

*In light of the unprecedented measures that the UK government has put in place to address the Coronavirus pandemic, **George Hepburne-Scott** provides an authoritative template of the relevant legal considerations for employers with a particular focus on their duty to employees under Health and Safety at Work Act 1974 (“HASAWA 1974”).*

### **What are the impacts of Coronavirus on employer’s duties under common-law and the HASAWA 1974?**

It is an employer's duty to protect the health, safety and welfare of their employees and other people who might be affected by their business. Employers must do whatever is reasonably practicable to achieve this. Employers have duties under health and safety law to assess risks in the workplace.

Specifically, all employers have a common-law duty of care to their employees. This means all employers are required to take all necessary precautions to ensure the physical and mental wellbeing of their staff

In addition, under the Health and Safety at Work Act 1974 (HASAWA) every employer has a duty to ensure that, so far as is reasonably practicable, the health, safety and welfare of employees are protected.

In response to the Coronavirus pandemic, Public Health England has issued advice on social distancing. It seems that, in light of this advice, there is a risk to health and safety if people from different households come within 2m of each other. It is therefore reasonably arguable that Coronavirus poses a possible risk to persons coming within 2m of each other.

It is worth noting that the Chief Medical Officer, Professor Chris Whitty, has repeatedly stated that those infected with Coronavirus may be asymptomatic i.e. have no symptoms. This means that the risk can come in the form of close contact with a person who has no symptoms and therefore no knowledge of their infectiousness.

The presence and/or risk of Coronavirus will require every employer to assess the risk of infection to employees and to put in place such measures as are reasonably practicable to avoid them and/or to reduce them to as low as is reasonably practicable.

Section 2 of the HASAWA 1974 places a duty on employers to assess and manage risks to their employees and others arising from **work** activities '*so far as is reasonably practicable*'.

Employers must also make arrangements to ensure the health and safety of the workplace, including making arrangements for emergencies, adequate information and training for employees and for health surveillance where appropriate.

Employees must work safely in accordance with their training and instructions given to them. Employees must also notify the employer or the person responsible for health and safety of any serious or immediate danger to health and safety or any shortcoming in health and safety arrangements

This overall duty imposed on employers by s.2 of the HASAWA 1974 is implemented by the Management of Health and Safety at Work Regulations 1999 ('the Regulations'), and in particular the risk assessment methodology required under Regulation 3 to carry out 'a suitable and sufficient assessment of (a) the risks to the health and safety of employees to which they are exposed whilst they are at work, and (b) the risks to others arising out of or in connection with the conduct by him of that undertaking'.

Employers have to undertake a risk assessment of the risks *so far as is reasonably practicable*. The risks that need to be assessed are those that arise from the workplace conditions including now the risk of (a) asymptomatic infectious persons be they co-workers, customers, patients or others, and (b) infection from viral deposits from such persons on surfaces in the workplace. However, this duty also extends to the workplace of homeworkers *so far as is reasonably practicable*.

The core relevant risks in relation to Coronavirus are the risks of infection of this highly infectious and potentially fatal viral disease. The virus is transmitted in the air via water droplets from infected persons and enters the body through the eyes, nose or mouth. It can also be transferred from a surface by touch and then touching the eyes, nose or mouth. In confronting the risk of transmission, different businesses will differently assess the risk of transmission, and the risk may well not be the same in different parts of those businesses. For example, hospital staff who are exposed to the risk of significant exposure to the virus from infected patients will require very stringent protection measures such as Personal Protective Equipment ('PPE') i.e. face-masks, disposable gloves and disposable clothing etc which will itself be subject to

stringent methods as to (a) when, where, and when this is put on, and (b) disposal/disinfection once used.

On the other hand, an office worker in an administrative business (if not homeworking) shall most likely not require face masks and medical PPE because social distancing together with regular handwashing, office cleaning and instructions on such matters and about what to do if symptoms develop etc, may well suffice.

Similarly, it may be easier to separate office workers within an office and or have them work from home, than those who are operating plant machinery or in a factory setting. I suggest that for all environments, the provision of good handwashing facilities will be an important control, together with rules on (a) regular and comprehensive hand washing, (b) how social distancing is maintained (as far as is reasonably practicable) within the building generally and in lavatory/washing facilities, (c) what to do when sneezing or coughing i.e. cough or sneeze into a tissue which should then be immediately throw away, and (d) what to do if any symptoms consistent with Coronavirus manifest i.e. immediately self-isolate and inform a designated person. Also, a regular and enhanced programme of cleaning within the workplace is likely to be necessary with a particular emphasis on places/objects people touch with their hands i.e. regular 'deep cleaning'.

Furthermore, Regulation 10 requires an employer to provide information for its employees which should be "*comprehensive and relevant*" on the risks to their health and safety, together with preventative and protective measures. This information should include a summary of the government's health and safety advice re Coronavirus and this information ought to include (a) the duties on employees to conduct regular hand washes, (b) duties on employees to maintain social distancing at all times *so far as is reasonably practicable*, and (c) all of the particular risks that have been identified and assessed within that particular work setting. Ideally all new and existing employees should be provided with a 'Coronavirus-pack' setting out all such matters in a clear and comprehensive way.

Many employees are working from home in response to the pandemic. Health and Safety Executive ('HSE') Guidance provides that the same health and safety responsibilities exist for an employer whose employees work from home as for those that work at an office, courier depot, factory, supermarket or other place of work. Particular matters that will need to be considered as part of the employer's overall risk assessment will include the nature of the work

the employee will be doing, how often they will take breaks, what contact they will have with others, and what measures are in place to manage stress etc.

Helpfully, as of 7 April 2020, the Department for Business, Energy & Industrial Strategy, has issued guidance on '**Social distancing in the workplace during coronavirus (COVID-19): sector guidance**' and specifically, advice for employers on social distancing during coronavirus (COVID-19). This can be found at <https://www.gov.uk/guidance/social-distancing-in-the-workplace-during-coronavirus-covid-19-sector-guidance>

It is worth all employers considering this guidance and implementing it as far as is reasonably practicable. It is anticipated that the HSE will begin to issue enforcement notices where such guidance is not being followed.

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