

26 May 2020

# Briefing Note

## CECA Member Briefing:

## Covid-19: Returning To The Workplace

### Returning to the workplace

It's important that employers talk to staff as early as possible about when they can return to the workplace. This document is based on advice from ACAS last revised on 19 May 2020. Further details are available [here](#). Staff should continue to work from home if they can.

### Planning to return to work

Employers should 'consult' with staff (ask for and consider their views to try and reach an agreement) about returning to work. This includes:

- trade union representatives
- employee representatives
- health and safety representatives.

Employers should also check any agreements they have with a trade union or employee representatives to see if they must formally consult.

Employees and workers should be ready to return to work at short notice, but employers should be flexible where possible.

### Making the workplace safe

Employers must make the workplace as safe as possible for staff, customers and anyone else who visits. To do this employers must:

- encourage staff to work from home, wherever possible
- do a 'risk assessment' to identify what might cause harm and take reasonable steps to prevent it
- follow the Government [guidelines](#) on working safely during coronavirus.

To get advice on working safely during coronavirus from the Health and Safety Executive (HSE) you can call 0300 790 6787, Monday to Friday 8:30am to 10.00pm.

### Discussing plans with staff

Employers, employees and workers should talk as early as possible about any plans to return to work.

It's a good idea to talk about:

- when staff might return to the workplace
- how staff will travel to and from work
- how health and safety is being reviewed and managed – you should share the latest risk assessment
- any planned adjustments to the workplace, for example additional hand washing facilities, staggering start and finish times to avoid overcrowding or floor markings to help people keep 2 metres apart
- if there might be a phased return of the workforce, for example some staff returning before others
- working from home arrangements.

Wherever possible, employers should speak to staff before making a decision or putting plans in writing. This can help staff understand, and feel included in, decisions.

### Changes that might affect someone's employment contract

If there are any proposed changes that affect the written terms of someone's contract, the employer must consult with the employee, worker or their representative, for example their trade union representative.

### If staff are worried

Some people might be anxious about safety and returning to the workplace. Employers should encourage staff to talk to them about any concerns they have, and try to resolve them together.

### If someone does not want to return

Some people might feel they do not want to go back to work, or be unable to return yet.

For example, this might be because they're:

- worried about catching coronavirus
- at high risk of getting a severe illness if they catch coronavirus
- caring for children
- living with someone who is 'shielding.'

An employer should listen to any concerns staff may have and should take steps to protect everyone.

For example, they could:

- offer extra car parking where possible so that people can avoid using public transport
- keep someone on furlough if they're temporarily unable to work
- arrange for someone to work different hours temporarily to avoid peak time travel

If someone still does not want to go back to work, they may be able to arrange with their employer to take the time off as holiday or unpaid leave. The employer does not have to agree to this.

If someone refuses to attend work without a valid reason, it could result in disciplinary action.

### The Last Resort

- If someone refuses to attend work without a valid reason, it could result in disciplinary action.
- Providing the employer has done absolutely everything to ensure that it is as safe as possible and no identifiable risks exist, then refusal to return to work would amount to a breach of contract on the part of the employee.
- The employer should advise the employee accordingly and warn that continued refusal will be considered a repudiatory breach of contract, such that the employer is entitled to terminate the contract without notice or pay in lieu of notice.
- Such a measure should be considered an action of very last resort.