



Covid-19 Claims Defensibility

Introduction

As the UK progresses through its Covid-19 Recovery Strategy, some facilities/organisations and businesses are reopening, whilst others are undertaking voluntary or enforced lock-downs.

With that in mind, a number of guidance papers have been written and are being frequently updated by the Government, to provide practical advice to organisations to assist in implementation of risk assessments and action plans. However, guidance is non-statutory and does not supersede employers existing legal obligations relating to health and safety, employment or equalities.

Covid-19 has created a situation whereby organisations may begin to see both Employers' Liability and Public Liability claims relating to infection, changes to working practices and claims arising from home working. This guidance note seeks identify and suggest actions that organisations can take to demonstrate that they have taken suitable advice, have appropriate controls and not acted in any way which could be deemed negligent.

An organisation which is able to evidence it has actively remained informed of government advice and, more importantly, is able to evidence its interpretation and application of this general advice should be appropriately positioned to defend claims brought against it. In addition, proving causation of infection is likely to be difficult.

The Issues

Both globally and in the UK, there have been outbreaks of Covid-19 within numerous workplaces. As the country continued to open up, areas have had to return to lockdown and organisations including the HSE are now investigating working conditions. In working environments such two-manned vehicles, or the food processing industry/factories where processing lines are operating, workers are often doing their job in close proximity to others which can present challenges to social distancing. The noise of operating machinery can lead people to communicate at higher volume and at close range to hear conversations.

Arrival at work, departure from work and break times would, under normal circumstances, be where gatherings of workers in confined areas such as changing rooms or canteens would take place. To reduce the risk of transmission, opting to stagger working and break times has been put forward as



guidance – but when it comes to a claim, an employer may not only be challenged on methods of prevention, but also its documentation control and review cycles.

Putting On A ‘Defensibility Hat’

A key part of claims defensibility relates to taking proactive measures. Taking time to reflect on the key questions that may be asked in the event of a claim and what the law and authorities such as the HSE deem reasonable in respect of duty of care to both employees and the public.

If a Covid-19 related claim was made tomorrow, would you be ready to defend that claim on the basis of any newly implemented measures, changes to the working environment?

Furthermore, would you have documented the steps taken, which you could use to demonstrate that your organisation has gone as far as, or beyond, what is reasonably practicable?

Identification

Firstly, has your organisation identified what it can do be Covid-secure at the current time?

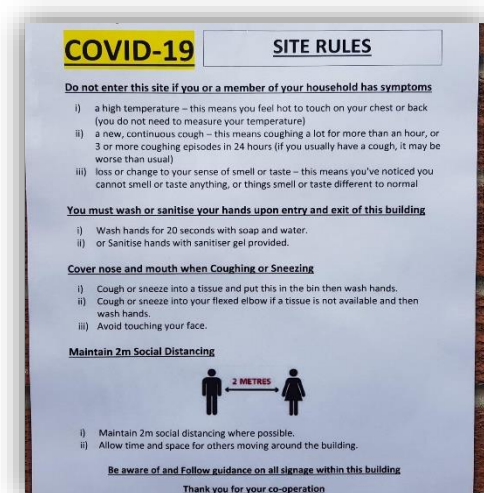
Have you checked for particular guidance from the Government relevant to your sector, or accessed the guidance provided by the HSE and any professional accreditation bodies? – Has relevant content been understood?

Things To Do / Consider

If the organisation has not already done so, then completing a Covid-19 Risk Assessment should be near the top of the list. This document should not be treated as a one-time tick box exercise, and should be regularly reviewed to ensure it is in line with any updated guidance in the event of changes, and a record of all versions kept on file to demonstrate these changes and evidence when they were made.

Consider an interim review of employee records to ensure all contact details are up to date in case of a requirement to communicate messages in the event of an outbreak in the workplace. Furthermore, when workers do return to work, provide them with short health questionnaires which can be recorded.

Many organisations will adapt workplaces to encourage social distancing, via the use of plastic screens and other methods. Photographs (date stamped) of any such works undertaken should be kept, along with examples including the installation of new hand hygiene stations, extra bathroom facilities etc.



Signage around the workplace to inform workers of correct procedures for entry to areas, hand hygiene and the importance of social distancing also plays a key role, and where English may not be the first language of workers, consider the use of translated versions. Once again, photographic documentation of signage displayed, particularly in communally used areas such as canteens will add to a portfolio for future reference.



Another proactive step includes having a dedicated Covid-coordinator, responsible for ensuring workers are completing any necessary checks, and who can communicate with those who need to be informed for track and trace purposes in the event of worker(s) testing positive for Covid-19.

A topic closely related to Covid-19 has been the availability of PPE. There is a global demand for various items, and delivery times may be longer than normal. To that end, organisations may wish to assess what items of PPE workers have, what they require during the current situation and what they require to order, being mindful further potential shortages cannot be ruled out. Once again, documenting what has been issued to workers and signature of receipt should be retained, as is good practice with any distribution of PPE.

Risk Management Advice

Communication plays a vital role, and with the operation of track and trace system underway it is important that instructions are both clear and easily understood. It is therefore advised that Covid-19 risk assessments are reviewed weekly and where no changes are required an opportunity is taken to keep workers informed and remind them of their role to play.

Workplaces for many will look different upon return for both staff and customers. If a new one-way system is now in place and other distancing arrangements complete, consider taking the opportunity to record a short video of this, available to be shared, so that people have an understanding of measures in place before they arrive.

Checklist

To assist clients, Protector has put together a checklist of suggested measures for organisations to consider which can be applied as appropriate. This checklist covers both physical control mitigations, training and suggested recording of documents which can be referenced in the event of a claim being made. The checklist is provided on the following pages.

Covid-19 – Return to work checklist

Control Mitigations

Control	Implemented (Yes/No/NA)	Date Completed
Covid-19 Risk Assessment Completed		
Perspex (or similar) screening for physical distancing		
Floor markings for physical distancing with visible signage displayed		
Additional PPE issued (masks, visors, gloves, aprons, sanitiser)		
Hand hygiene stations introduced with signage guidance on good practice		
Visible signage displayed in alternative languages		
Covid-Coordinator nominated to communicate messaging with internal and external stakeholders in event of positive testing worker		
Marshals nominated to ensure physical distancing and controls being adhered to in the workplace and communal areas		
Return to work health questionnaires for workers		
Temperature testing on arrival to work for workers		
Weekly meetings with workers to keep them informed of changes		
Mental health and wellbeing strategy in place for Covid-19		
Vulnerable workers contacted to identify procedures to manage needs		
Enhanced cleaning regimes to sanitise communal facilities / work areas		
Protocols in place in the event of an outbreak (inc testing, track & trace)		
Staggered working times to limit number of workers on site		
Exclusion of work which puts workers in high risk zone		
Where possible, employees holidaying abroad to work from home for 14 days upon return due to actively changing country quarantine list		

Training

Training type	Implemented (Yes/No/NA)	Date Completed
Return to work video – showing workers any changed layout & hygiene arrangements prior to arrival		
Return to work Covid-19 induction – introducing new rules /measures		
Choosing suitable PPE - Instructions Why/When/How it should be worn		
Employees signed that training received, understood and they will follow new instructions/working practice		
Introduction of cohort working groups to promote physical distancing		
Manual / E-learning module on Covid-19 with questions provided		
Issue copies of both government guidance and internal Covid practice to workers		
Ensure any training materials /sessions are recorded and attendees sign to confirm they have received training and understood message		
Questions/quiz or similar to verify persons have understood training		
Regular refresher training		

Document Recording / Evidence

Document	Implemented (Yes/No/NA)	Date Completed
Formal policy statement, signed/dated by Senior management for all staff, visitors, contractors highlighting legal compliance, the company aims and commitment to protecting the wellbeing of all persons on the premises		
Completed a specific Covid-19 risk assessment – weekly updated and recorded retention of history and different file versions		
Documentation of nominated persons to co-ordinate Covid-19 related safety related activities		
Inspections by marshals should be documented to demonstrate that checks are being undertaken and to record outcomes		
Update employee records for the communication and track & trace purpose		
Before and after photographic evidence of physical adaptations for Covid		
Photographs of visually displayed signage		
CCTV recording internally / externally		
Documented increased cleaning regimes		
Documented changes of any working practices to ensure does not increase risks in other ways (i.e. risk of collision / being struck by vehicles)		
Records of worker completed health questionnaires		
Records of meetings with workforce documented and signed by attendees		
Record PPE purchasing history, and any specific PPE provided to workers along with instruction given in its use – records of PPE collections via signature		
Documentation of Mental Health and Wellbeing Strategy for Covid-19		
Documentation of cohort working groups if implemented		
Provide copies of latest guidance available for workers to review at any time by Government / Local Authority / HSE		
Document any testing of procedures prior to implementation – note all findings including measures which do not become used and why		
Document procedure in event of a positive testing employee / outbreak		

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