

Important Business Law Update April

Published 16/04/2020



The ARAG Business Legal Services website is an online legal document service designed to help you comply easily with a range of regulations and protect your interests when doing business.

Registered policyholders have access to our law guide and free legal documents, the chance to opt-in to receive our topical monthly business bulletin. Our bulletins include important updates in the laws and regulations that might affect your business and include recommendations to help you stay compliant.

■ **Coronavirus: what are your legal obligations?**

The COVID-19 (Coronavirus) pandemic affects every business in the UK and is likely to do so for months – the chances are you've already taken action to respond, but if you haven't (or want to review what you're doing), we've tried to cover some of the issues below. This information is correct as of 9am on 18 March 2020.

■ **Health & Safety: what do you need to do?**

The law requires you to protect the health, safety and welfare of your staff (including non-employees, such as contractors) and prevent harm to any visitors to your offices and buildings. There's a legal obligation on staff to cooperate with you on this.

Washing facilities

You're legally required to provide adequate toilet and washing facilities. This includes:

- **Enough toilets and washbasins for those expected to use them**
- **Hot and cold running water**
- **Enough soap or other washing agents**
- **Hand towels (preferably disposable) or a hand-dryer**
- **Toilet paper**
- **Drinking water**

Individuals with disabilities must be able to easily access the facilities.

Create a health and safety action plan

1. Select someone to be responsible for monitoring the situation and reporting to management with regular updates (see Useful links at the end of this article). Consider signing up to receive updates by email or RSS feeds.
2. Conduct a risk assessment and monitor the risks posed by COVID-19 to anyone. Individuals at particular risk include those:

- **With compromised immune systems;**
 - **Over 70;**
 - **With certain pre-existing health conditions, e.g. cardiovascular disease, respiratory conditions or diabetes;**
 - **Who are pregnant.**
3. Ensure any control measures identified by the risk assessment comply with government advice. Take steps to reduce the risk to vulnerable staff identified by the risk assessment. If necessary, suspend pregnant employees on medical grounds. Note that:
 - **If a pregnant employee is on paid suspension or off sick in the 4th week before the expected week of childbirth, their statutory maternity leave will start early.**
 - **You may have a duty to make reasonable adjustments for disabled staff.**
 - **Regularly pass on updates to staff and give them guidance on issues like:**
 - **What the symptoms are and what they should do if they have them;**
 - **When and how you should be notified if they've been diagnosed with COVID-19 or in contact with someone who has;**
 - **What you require them to do after being notified.**
 5. Ban all non-essential business travel. Use other options, such as video conferencing, if possible.
 6. Ensure managers know how to spot possible symptoms of COVID-19 and are clear on any relevant processes, such as sickness reporting and sick pay.
 7. Decide what steps you'll take if a staff member infected with COVID-19 attends the workplace. You should:
 - **Immediately communicate this to all staff (if possible, don't name the person for data protection reasons)**
 - **Confirm if the workplace will close (consider doing this to protect staff).**
 - **Instruct staff to take work home with them (if possible)**
 - **Contact your local public health authority in England, Wales, Scotland or Northern Ireland. They'll conduct a risk assessment and tell you what to do next.**
 8. Increase the frequency and extent of cleaning in the workplace. Focus on shared areas and areas that may not often be cleaned, like doors and chair handles, light switches, keyboards and mice,

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telephones, desks and worktops, photocopiers and bannisters.

9. Try to maintain supplies of soap, cleaning products, disinfectants and cleaning materials.
10. Give staff access to tissues and antibacterial hand gel, wipes or sprays. Try to maintain supplies.
11. Keep records of the number of staff who have:
 - **Been diagnosed with COVID-19**
 - **Been in contact with someone who has been diagnosed**
 - **Shown potential COVID-19 symptoms, but haven't been diagnosed**

For data protection reasons, don't collect more data than you need and use appropriate measures to safeguard it.

12. Ensure staff contact and emergency contact details are up to date.
13. Display COVID-19 information in the workplace and visitor areas.
14. Advise visitors to follow your guidance on preventative measures.

■ What do you need to do to let staff work home?

The government has asked the public to work from home where possible. If you're able to allow this, consider the following:

Health and safety

You have the same duties as when they are in the workplace (see above), though they must take reasonable care of their own health and safety. Remind them to take breaks and not overwork or do anything that may risk their health and safety.

Ordinarily, you'd visit them at home to perform a risk assessment, but that's not practical in the current situation. You could ask them to assess themselves by sending them a questionnaire about their workplace – look at their answers and tell them what action to take (if any).

Work equipment

Confirm who's responsible for providing work equipment. This can depend on whether they already have the necessary equipment.

Otherwise, you'd usually need to provide it, particularly if there are security or legal compliance risks, or if they need specific items. Let them know:

- **That any equipment you provide is your property, must be looked after, and returned to you when no longer needed**

- **How costs incurred for personal use and work will be split, e.g. phone bills, and how to reclaim them**

- **What costs you won't be responsible for, e.g. energy bills.**

■ Security and confidentiality

Tell them how to keep equipment secure (e.g. installing security updates), and how to maintain confidentiality, particularly if they're in customer-facing roles.

Give copies of your IT policies, and policies on compliance (e.g. data protection, bribery and corruption) and confidentiality.

Note that the Information Commissioner has advised that data protection laws don't prevent home working, but that "you'll need to consider the same kinds of security measures for homeworking that you'd use in normal circumstances".

■ Other considerations

Inform staff that their line manager will remain responsible for supervising them and their performance measures and objectives will remain the same. Do you need to pay staff who aren't working due to COVID-19?

■ Refusing to come to work

Staff whose job allows them to work from home, should be allowed to do so. Where you can't offer homeworking and your workplace remains open, you may find that some staff will refuse to come in even if they're not self-isolating on medical advice.

Try to be flexible and look for ways to make them more comfortable about working. E.g. move their workspace to somewhere less busy; allow them to commute outside peak hours.

If nothing changes their view, you could (but don't have to) let them take the time away as unpaid leave or ask them to take their annual leave. If there's no valid reason for their refusal, you could take disciplinary action – but it's a last resort and you should get legal advice first.

■ Sick or self-isolating

You should pay sick pay to anyone who isn't working because they've got COVID-19, or been told to self-isolate by a doctor or NHS 111 (and can't work from home).

The UK government has temporarily changed statutory sick pay (SSP) arrangements for employees and workers in this situation. SSP will be available to employees and workers (who earn an average of at least £118 per week) from the 1st day of absence: an extra 3 days of payment. There'll be a new type of fit note for these purposes.

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Employers with fewer than 250 employees (as of 28 February 2020) can reclaim SSP paid for COVID-19-related absences. You'll be able to reclaim up to 2 weeks' SSP for each eligible individual.

You must maintain records of all staff absences. Staff won't be required to give you a GP fit note, but consider asking for it anyway.

The repayment scheme will start the day after the new regulations come into force: it's not clear if they will allow for retrospective claims, so employers paying SSP now may miss out. Those not eligible for SSP (e.g. self-employed contractors or staff earning less than £118 per week) can claim Universal Credit or Contributory Employment and Support Allowance for the duration of the outbreak. The requirements for each will be temporarily relaxed.

■ What happens to staff if you need to close?

If your financial situation means closure is inevitable, look at ways of avoiding employee redundancies, such as ending contracts with any self-employed staff and casual workers or by moving staff to any parts of the business that are unaffected by the present situation.

If your closure is temporary, you could consider laying-off employees, i.e. temporarily stop giving them work (usually as a way of avoiding redundancies). To do this, you must have the right in their contracts, or in any collective agreement. They can be laid off without pay if their contract says so, or they must receive statutory guarantee pay from you.

Only keep them laid off for less than 4 continuous weeks (or 6 weeks if no more than 3 of those 6 weeks is taken continuously), or they'll have a right to ask for a statutory redundancy payment. Seek legal advice before taking this step and read the Acas guide on layoffs and short-time working.

An alternative to lay-off is to allow employees to take their annual leave. You could also offer this to non-employees (workers), or let them take unpaid leave to avoid being made redundant.

■ Do customer/supplier contracts need to be honoured?

If you have a contractual obligation that you can't meet because of the outbreak, check if your contract contains a force majeure or material adverse change clause.

These allow you to freeze a contract or end it, if events are beyond your control. But the event must be listed in the clause and you must meet any conditions attached to it. Consumer contracts with these types of clauses can be deemed unfair.

If you can't rely on such a clause, you could argue that the impact of COVID-19 has frustrated the contract. This is when a change in circumstances makes it physically or commercially impossible to perform the contract, or would make the performance very different from the original intention. This would mean you'd be cleared from your contractual obligations. This could apply if, for example, you have to perform the contractual obligation in a region with a state-imposed lockdown.

Get legal advice before attempting to use either of these.

Check your insurance cover if you have to cancel an order or event. Review the policy to see if there's cover for your losses and liabilities, such as refunds to customers and pay-outs to suppliers where contracts cannot be cancelled without payment.

Useful links

- [UK government coronavirus hub](#)
- [Number of coronavirus cases and risk in the UK](#)
- [Acas guidance](#)
- [How to wash your hands](#)
- [Deep cleaning/decontamination of the workplace](#)
- [Poster - Catch it, bin it, kill it](#)
- [World Health Organisation](#)
- [NHS Wales](#)
- [Gov.scot](#)
- [Northern Ireland \(Department of health\)](#)

How we can help

We're working to create new documents and guidance to help your business deal with the outbreak during the coming weeks and months. Look out for this soon on the ARAG Business Legal Services website.

New employment laws in effect from April

It's easy to forget in the current climate, but there are planned new laws due to come into force in April, to summarise:

- **From 6 April, employers in Great Britain need to give more written information to new employees and workers, and do so earlier (by their start date).**
- **Parental bereavement leave will give parents the right to 2 weeks' leave if they experience the death of a child under 18, or a stillbirth, after 6 April.**

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- **Minimum wage and other statutory pay rates increase for 2020/21.**
- **The holiday pay reference period for workers without fixed hours or pay increases from 12 weeks to 52.**
- **Swedish derogation ends: agency workers must get the same pay and basic working conditions as comparable workers after 12 weeks' continuous service, even if they're paid by their agency between assignments.**
- **Employers with 50+ employees must inform and consult employees before making changes that affect them, if 2% of the workforce request it (it was previously 10%).**

How we can help

We've updated our ARAG Business Legal Services content to comply with these changes. In particular our Employment statement, Employment agreement, Fixed-term employment agreement, and Zero-hours worker agreement now meet the new minimum information requirements. We've also added a Parental bereavement leave policy to our Employee handbook.