

On 19 July, England moved to Step 4 of the government's road map out of lockdown and most COVID-19 restrictions were lifted, meaning that all businesses were allowed to be open and staff were able to return to the workplace, rather than being advised to work from home where possible.

For the most part, the change in guidance did not result in a wholesale return to the office – for a variety of reasons, not least the fear of jeopardising precious holidays by getting “pinged” and the need to cover childcare during the school break. However, with all adults in England now having had the opportunity to be “double-jabbed” and the change to the self-isolation rules on 16 August (meaning that all those who are fully vaccinated and the under 18s are exempt from the requirement to self-isolate), we anticipate greater numbers of staff returning to offices with varying degrees of reluctance during the autumn. The hope is also that more staff will be able to remain working, which was a big issue for many employers over the summer, when large numbers were required to self-isolate.

However, it is still very much not business as usual. Employers continue to face a range of difficult employment law issues, from how to bring more staff back to the office to ensuring the workplace is safe going forward. At the same time, with children returning to school, it seems inevitable that case numbers will rise. Add into this heady mix the closing down of the furlough scheme from 30 September (this was the last day that employers can claim for – final claims for September must be submitted by Thursday 14 October) and employers could easily be forgiven for slightly losing track of what they can/cannot/should/should not be asking their employees to do around the return.

What is clear is that the government is now very much placing the onus on employers to carry out the relevant risk assessments and determine the best approach for their business. Some level of conflict between what the government says and what it means is an inevitable consequence of the relaxation of restrictions being a partly political rather than solely medical decision, but it generates a number of posers for employers going towards their own “new normal”.

To assist employers in navigating these issues and to help them to understand their options, we have put together this quick guide. Please note that in all cases where this guide states that an employer is able to request that an employee returns physically to the workplace, that is contingent upon the employer having satisfied its obligations in relation to workplace safety – so please do review the “Working Safely” section of this guide first.

**Please note that this guide is intended as a high-level overview only and should not be regarded as a substitute for legal advice.**







Click on the buttons (below) to see what your obligations and/or options are:

-  **Working Safely**
-  **Unwell due to COVID-19**
-  **Close contact of positive COVID-19 case**
-  **Self-isolating** – In accordance with a notification from NHS Test and Trace
-  **Self-isolating** – Compulsory isolation after returning to the UK from abroad
-  **Shielding**
-  **Pregnant**
-  **Childcare responsibilities**
-  **“Scared of returning to work”**



## Working Safely

The government has updated its [Workplace Guidelines on working safely during the COVID-19 pandemic](#). These cover a variety of different workplaces, from offices and contact centres to factories and warehouses, now grouped into six sector-specific guides. The Workplace Guidelines contain practical steps for businesses focused around the following six key steps:

-  1. Complete a health and safety risk assessment that includes the risk from COVID-19 – this will continue to be critical
-  2. Provide adequate ventilation
-  3. Clean more often
-  4. Turn away people with COVID-19 symptoms
-  5. Enable people to check in at your venue
-  6. Communication and training

As has always been the case, the devil is in the detail and while the guidelines contain a number of generic practical considerations on how the recommendations can be applied in the workplace, if you are looking for a more granular “you must do this” and “you must not do that”, you will be disappointed.

Key changes highlighted in the guidance include:

- As social distancing guidance no longer applies, businesses strictly no longer need to implement social distancing in their workplace or venue, and customers and workers no longer have to keep apart from people they do not live with. The fact that social distancing guidance no longer applies, however, does not mean that employers have to (or indeed can) immediately dispense with all the systems, etc., they have put in place to comply with it at all. There might usefully be a review of whether a reduced set of restrictions on masks and social distancing might remain appropriate in unventilated or high-traffic areas. As the guidance for offices points out, COVID-19 can still be spread through social contact and employers should still think about how they can mitigate this risk by reducing the number of people that their employees come into contact with.
- Face coverings are no longer required by law. However, the government has already said that it “expects and recommends” that people continue to wear face coverings in crowded, enclosed spaces. The updated guidance for offices, for example, asks employers to consider “encouraging the use of face coverings by workers”, particularly in indoor areas where they may come into contact with people they do not normally meet. So you do not have to, but you are expected to – hardly difficult to see the confusion that that stance might generate! A number of organisations and transport providers are continuing to require individuals to wear face coverings in certain circumstances. For example, you have to walk around the office with a mask on, but when you are sat at your desk, you do not have to.
- On the one hand, employers may welcome a greater degree of flexibility, but there is no doubt this lack of certainty about what people must do is resulting in more issues for employers as more staff return to the workplace. In broad terms, however, we consider that an employer’s requirement that employees continue to comply with reasonable anti-COVID-19 precautions (masks, social distancing, vaccinations, etc.) will be a reasonable management request despite the relaxation of the guidance, and so ultimately enforceable via the disciplinary process up to and including dismissal. We have already spoken to clients that have been approached by employees who are concerned about this, who say they do not want to work in close proximity to someone who is not wearing a mask, etc. Employers are going to have to decide on their approach and then clear communications to staff will be critical in reducing the scope for uncertainty, disputes, concerns, etc.

It is also important to remember that the underlying law governing employment, health and safety, and discrimination has not changed and employers should continue to ensure they comply with their legal obligations.

The Workplace Guidelines contain non-statutory guidance to take into account when complying with those existing obligations. As highlighted previously, employers continue to have a duty to ensure, so far as reasonably practicable, that they do not expose employees and non-employees (customers, contractors, members of the public, etc.) to risks to their health and safety. In the Workplace Guidelines, the government states that in the long term, it expects that businesses will need to take fewer precautions to manage the risk of COVID-19 and that it will continue to keep its guidance under review and will remove the advice once it is safe to do so. Until it does so, employers will need good reasons for not complying with it, since it would inevitably be taken into account in any court or tribunal proceedings.

Category of individual	Duration of absence (if any)	Can/should they be required to attend the workplace?	Pay if the individual can work from home?	Pay if they do not come to work and cannot work from home?	Suggest they use accrued holiday?	Suggest they take unpaid leave?
<b>Unwell due to COVID-19</b> Has COVID-19 symptoms and/or a positive test result.	10 days' self-isolation (or until a negative test result is obtained).	✗  Not until the end of the self-isolation period or until a negative test result is obtained (provided that the individual is then without symptoms).	✓  The individual should not work from home while unwell. Normal sick pay rules apply.  If the individual is feeling better but still required to isolate and can and does work from home, they will be entitled to their usual pay.	✓  Usual contractual and statutory sick pay entitlements apply.  The waiting period for SSP has been removed for COVID-19 absences, so SSP applies from the first day of absence until the end of the self-isolation period or a negative COVID-19 test, but remember that an individual must still actually be absent from work for four days to receive SSP.  Under the COVID-19 SSP Rebate Scheme, eligible employers with fewer than 250 employees (as at 28 February 2020) could apply to HMRC for reimbursement of SSP paid for sickness absence due to COVID-19. The scheme closed with effect from 30 September 2021, after which time SSP reverts to being met entirely by the employer.	✗  Individuals cannot be required to take holiday during sick leave (although they can choose to).  If employees have pre-booked holidays falling during the period of sickness, they must be allowed to re-arrange these if they ask to do so.	✗



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<b>Close contact of positive COVID-19 case</b>	Depends	<p>Maybe</p> <p>Since 16 August, instead of self-isolating, those who are double jabbed and under 18s identified as close contacts of positive COVID-19 cases are no longer legally required to self-isolate – although they are advised to get a PCR test as soon as possible.</p> <p>Such individuals are advised to consider other precautions, such as wearing a face covering in enclosed spaces and limiting contact with other people, especially with anyone who is clinically extremely vulnerable. Advised to do this for 10 days after their most recent contact with the positive case.</p> <p>Anyone who tests positive will still be legally required to self-isolate. Similarly, anyone who develops COVID-19 symptoms should self-isolate and get a PCR test and remain in isolation until the results come back.</p> <p>NHS Covid-19 App updated to align with changing requirements on self-isolation.</p>	<p>✓</p> <p>Given the change in self-isolation rules, in direct contrast to the “pingdemic” chaos over the summer, it is more likely that those individuals who are close contacts of COVID-19 cases will continue to come physically into the workplace, although they should self-isolate if they are over 18 and not double-jabbed.</p> <p>If individuals are required to self-isolate and are able to work from home, they will be entitled to their usual pay.</p> <p>The tricky part for employers to navigate is establishing who is required to self-isolate and who is not. The NHS Test and Trace in the workplace guidance says that workers do not need to tell employers if they are a contact of a positive case but exempt from self-isolation – similarly, employers are not required to check whether someone is exempt from self-isolation. For more information on this issue, please see <a href="#">here</a>.</p>	<p>Maybe</p> <p>Usual contractual and statutory sick pay entitlements apply.</p> <p>The waiting period for SSP has been removed for COVID-19 absences, so SSP applies from the first day of absence until the end of the self-isolation period, but remember that an individual must still actually be absent from work for four days to receive SSP.</p> <p>Under the COVID-19 SSP Rebate Scheme, eligible employers with fewer than 250 employees (as at 28 February 2020) could apply to HMRC for reimbursement of SSP paid for sickness absence due to COVID-19. The scheme closed with effect from 30 September 2021, after which time the funding of SSP reverts to being met entirely by the employer</p>	<p>✗</p> <p>Individuals cannot be required to take holiday during sick leave (although they can choose to).</p> <p>If employees have pre-booked holidays falling during the period of sickness, they must be allowed to re-arrange these if they ask to do so.</p>	<p>✗</p>



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<b>Self-isolating</b> In accordance with a notification from NHS Test and Trace	10 days	✗ Not until the end of the self-isolation period.	✓ If the individual is able to (and does) work from home, they will be entitled to their usual pay. Note: self-isolating is not the same as being ill and it may be entirely possible to work from home while self-isolating. If the individual is unwell with COVID-19, please see "Unwell due to COVID-19" for details.	✓ Usual contractual and statutory sick pay entitlements apply. The waiting period for SSP has been removed for COVID-19 absences, so SSP applies from the first day of absence until the end of the self-isolation period, but remember that an individual must still actually be absent from work for four days to receive SSP.	✗ Individuals cannot be required to take holiday during sick leave (although they can choose to). If employees have pre-booked holidays falling during the period of sickness, they must be allowed to re-arrange these.	✗
<b>Self-isolating</b> Compulsory isolation after returning to the UK from abroad.	From 4 October, the Amber and Green lists will merge and individuals will only need to self-isolate on return from a Red List country.	✗ Not until the end of any isolation period.	✓ If the individual is able to (and does) work from home (and/or any managed quarantine hotel), they will be entitled to their usual pay.	Maybe If the individual is sick, they will be entitled to the usual contractual/statutory sick pay entitlements. If the individual is not sick but cannot work from home (and/or any managed quarantine hotel), they will not generally be entitled to pay. However, this will depend and there may be circumstances in which employers exercise their discretion to pay in any event, e.g. if the travel was work-related, so as to offset any risk of grievance/constructive dismissal claim.	✓ If the employee is not entitled to be paid and there are no circumstances that might persuade the employer to pay anyway, this option should be discussed with the employee. The employer can choose to compel the taking of some holiday by giving advance notice under the Working Time Regulations.	✓ If the employee is not entitled to be paid and there are no circumstances that might persuade the employer to pay anyway, this option should be discussed with the employee. It cannot be imposed without constructive dismissal or unlawful deductions risk.



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<b>Shielding</b>	<p>The shielding programme has now ended.</p> <p>This means that people who were previously considered clinically extremely vulnerable will not be advised to shield in the future.</p>	<p>✓</p> <p>Clinically extremely vulnerable people should continue to follow the same guidance as everyone else, save that they may wish to think about additional precautions they can take to reduce the risk of catching COVID-19, especially in those areas where disease levels are currently high.</p>	<p>✓</p> <p>The guidance makes it clear that employers still have a legal responsibility to protect their employees and others from risks to their health and safety (under their general health and safety obligations). Employers should, therefore, consider each case on an individual basis and speak to any employees who have concerns about returning to the workplace because they are clinically extremely vulnerable. It may be appropriate to continue to allow them to work from home, for example, if this is what they have been doing up until now.</p> <p>Alternatively, they may continue to carry out an alternative role. Employers should remember that if an employee is disabled under the Equality Act 2010, the duty to make reasonable adjustments may be triggered.</p> <p>If the individual is able to (and does) work from home, they will be entitled to their usual pay.</p>	<p>✗</p> <p>Generally, the employee will not have a right to pay unless they reasonably believe they are in serious or imminent danger in their workplace (see blog <a href="#">here</a> for more detail).</p>	<p>✓</p>	<p>✓</p>



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Pregnant	None	<p>Maybe</p> <p>Earlier this year, the government produced <a href="#">separate guidance for pregnant employees</a>.</p> <p>Employers should continue to take a more cautious approach in relation to women who are 28 weeks pregnant and beyond or who have underlying health conditions that place them at greater risk of severe illness from COVID-19.</p> <p>They should carry out the required risk assessments, but where adjustments to the work environment and role are not practicable and alternative work or working arrangements (including working from home) cannot be found, employers should consider suspending on full pay.</p>	<p>✓</p> <p>If the individual is able to (and does) work from home, they will be entitled to their usual pay.</p>	<p>✗</p> <p>Not entitled to SSP.</p>	<p>✓</p>	<p>✗</p> <p>Where adjustments to the work environment and role are not practicable and alternative work or working arrangements (including working from home) cannot be found, employers should consider suspending on full pay.</p>



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<b>Childcare responsibilities</b>	<p>Schools and other childcare settings are currently generally open, save for specific closures due to incidents of COVID-19.</p> <p>Under 18s are now generally exempt from the self-isolation rules, meaning that parents and carers should experience fewer incidents of children being sent home from their childcare setting.</p>	<p>✓</p> <p>Due to the change in the self-isolation rules, even where a child has COVID-19, parents/carers who are double-jabbed are still able to attend the workplace, although it is recommended that they take a PCR test.</p> <p>That being said, where a child is unwell, understandably parents/carers may need to remain at home to care for them. This will fall under the standard dependent leave provisions.</p>	<p>✓</p> <p>Employers should offer home-working if possible.</p>	<p>✗</p>	<p>✓</p>	<p>✓</p>
<p><b>“Scared of returning to work”</b></p> <p>For employees not caught by one of the other categories above, e.g. not extremely clinically vulnerable.</p>	<p>N/a</p>	<p>✓</p> <p>Provided that the employer has followed the relevant <a href="#">Workplace Guidelines on working safely during the COVID-19 pandemic</a>, they can request that employees return physically to the workplace. Please see <a href="#">“Working Safely”</a> above.</p>	<p>✓</p> <p>Working from home should still be considered where possible. The individual will be entitled to their usual pay.</p>	<p>Maybe.</p> <p>Generally, the employee will not have a right to pay unless they reasonably believe they are in serious or imminent danger in their workplace (see blog <a href="#">here</a> for more detail).</p> <p>May be entitled to usual sick pay entitlements if the employee is signed off due to clinical anxiety, i.e. is actually unwell.</p>	<p>✓</p>	<p>✓</p>





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