

Living with Covid: the new world for employers from 1 April 2022

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On 1 April 2022, the last Covid-related restrictions were withdrawn, and the Government moved to the next phase of the pandemic – “living with Covid”. In this briefing, we discuss the changes of most interest to employers and what they mean in practice.

What changed for employers on 1 April 2022?

The following changes took effect on 1 April 2022 and are of particular importance to employers:

- **Covid testing:** free lateral flow and PCR testing ended for the general public (PCR tests remain available for social care workers and those at higher risk of serious illness from Covid).
- **Self-isolation:** those with Covid symptoms are no longer required to stay at home but encouraged to exercise personal responsibility and show consideration to others, and this includes working from home if they can.
- **Guidance for employers:** the stringent “Working safely” guidelines for employers across different sectors were replaced by new lighter touch public health guidance.
- **Risk assessments:** the requirement for employers explicitly to consider Covid in their health and safety risk assessments was removed.

There are also two new guidance documents for employers to understand. First, the [guidance on reducing the risk of respiratory infections in the workplace](#) and second, the [guidance for people with symptoms of a respiratory infection](#) (this guidance is aimed at individuals, including employees).

These changes are considered further below.

What is the impact of removing free Covid testing?

The withdrawal of Covid tests means it will become harder to identify when employees have Covid. Where an employee reports Covid symptoms and is feeling unwell enough not to attend work during this period then the assumption could simply be made that they have Covid without the need for a test. Such employees would take sick leave in the normal way. Special statutory sick pay rules have been revoked, meaning that statutory sick pay will only be payable from the fourth qualifying day that the employee is absent from work.

Where the employee has symptoms but feels fit enough to attend work, then their status could be confirmed by way of a private Covid test. The Government has published a [list of private Covid test providers](#) who offer “general population Covid tests” for asymptomatic individuals. This list is updated daily and contains details of over 1000 providers.

One question for employers will be who pays for the test in these circumstances? If the employer is asking the employee to take the test in order to be allowed to attend the workplace, then it would be reasonable for the employer to pay. Similarly, any employers continuing with routine Covid testing arrangements for staff will probably have to foot the bill for them.

Can employers now ask employees with Covid to attend work?

In principle, yes. Where an employee tests positive for Covid after 1 April 2022, they are not required to self-isolate. The replacement guidance (discussed in more detail below) is very light touch and does not ask much from employers. On the face of it, employers have greater flexibility to instruct Covid positive employees to attend work.

However, employers will still need to consider health and safety risks, particularly to those who are at higher risk of illness from Covid, which will include:

- older people;
- pregnant women;
- people who are unvaccinated;
- people whose immune system means they are at higher risk of serious illness; and
- people with [certain long-term conditions](#).

Further, employers will wish to avoid provoking Covid outbreaks in the workplace, which will lead to higher levels of sickness absence.

Finally, the wider employee relations angle should be factored into any decisions here. The guidance aimed at individuals suggests that they should try to work from home when they have Covid symptoms, and so there may well be an expectation from staff that they will be permitted to do so. Plus, many employees will be unhappy about the prospect of having to work alongside someone with Covid.

What does the new public health guidance ask employers to do?

The guidance does not specifically deal with Covid but looks at steps to be taken in respect of all respiratory infections (which includes Covid, but also things like flu).

In contrast to the guidance that preceded it, the new workplace guidance is very light touch. It asks employers to know the symptoms of Covid so that they can take actions to reduce the risk of spreading the infection to others. Such actions include:

- encouraging and enabling staff to be vaccinated;
- keeping the workplace well-ventilated;
- keeping the workplace clean and providing handwashing materials; and
- applying these steps more rigorously in the event of an outbreak of Covid in the workplace.

In addition, the guidance urges employers to consider the

particular needs of employees who are at greater risk of serious illness from Covid (listed above).

Separate [guidance](#) has also been published for those whose weakened immune systems mean that they are at higher risk. That guidance says that such staff should work from home if they can and if they feel it is right to do so. Where it is not possible to work from home, affected staff are encouraged to speak to their employers about what arrangements can be made to reduce the risk of infection. If the individual is disabled, such adjustments would also qualify as “reasonable adjustments” under the Equality Act 2010 (and could give rise to a discrimination claim if not made).

Does Covid still need to be considered in workplace health and safety risk assessments?

Although there is no longer a requirement for employers explicitly to consider Covid in their statutory health and safety risk assessments, the new guidance stresses that employers must continue to comply with their general legal obligations relating to health and safety and employment law.

The [Health and Safety Executive](#) says it no longer requires every business to consider Covid in their risk assessment or to have specific measures in place, but employers may still choose to continue to cover it in their risk assessments. The HSE also states that employers must comply with general health and safety laws and also take extra steps where staff will come into contact with Covid as part of their work activity (e.g. healthcare workers or those involved in researching the virus in laboratories).

In practice, this means that the risks arising from Covid in the workplace will usually still be considered, although not in quite so much detail as during the height of the pandemic.

BDBF is a law firm based at Bank in the City of London specialising in employment law. If you would like to discuss

your Covid strategy, or any issues relating to the content of this article, please contact Principal Knowledge Lawyer, Amanda Steadman (amandasteadman@bdbf.co.uk), or your usual BDBF contact.

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