

UK Employer COVID-19 Return-to-Work and Reporting Obligations Under RIDDOR

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The UK national government has announced, in relation to England only, a programme of progressive easing of current lockdown measures due to Coronavirus Disease 2019 (COVID-19). With respect to working arrangements, the guidance provides that:

All reasonable steps should be taken by employers to help people work from home. But for those who cannot work from home and whose workplace has not been told to close, our message is clear: you should go to work.

This represents a change to the previous guidance for England, which provided that individuals who could not work from home should not go to work (to the extent they were not deemed to be key workers) unless it was absolutely necessary for them to do so.

To allow employers, employees, and self-employed persons to work safely following the easing of the restrictions (and as those restrictions are eased further), the government has produced a [suite of guidelines that should be taken](#). These cover a range of activities for people who work in or run [offices](#), [factories](#) and [shops](#).

One important point not emphasised in the guidance, but which may become more relevant as more workplaces start to reopen, is the obligation for employers (or, if different, the person having control of a work premises or activity) under The Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 2013 (RIDDOR) to make a report to the Health and Safety Executive when:

1. an unintended incident at work has led to someone's possible or actual exposure to COVID-19 (which must be reported as a dangerous occurrence);
2. a worker has been diagnosed with COVID-19, and there is reasonable evidence that it was caused by exposure at work (which must be reported as a case of disease); or
3. a worker dies as a result of occupational exposure to COVID-19 (which must be reported as a work-related fatality).

It is apparent that the circumstances triggering a reporting requirement are both wide and vague. For example, it may be difficult for employers to determine with certainty whether an individual has been actually or possibly exposed to COVID-19 “at work”, or what counts as reasonable evidence that an individual contracted COVID-19 (to the extent that a definitive diagnosis may be unlikely to be obtained) as a result of an exposure at work.

However, where an employer opts not to make a report under RIDDOR, the employer should retain documentary evidence of the reasons behind this decision and the facts upon which the decision rested. This may help in the event of a challenge to the employer’s reporting obligation.

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