

HR & Health and Safety Considerations for A Return to The Workplace – Employers Responsibilities

by Sarah Fagan

Recent warnings of the emergence of new variants of Covid-19 and cases of Monkeypox being reported across the globe are a stark reminder of how easily our lives can be impacted by viral diseases. While the numbers becoming infected are relatively low, vigilance is advised. However, we have proven our collective ability to adapt in difficult circumstances and the willingness of employers and employees to work together to meet challenges presented by any new health crisis.

Our approach when supporting businesses with their health and safety requirements was not to look at Covid-19 in isolation or as a temporary issue. It should be considered as another workplace hazard that could cause illness. Certainly acknowledge the serious impact but take the time to analyse your businesses' ability to manage the operational disruption and assess as part of your business continuity plans and systems.

For those organisations with active and dynamic health and safety management systems in place, Covid-19 was simply another exercise in risk assessment albeit a significant one and most likely required minimal additional resources.

However, businesses with little or no systems in place, managing the impact of Covid-19 was a real wake up call. Not only did these businesses have to address Covid-19 but they also had to address all risks associated with the widespread impacts across operations, employees, suppliers, customers, logistics, etc. While this would have been a steep learning curve for many, the result is that they now have tried and tested systems in place that can meet any new crisis with relative ease.

There has been definitive change to the employment landscape accelerated as a consequence of the pandemic. New ways of working, employee health & wellbeing and

ensuring compliance with evolving public health advice shaped business strategies over the two-year period. But now in post-pandemic world, what should be the priority considerations for employers.

New working models

The Government's Right to Request Remote Working Bill 2022 is expected to be enacted by summer recess demonstrating its commitment to remote working. The recently published draft scheme for the Bill provides a legal framework around which requesting, approving or refusing a request for remote work can be based. It states that any employee with six months employment can submit a remote working request. Employers must respond with its decision within 12 weeks. A list of 13 reasons for which employers can decline a request was also published. However, any refusal by an employer to a request can be appealed to the Workplace Relations Commission (WRC).

Implementing new working models that meet the business needs and support employees has been proven to be broadly successful. Organisations have now had the time and opportunity to assess the pros and cons of remote and hybrid working relative to their business and develop a model that works effectively. Our most recent HR Barometer Report found that the average percentage of the workforce

working remotely at least one day a week is 48%, with 19% working remotely full-time.

There are a number of factors influencing an employer's decision to introduce or maintain remote working. Eight in ten (81%) organisations state 'Retention' as the main influence with nearly six in ten (59%) using remote working to attract talent. And certainly, we are seeing the real need to develop and adopt robust retention strategies as a means of retaining key skills and talent, one which requires a degree of investment on the employer's part.

While developing a remote work strategy for their business, employers need to take a considered approach, engage with employees and their representatives and consider the business objectives. They should also look at businesses in their sector or those that would be competing for the same talent to see what they are doing in terms of remote working.

Employee health, safety & wellbeing

An increased focus on the health and wellbeing of employees was another positive to come out of Covid-19. Employers clearly understood their responsibilities and acted accordingly by introducing initiatives and programmes specifically aimed at supporting employees. We can expect that this will continue given it has been shown that promoting

health and wellbeing in the workplace helps improve employee engagement, enhanced productivity and retention among others.

Under the Health, Safety and Welfare at Work Act 2005, employers must provide a safe place to work, provide safe equipment to carry out their tasks and deliver training and instruction appropriate to the task and equipment.

The post-pandemic return to the workplace provides an opportunity for employers to assess their compliance with these responsibilities and how that impacts any changes to their place of work or working practices implemented during Covid-19. Considerations of blended workplaces must also factor into the obligations of employers to fully understand the requirements from a remote or home-based setting in particular where a more permanent decision is being made in relation to working practices.

Refusing to return to the workplace

Employers can expect some employees to refuse or be concerned about returning to the workplace. According to the HR Barometer Report 6.1, just over four in ten (41%) organisations stated that they had



experienced an increase in short-term employee absence due to 'Anxiety returning to the workplace'.

While remote working was a temporary public health measure that has been lifted, employers should seriously consider any refusal or reluctance to return to the workplace by engaging with the employee to identify the concerns and show they are unfounded or have been addressed. If shown to be founded, an employer is obliged to put measures in place to provide a safe place to work for that employee.

DSE Training and Ergonomics Assessments

When businesses implemented remote working at the start of the health crisis, remote DSE training and assessments were deemed acceptable given travel restrictions, etc. However, for employees who have returned or will be returning to the workplace in the coming months, in-person assessments should take place again.

Covid-19 and other future vaccines

The rules around vaccines and employees have not changed; employers are not permitted to ask if an employee is vaccinated or request that they get vaccinated (there are limited exceptions). Therefore, it is crucial that employers insist that all employees follow the safety procedures that have been put in place whether they are vaccinated or not.

Equally, employees have responsibilities under legislation to work with their employer to protect themselves and their colleagues from potential risks; this could reasonably include the risk of Covid-19 infection.

There is little an employer can do if an employee refuses to get the vaccine. However, understanding their concerns is important and finding solutions that meet the business needs without infringing on their rights is crucial in managing their integration into the workplace.

Conclusion

Under legislation, employers are obliged to provide a safe place to work for employees and demonstrate that everything practicable has been done to do so. This includes measures to mitigate the risks associated with Covid-19.

As already outlined, Covid-19 needs to be considered as part of this obligation rather than a temporary or isolated issue. If there are employees who are vulnerable to Covid-19, employers should be noted of same, and measures should be put in place. Again, the current legislation outlines employees should not put themselves or others in danger and declare any relevant medical condition that could give rise to increased health and safety risks.

We know that the efficacy of the vaccines wane over time and that the virus mutates, which presents some uncertainty about the future of Covid-19. The Irish vaccination programme has been largely successful in suppressing the spread of the virus.

And with the emergence of new variants and other viruses, employers and employees need to stay informed of relevant public health guidance, understand their responsibilities and ensure policies and procedures reflect the current situation and are reviewed and updated accordingly.



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