flexible furloughing: You will need to report and claim for a minimum period of a week, but you will be able to claim for longer periods such as on a monthly or two weekly cycles if you prefer.

You will have to submit details of the usual hours an employee would be expected to work, and the actual hours worked.

Employers will have until 31st July to make any claims in respect of the period to 30 June.

You can read our [Coronavirus job retention scheme: Furlough Leave Guidance](#) as well as our [Coronavirus Q&A for Employers](#), for more information around the management of the scheme.

Lay off

If you have the contractual right to lay employees off, this could be for 4 consecutive weeks (or 6 weeks in 13) before the employee can claim redundancy.

For those employed for at least one month will be entitled to a statutory lay off payment of £29 per day (less if they usually earn less than £29) for 5 days in any rolling 3-month period.

Bear in mind that with temporary layoff, an employee can claim the right to a redundancy payment if they have been laid off without pay for 4 or more weeks in a row, or 6 or more weeks in a 13-week period.

Short time working

If you identify that there is not enough work for your employees to do, an alternative option could be short time working, ie reducing the employee's working hours and pay only for hours worked. This option may also help avoid a redundancy situation but must only be a last resort and where you have a right to do so under the contract of employment.

Bear in mind that short time working can give employees the right to claim a redundancy payment if they receive less than 50% of a week's pay due to short time working for four weeks in a row (or 6 weeks out of 13).

Redundancy

A redundancy situation arises when:

- The employee ceases to carry on the business in which the employee was employed
- The employer ceases to carry on that business in the place where the employee was employed
- The needs of the business for employees to carry out work of a particular kind cease or diminish or
- The needs of the business for employees to carry out work of a particular kind in the place where the employee was employed cease or diminish.

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If you are contemplating redundancies then you need to be aware that depending on the numbers of staff affected, the deadlines for starting this process are fast approaching.

If you have **100 or more employees** that you propose to dismiss as redundant within a 90-day period, there is a need for 45 days of consultation before the first dismissal.

Therefore, you would need to start this process and have held the first consultation meeting no later than by **16th June 2020** if you intend to serve notice at the end of July (or **16th September 2020** if you intend to serve notice at the end of October).

This would require collective consultation and a need to notify BEIS and elect representatives (unless you have a union in place) which needs to happen prior to the first formal consultation meeting being held.

If you have **20 or more but less than 100 employees** that you propose to dismiss as redundant, there is a need for 30 days of consultation before the first dismissal.

The latest date you can start formal consultation is **1st July 2020** if you want to make a decision to serve notice by 31st July 2020 (or **30th September 2020** if you intend to serve notice at the end of October).

With 20 or more at risk, as mentioned above you would need to notify BEIS and this would require collective consultation and a need to elect representatives (unless you have a union in place) which needs to happen prior to the formal consultation beginning.

If it is **less than 20 employees** that you propose to dismiss as redundant, there is a need to have 'meaningful' consultation.

The latest date you will need to start formal consultation is 15th July 2020 (or before) if you want to make a decision to serve notice by 31st July 2020.

Even if the Furlough scheme is extended beyond 31st October, you may want to begin the consultation process now to give you more options to take appropriate action at the time you need to.

4 Returning to work – when and how to bring employees back

Once you have reviewed your business plan and identified the ongoing needs of the business and work is becoming available once more, it is now about ending your employees' period of furlough leave.

How to unfurlough?

The act of furloughing/unfurloughing has never been used in the UK prior to Covid-19 so we do not have specific legislation or precedence around how to administer it, nor has it ever been tested in the courts. However, we do know that we have certain legal obligations stipulating how we should treat our employees, and this should guide us in how we manage unfurloughing.

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There is an obligation to act in accordance with existing employment legislation. Whether it is the Equality Act 2010 which protects people from being discriminated against or the Employment Rights Act 1996 which protects people from being unfairly/constructively dismissed.

Determining an unfurlough strategy upfront will help you to ensure it is carried out fairly and objectively, and you will have a documented thought process to evidence the approach, should it ever be challenged.

So who do you unfurlough and how? Here are some thoughts....

- Depending on timings; it maybe you have adopted a staggered furlough approach and so have some employees who have been on Furlough for less than the required 3-week minimum duration. Be mindful therefore that to bring back an employee who has been on furlough less than 3 weeks will mean that you will not be eligible to claim for the grant under the CJRS. It may be best, and reasonable therefore to keep those on furlough and bring those back who have been on leave longer than then 3 weeks.
- A more involved process could be undertaken focused on the skills and experience of those on Furlough. Grading employees on these attributes and the ones with the highest scores are brought back.
- If you do not need everybody to return at once, you can ask for volunteers. This may seem the fairest but could present challenges. If people feel anxious about returning to work, they may not come forward. Equally you may have everybody come forward and you then have to apply a selection process.
- You could consider basing it on business need. Look at your work activity and your pipeline/business plans.
- You could consider personal circumstances bearing in mind not to use discriminatory criteria. For example, you have an employee who is shielding because of an underlying medical condition; you could decide to continue to furlough that employee as a way to protect their health and safety.
- For those whose role allows for working from home this should be considered, as it is one way to maintain social distancing and complies with Government advice.

Notice of returning

Even if your furlough agreement allowed for an immediate recall to work you should still give employees reasonable notice requiring them to return to work.

This is particularly important given that many people will have additional childcare or other responsibilities which they may need to manage.

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Crucially too, is that you ensure your payroll team/provider is aware that furlough will be ending and when staff are to resume normal pay.

5 Communication

Strategy

Communication with your employees will be key to ensuring a smooth transition. Being open and transparent and keeping employees informed will help them to make their own decisions and have to some extent stability at what is a very unsettling and uncertain time. Your employees will want to be reassured that their workplace is safe.

It is recommended that you make clear to your workforce the strategy for managing the transition back to work. You will need to be prepared to answer questions why one person and not another is being brought back. Transparency in how you act will help you manage staff morale and maintain employee engagement.

The emotional impact of Covid-19

The psychological impact of Covid-19 is significant. We are in unprecedented and uncertain times. Supporting the mental wellbeing of your staff will be of utmost importance. Communication that is clear, open and transparent will help towards providing clarity to your employees, even if it is only clarity about what is happening now.

Many employees are likely to feel anxious in returning, so it will be key to reassure them that the workplace is safe.

Also remember that there may be those employees who will know family or friends who have either suffered from COVID-19 or sadly passed away. Where you offer an Employee Assistance Programme (EAP), be sure to remind your employees of this while furloughed, in advance of returning and throughout their return.

Where you do not have any employee assistance scheme in place, then do still direct them to available support such as MIND, Anxiety UK or even to their own GP.

Some key messaging to convey in your communications to alleviate worry and provide reassurances, could include:

- You are following closely the Government advice and implementing it as necessary
- Risk assessments have been undertaken and will be subject to ongoing reviews
- Communicating the measures you are taking to manage their safety and wellbeing in the workplace
- If you offer an Employee Assistance Programme (EAP), remind your employees of this service
- That you have their safety as priority

Training

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You will need to consider training for your workforce. For instance, if you have new starters who joined just prior to the lockdown, then it is likely they will benefit from either part or all of their induction being repeated.

If you are introducing new working practices in light of social distancing, then ensure your workforce are trained so that everybody is working safely.

Finally, your line managers will need to be alert on what to do, should a team member display Covid-19 symptoms. Put in place guidance for your line managers so they are prepared should this happen.

6 Practical considerations for supporting the return to work

Flexible approach

Lockdown is being eased gradually and whilst there is no vaccine, social distancing, self-isolation and shielding will be an ongoing part of life. Employees may therefore still experience personal challenges at the same time of returning to work. As an employer it is important that you can show flexibility in how you enable your employees to manage their return.

When planning the return, you may also need to consider:

- An employee may have a caring responsibility such as a child at home and they have nobody else who could look after them or cannot place them in a nursery or school
- An employee may have to shield due to falling in the extremely high-risk group so is unable to return, even if work is available
- An employee may have to household isolate due to a family member in the same household displaying the symptoms, yet they are not sick or have any symptoms themselves.
- You may have employees who continue to need to home school
- You may have an employee who has suffered a bereavement

Knowing your employees and being empathetic to their situation at this uncertain time will reassure them that their health and wellbeing is at the centre of all your decisions.

Adaptations

With the need for social distancing you will need to review your workplace and consider how your employees can maintain a 2m physical distance between each other. It is also recommended that you plan to have the minimum number of people needed on site, if possible, allowing for home working to continue. However, it is recognised that home working will not always be practicable for all businesses, meaning greater emphasis will be on how adaptations can be made to the working environment.

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We know that social distancing will be a key part of life for some time. Before employees can return to work risk assessments will need to be completed. These must then be kept under review and updated as appropriate.

Under the Management of Health at Safety at Work Regulations 1999 all employers are required to make a “suitable and sufficient” assessment of risks to employees’ health and safety to which they are exposed to whilst at work. Where more than 5 employees are employed, there must be a written record of the risk assessment covering the main findings and steps taken to minimise/remove risks to health and safety.

Here are some examples of how you can adapt the role, the hours, and the working environment in order to remain Covid-19 safe.

The Role

- Continuing home working where possible
- Mix between working from home and being on site to limit on site time
- Change the way work is carried out, using technology to interaction in person
- Rotate groups of employees working from the office each day

The working hours

- Staggered shifts and break times
- Adjust start and end times to avoid peak commute times – important for those relying on public transport
- Temporary flexible working arrangements to support those with caring responsibilities

The working environment

- Plan to have the minimum number of people needed on site
- Having a staggered reintroduction
- Rethink the physical set up of the working environment
- Change seating layouts, tables so staff work further apart
- Regulate use of corridors, stairs and lifts, but particularly encourage use of stairs. Where lifts are used, keep lifts half empty
- Avoid hot desking
- Reduce face to face interaction
- Face employees away from each other or side to side where possible so they are not face to face
- Have separate entry and exit points to the building
- Provide protective screening for staff in receptions or similar areas
- Review first aider equipment and provide additional PPE
- Use screens to create physical barriers between people
- Provide hand sanitizer at entrances, exits and in meeting rooms
- Use outside areas for breaks
- Posters around the workplace
- Workers bring their own food

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- Employee declaration in advance
- Workplace temperature screening

Employee Screening

You could consider asking employees, and visitors to complete a declaration form verifying they do not fall in the categories for self-isolating (for example, displaying symptoms or living with somebody who is).

You could consider whether temperature checks are reasonable as part of providing a safe place of work. For example, if you are limited to what other measures you can introduce. However, you must have employees' consent to this and be mindful of the Equality Act and data protection regulations. This screening should be applied consistently across the workplace to avoid claims of discrimination and harassment.

7 Managing and recording absences from work due to Covid-19

The Government announced in March that SSP would be paid from day 1 of absence for coronavirus related absences from work. They also announced that small businesses would be able to claim a refund on the SSP paid for the first 14 days of a covid-19 related absence.

It is for an employer to determine what evidence they require regarding covid-19 related absences. However, we would recommend that some form of record keeping is kept. You may be required to evidence SSP payments that you have made and claimed for through HMRC. You may also need to keep records for general absence management purposes. For instance, when managing somebody's absence record under your usual absence management procedures, it is important to be flexible in your approach and it would be reasonable to discount the absence record related directly to Covid-19.

Those employees who are absent directly related to Covid-19 can obtain an isolation note from NHS 111 online and those who live with someone that has symptoms can get a note from the NHS website.

A further consideration regarding record keeping of Covid-19 is in respect of RIDDOR reporting (The Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 2013). All employers are required to make a RIDDOR report when:

- An unintended incident at work has led to someone's possible or actual exposure to the Coronavirus. This must be reported as a dangerous occurrence
- A worker has been diagnosed as having Covid-19 and there is reasonable evidence that it was caused by exposure at work. This must be reported as a case of disease
- A worker dies as a result of occupational exposure to coronavirus.

8 Employees refusing to return

Legal Considerations

As the Management of Health at Safety at Work Regulations 1999 requires businesses to make a "suitable and sufficient" assessment of risks to employees' health and safety to which they are

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exposed to whilst at work. It will be necessary to revisit the risk assessment when an employee is refusing to return.

Under the Employment Rights Act 1996, employees are protected when acting to protect their own or others' safety. An employee has the right not to be subjected to any detriment or be unfairly dismissed where the employee reasonably believed the danger to be so serious and imminent and chose to leave or refused work. It is likely that Covid-19 would be considered as a serious and imminent risk.

Furthermore, an employee must show that there were circumstances of danger which the employee reasonably believed to be serious and imminent. It will not matter what the employer thought, what matters is what the employee reasonably believed at the time they acted (ie refused to work).

Unlike general dismissal claims, an employee who brings a claim relating to health and safety does not need the usual two-year service to bring a claim. Dismissals on health and safety grounds are automatically unfair.

Another part of the Employment Rights Act (section 43A to 43L) relates to employees who make protected disclosures (whistleblowing) in that they are protected from dismissal, selection for redundancy or from being made subject to a detriment.

If you have a situation where one of your employee's is refusing to work then it is critical that you first listen to their reasons to understand their concerns and work with them to explore further and taking appropriate steps as necessary. It is critical that as part of these conversations you review and update your risk assessment. You need to establish the risks and determine what steps can be taken if any to minimise or avoid their perceived concerns.

Next Steps

So, what happens if after all of this, they still refuse. You believe the workplace is safe, yet they do not. What next?

If you are unable to reassure the employee, and you firmly believe through having completed a thorough risk assessment that the workplace is safe, then consider if you can allow the employee a reasonable period of unpaid leave, or allow them to take annual leave. This would be seen by a tribunal, as taking the middle ground.

Using the disciplinary process to manage the refusal to attend work would be a risky approach given Covid-19 would likely be deemed by a tribunal to be "such a serious and imminent risk to people's health".

What also needs to be considered is that if an employee feels they are being forced to work in an unsafe workplace, they have protection for raising these concerns as they would be raising protected disclosures under the Employment rights act and could lead to whistleblowing claims.

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Webinar Support

Business HR Solutions have been running webinars throughout the Corona Virus Pandemic to support policy holders, by providing advice and guidance. These have all been recorded and can be found in their webinar library.

<https://hrsolutions.microsoftcrmportals.com/webinar-library/>

CIWM Member Benefit – HR Support

Don't forget you have access to a new member benefit:

- Free Call to our HR helpline for members (up to 30 minutes) per annum
- We will try to resolve your issue in that time, but you can purchase additional support at £109.50 per hour, or we could discuss if a retainer service is more beneficial.
- Access to our Risk Audits

Registration page: <https://www.hrsolutions-uk.com/members-ciwm/>