

The UK Prime Minister's [announcement](#) last night that England will "move to Plan B" in light of the rapid spread of the Omicron variant in the UK is one he had very much hoped not to have to make, but at least it will divert attention away from any festive bash that did not happen in Downing Street last year and who did not do what when they were not at it. "Plan B" refers to Plan B in the government's [Autumn and Winter COVID-19 Response Plan](#) (first issued back in September), which sets out how it intends to help control transmission of the virus during the autumn and winter period. Ordinary usage also implies that it follows the failure of Plan A, but in view of the sudden emergence of Omicron, that would probably not be completely fair.

What does this latest announcement mean for employers? The key change is that people are again being advised to "work from home if they can" with effect from Monday 13 December. At this stage, the advice to work from home appears to be advisory rather than statutory (so guidance rather than law), meaning that employees do not have to and employers are not obliged to make them. Nonetheless, this takes the middle stump out of many employers' efforts to return staff to the office and will reawaken only recently quieted fears around the adequacy of precautions plus vaccinations as a basis for a safe return. It is clearly important that if employees can work from home (even if they might work more effectively in the office), employers should seek to encourage and facilitate this. Presumably, the [Working Safely During Coronavirus guidance](#) will be updated to reflect this change in approach, so it is worth keeping an eye out for this in the next few days to see exactly what it says and how the advice is framed. Until more is known about Omicron, however, that will inevitably be provisional only.

Other changes highlighted in the announcement include the introduction of mandatory masks in most public venues from Friday 10 December, although not in the hospitality sector, it seems. The press release stated there will be exemptions in venues where it is not practicable to wear one, such as when you are eating, drinking or exercising. Again, it would be sensible to keep an eye on the guidance referred to above in relation to what exactly these changes mean for pubs, restaurants, bars, etc.

Subject to parliamentary approval, from Wednesday 15 December, it will be mandatory for people to demonstrate proof of vaccination or a negative lateral flow test via the NHS Covid Pass on the NHS App before being able to access certain large-group settings, including unseated indoor events with more than 500 attendees, unseated outdoor events with more than 4,000 attendees and any event with more than 10,000 attendees. Employers with staff operating at such events will need to ensure that they comply and the change in that respect from good practice to law will very much strengthen the hand of employers nervous about the merits of insisting and redeploying or dismissing those employees and subcontractors who cannot or will not comply, exemptions aside.

A common question from clients this week, even before this announcement, is whether their festive parties should still be going ahead at all. The advice from government ministers and advisers on this to date has been less than consistent. The Prime Minister's initial view at the start of the month was that you should have pretty much the party you want, even as some ministers were moving their departmental events online. One adviser suggested faintly that people might want to steer clear of "snogging under the mistletoe," but that was disowned immediately by Downing Street, presumably to accommodate Matt Hancock. Nothing in today's announcement totally prevents such gatherings taking place and, unless you have a very large event planned (with more than 500 attendees), it would not be caught by the new rules anyway. Equally, however, nothing in today's announcement changes any of the underlying rules and good practices that should already be in place as anti-COVID-19 measures. Although the operator of the event (assuming it is at an external venue) will bear a minimum level of responsibility for the safety of the premises, pretty much everything else will rest on the employer as the organiser of the party.

This means that if employers choose to go ahead with festive parties, lunches, etc., they should be seen to take all reasonably practicable steps to reduce the risk of infection to its lowest reasonably practicable level. This may include a requirement to be fully vaccinated or to provide a negative lateral flow test, even if this is not a strict statutory requirement (again, exemptions aside). Other practicable steps are likely to include dumping the mistletoe; making it clear that no one is obliged to attend if they do not want to; no one should attend if they are displaying any COVID-19 symptoms; reminding everyone about the good sense of social distancing, regular handwashing and respecting the venue's rules; and keeping the noise down a little so that you do not have to stand close to people to be heard, etc.

Consider using masked caterers or nominated staff to serve food and drink to minimise the scope for breathing onto others' food or many people all touching the same bottles, crockery or cutlery. If you have the time, a new risk assessment in light of what we now know of Omicron might be a good idea, but since that is generally acknowledged to be next to nothing, it may well not lead to any changes to your proposed arrangements.

Parliament will debate the new measures next week, with a vote expected to take place on Tuesday 14 December. Interestingly, the regulations will be set to expire six weeks after implementation, with a review after three weeks – a step presumably designed to assuage fears at the more fundamentalist end of the Conservative back benches about the necessity for these new restrictions and how long they are likely to last. It would be a brave minister who would make any promises in that respect, and so the return-to-workplace movement is likely to be set back by a great deal longer than that.

In terms of self-isolation, the rules have already been changed recently in light of the Omicron variant and it is currently the case that anyone who is a direct contact of an individual who has been infected with the Omicron variant must self-isolate for 10 days, regardless of age or vaccination status. In last night's press release, the government stated that it intends to introduce daily contact tests for contacts of confirmed positive cases instead of the 10-day isolation period. Further details are awaited, but in light of the increasing numbers infected by the new variant, this development is likely to be welcomed so as to avoid a repetition of the summer's crippling "pingdemic".

This alert sets out the current position in England. As has been the case with other COVID-19 developments, the position does differ in Wales, Scotland and Northern Ireland. In Scotland, for example, the guidance has already been changed to promote working from home wherever possible.

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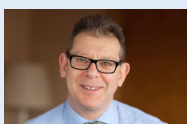
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