



HUMAN RESOURCES

RETURNING TO WORK AFTER COVID



CONTENTS

-
- Main Challenges faced by HR Departments
 - Return to work
 - Solutions
 - Disciplinary issues
 - Resolution
 - Decision
 - Whistleblowing Protection



COVID 19

CHALLENGES FOR HR

Paved the way for one of the most prominent workplace transformations of our lifetime. How we work, shop, learn and communicate has changed forever.

We are now moving from a response phase into a recovery phase.

COVID-19 forced many businesses into working from home – and over two-thirds (74%) of businesses plan for their employees to work from home permanently once the pandemic subsides.

RETURN TO WORK

I'm clinically vulnerable

I'm worried about catching the virus

I just prefer homeworking

I need to be home for my children

Although clinically extremely vulnerable (CEV) people can now return to work. They still need to take extra precautions. If your employee has a serious health condition or had to shield during lockdown. It's understandable they're anxious. You should allow them to work remotely if you can. If that's not possible ask them how you can reduce risks in the workplace and listen to their safety concerns.

Worried about catching virus. Ask them if there are any risks they are particularly concerned about – understanding their specific worries means you can do more to support them. Carry out a risk assessment – once completed – share with your team. Being open about covid measures should ease worried about returning.

If it is simply a matter of preference or because it is more convenient as an employer you are entitled to refuse – refusal to work from your usual place of work is probably a breach of their employment contract - could be misconduct –justify disciplinary action and dismissal. However, if due to a disability or safety concerns could be discriminating if they refuse a request to work from home.

As parents stayed at home, they have saved a lot of money on childcare. So its not surprising they want to continue homeworking. You could consider flexible remote work during school holidays. This could have the benefit of preventing annual leave clashes as parents won't need to book the same days off.

SOLUTIONS

- Understand why your employee is reluctant
- “Hybrid” return to work
- Plan a phased return to the office
- Speak to your staff now to start planning ahead

Why is employee reluctant to return? Have a chat see what’s holding them back from the office – stay calm and be supportive about any concerns, your next steps will depend on what they say.

Could you consider a hybrid return to work. This means staff have the option to split their time between the home and the workplace. There are a number of benefits:-
A less crowded workplace can reduce the risk of Covid 19 – Flexible remote work could prevent your staff from leaving – it could boost productivity and staff morale.

Phased return – opening up for a small number of employees, allowing staff to gradually increase their days in the office.

Still not sure – speak to your staff now to start planning ahead. This gives you time to plan any adjustments and address staff concerns

CAN I DISCIPLINE
STAFF FOR NOT
RETURNING TO
WORK AFTER
LOCKDOWN?

REMOTE WORKING IS NOT RIGHT FOR MY BUSINESS

You've done everything you can to make your office COVID – secure. You've taken extra steps to protect staff with health conditions and after thinking about it have decided that remote working is not for your business. If staff are still refusing to work for non health related issues disciplinary action might be your only option. Depending on the circumstances this could mean withholding pay or issuing a written warning.

Dismissing staff should be your last resort, as this could lead to unfair or constructive dismissal claims.

Remember, staff who believe that the workplace poses a genuine risk (that they can't reasonably avoid) can't be disciplined. And when staff are pregnant or have a disability, they have protected characteristics – so disciplining these employees could lead to a discrimination claim.



LOOK AT INDIVIDUAL
CIRCUMSTANCES

RESOLUTION

Look at individual circumstances

An understanding of why the employee doesn't want to return needs to be obtained "first and foremost". "Employers are just going to have to be systematic and really probe into employees' individual circumstances and understand exactly why and what the reasons are so you can work around it. It shouldn't be a surprise because most of you will already have a sense of what their workforce feels about returning.

It all boils down to reasonableness and people have differing notions as to what is deemed reasonable and appropriate behaviour."



FACTOR IN VARIOUS
CONSIDERATION BEFORE
MAKING A DECISION

DON'T TAKE A BLANKET APPROACH

Don't take a blanket approach

As such to take a one-size-fits-all approach when dealing with employees reluctant or refusing to return to work could be “really misplaced. It is not easy for some people to return to work, and that employers must factor in various considerations before making a decision.

Those considerations could be living with someone who is shielding, a single parent who cannot secure childcare or underlying health conditions.

“An employee cannot be at a detriment for refusing to return to the workplace where they have serious health and safety concerns.

From a legal perspective if an employer decided to discipline or reprimand, they would be on tricky ground,

PROCEED CAUTIOUSLY

- A balancing act of employee and employer rights could make for precarious legal ground

Proceed cautiously with disciplinary or dismissal action

"An employer can impose rules or make requests, but the flashpoint comes if the employee refuses to comply and calls the employer's bluff,"

"So what we've got is a relaxation of the employer's contractual right to insist the employee attend the workplace,"

"In these circumstances it would be unreasonable to force employees and it would infringe other rights of the employee such as health and safety. You have all these different rights and it's a case of trying to balance them and work out which takes priority in any circumstances."

"Don't rush into disciplinary action or dismissal. It's going to be very challenging to take action, especially if the employee has personal circumstances that prevent their return."

MAKE A WELL
INFORMED
DECISION

Does your
employee have
reasonable ground
for refusing?

Make a well-informed decision

Do not jump to conclusions about an employee's ability to return to work problem free,

If an organisation has followed all government guidelines and ensured the risk is minimised for employees, but they still refuse to return, you could start disciplinary proceedings, but think very carefully about this. then the business also needs to be prepared to conclude a staff member doesn't have reasonable grounds. The employer should then think very carefully about how to approach disciplinary proceedings, she says. Because if we go back to - hey are refusing on the grounds of not having childcare because of schools remaining closed, then disciplinary action would be precarious."

REMEMBER WHISTLEBLOWING PROTECTIONS

- Employees who raise concerns (in the public interest) about health and safety risk in the workplace could also exercise whistleblowing rights

Remember whistleblowing protections

Employees who raise concerns (in the public interest) about health and safety risk in the workplace could also exercise whistleblowing rights. This is going to be a “whole other route of protection for employees”.

“If they put their concerns for their safety in writing then that could be considered a disclosure against health and safety concerns.

However, if you have instigated a proper risk assessment and implemented measures based on the risk assessment control measures, that protective disclosure would probably fall apart if they had no grounds, but it doesn't stop them doing it.

“Another angle to that is you can be reported to the Health and Safety Executive,” she adds. “They've just received £14m of funding, presumably on the expectation that there are going to be more reports of these types of situations.

So there are routes via which employees can raise concerns.

But likewise if they are malicious or unfounded then the employer shouldn't be at risk.”



ANY QUESTIONS?

Don't take a blanket approach

As such to take a one-size-fits-all approach when dealing with employees reluctant or refusing to return to work could be “really misplaced”, says Palmer. She highlights that it’s not easy for some people to return to work, and that employers must factor in various considerations before making a decision.

Those considerations could be living with someone who is shielding, a single parent who cannot secure childcare or underlying health conditions.

“An employee cannot be at a detriment for refusing to return to the workplace where they have serious health and safety concerns. From a legal perspective if an employer decided to discipline or reprimand, they would be on tricky ground,” adds Palmer.

What we can help with

- Reviewing contracts and handbooks
- Recruitment
- Redundancy
- Disciplinarys, Appeals & Investigations
- Employment status
- Difficult conversations
- Employee wellbeing
- Training
- Absence management

The list goes on!



Get in touch

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Preventing People Problems

Personalise by including details and image of yourself