

# PREPARING FOR A COVID-SAFE WORKING ENVIRONMENT

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# PROVIDING END-TO-END SUPPORT IN YOUR COVID-SAFE WORK STRATEGIES



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**Addleshaw Goddard are able to assist relating to the current Coronavirus legislative and guidance position throughout mainland UK. The regulations and guidance differ between England, Scotland and Wales.**

It should be noted that a lockdown came into force in England on 5 November which aims to reduce our day to day contact with other people in an attempt to slow the spread of the virus. This lockdown is currently expected to last for a 4 week period finishing on 2 December with (The Health Protection (Coronavirus, Restrictions) (England) (No. 4) Regulations 2020) coming into force in England as of 5 November. The new restrictions now mean that everyone who can work effectively from home must do so.

Prior to the second lockdown the government had announced a gradual relaxation of COVID-19 restrictions together with the publication of detailed sectoral guidance of the measures to be taken to ensure a safe return to work. This led to employers having to re-engage with health and safety considerations associated with a return to work during the pandemic.

We have produced detailed summaries of each sectoral guide which can be found here but please note that at present England is currently subject to the overriding lockdown regulations referenced above - [Health & Safety Insights](#).

Prior to the second lockdown the partial relaxation at present mainly applies in England, with Wales and Scotland maintaining stricter regimes and deviating from the English government's approach (at the time of writing). It should however be noted that in all domestic jurisdictions the principal mechanism whereby public health guidance will be enforced in the workplace is through health and safety law. Under the Health and Safety at Work etc Act 1974 and its subordinate regulations employers must take all reasonably practicable steps to protect employees and members of the public from risks created by their work activities. Significant scrutiny can now be expected of risk assessments, particularly as government and HSE guidance still suggests that those with more than 50 employees should publish the results of risk assessments, inviting greater scrutiny.



# A FOUR STAGE PROCESS



## RISK ASSESS

The cornerstone of health and safety law is the risk assessment process which involves identifying the risks and considering what steps can be taken to eliminate or mitigate the risks to the lowest level reasonably practicable.

### HOW CAN WE HELP?

We have assisted:-

- leading retailers
- leading financial institutions
- construction companies
- manufacturers
- Professional Service firms

Reviewing their national and global approaches to risk assessment both of COVID-19 risks associated with a return to work and of the risks associated with continued working from home. We provide pragmatic critical commentary on the risk assessment, identifying potential areas of challenge and commercial and presentational issues which might affect enforceability and the likelihood of a complaint being made to a regulator.



## CONSULT

Unionised workplaces must consult with trade union safety representatives, in non-union settings employers must consult with either the workforce as a whole or with representatives elected by the workforce.

Many lower risk workplaces have historically not faced significant employee feedback and may not have put in place formal consultation mechanisms. Care should be taken given the high profile of COVID-19 risks and the high probability of employee “push back” in the event that they feel safety concerns are inadequately addressed.

### HOW CAN WE HELP?

We have assisted a number of businesses addressing how to structure workforce consultations around COVID-19, including what to prioritise and whether significant enforcement risks arise.

Addleshaw Goddard also has teams specialising in the employment and reputation management aspects of workforce relations in the event the worst happens.



## PUBLISH

As outlined above HSE and government guidance indicates COVID-19 risk assessments should be published externally by larger employers. This creates significant risks as these documents are likely to be scrutinised and, if concerns are identified, could cause significant workplace disruption as employees refuse to return to work due to perceived risk, or complaint to regulators about alleged COVID-19 exposure. Even if groundless such concerns would cause significant disruption and costs in management time and resource.

### HOW CAN WE HELP?

We have advised leading organisations in a variety of sectors about the format and content of published risk assessments. We advise on the approach to be adopted to multi-site organisations and have collated a bank of risk assessments published by governmental or quasi-governmental bodies to act as precedents on the level of detail and format to be adopted.



## REVIEW

Health and safety arrangements, including the risk assessment, should be kept under continuous review, particularly if cases arise in your workplace or as guidance changes.

### HOW CAN WE HELP?

Addleshaw Goddard has access to independent former HSE experts who can provide robust review and assurance of your health and safety arrangements. This includes the novel risks presented by COVID-19 and your compliance with current best practice.

# ENFORCEMENT DURING AND AFTER THE PANDEMIC

**HSE has said it will continue its regulatory oversight of how duty holders are meeting their responsibilities in the context of the current public health risk and based on their available regulatory capacity, including “if it comes to the HSE’s attention that employers are not complying with the relevant Public Health England guidance (including enabling social distancing where it is practical to do so), HSE will consider a range of actions ranging from providing specific advice to employers through to issuing enforcement notices, including prohibition notices”.**

It is clear that where HSE and Local Authorities identify employers who are not taking action to comply with guidance, they will consider enforcement.

It can reasonably be expected that as restrictions are relaxed, employers’ approaches to managing H&S during the pandemic and indeed “after” it are likely to be scrutinised, and particularly if there have been high levels of “whistleblowing” or other documented concerns.

Investigation and enforcement risk increases where complaints are made or where media attention focuses on the business. Care should be taken to engage with the workforce to ensure that there is as much employee “buy-in” as possible in order to minimise such adverse scrutiny.

The risk of RIDDOR reports should also of course be considered as such are highly likely to give rise to enforcement.

If a prosecution does occur employers face a risk of an unlimited turnover linked fine with the Courts likely to consider that an inadequately controlled COVID-19 risk exposed employees to a risk of death or serious injury, depending on the profile of the workforce who were exposed.



**Given the severe potential consequences to getting it wrong we are happy to assist employers in perfecting their approach to ensure employees and other stakeholders are properly engaged and that documents are thoroughly vetted and reviewed to identify and correct issues early on.**

# AT A GLANCE SERVICES

STAGE	DELIVERABLES
<b>RISK ASSESS</b>	<ul style="list-style-type: none"><li>● Provide critical commentary on the risk assessment,</li><li>● Identify potential areas of challenge and commercial and presentational issues which might affect enforceability</li><li>● Provide assessment of the likelihood of a complaint being made to a regulator</li></ul>
<b>CONSULT</b>	<ul style="list-style-type: none"><li>● Advise on consultation requirements in union/non-union contexts, commenting on compliance and remedies for defects in consultation</li><li>● Advise on employee communications and commercial factors affecting securing “buy-in” from workers to proposed approach to COVID-19 risks</li></ul>
<b>PUBLISH</b>	<ul style="list-style-type: none"><li>● Advise on guidance around publication for large businesses, best practice observed by other businesses and public sector bodies</li><li>● Advice on content and format of documents for publication, difference between internal and external facing documents</li></ul>
<b>REVIEW</b>	<ul style="list-style-type: none"><li>● AG integrate consultant to carry out site inspection and review at agreed daily rate</li><li>● AG Integrate commentary and feedback on documentary procedures and their on-site adoption and enforcement as independent validation of COVID-19 control measures</li></ul>

**PROBLEMS. POSSIBILITIES.  
COMPLEXITY. CLARITY.  
OBSTACLES. OPPORTUNITIES.  
THE DIFFERENCE IS IMAGINATION.**

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