

# **New COVID-19 rules and guidance for office-based employers as the second wave of the pandemic hits**

written by BDBF

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## **Employment Law News**

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**New COVID-19 rules and guidance for office-based employers as the second wave of the pandemic hits**

When the number of COVID-19 cases dropped over the Summer, the Government abandoned its original “work from home” message and encouraged office workers to return to the workplace. However, the second wave of the pandemic has prompted the Government to retreat from this position and both the [national restrictions for England](#) and the [COVID-19 Secure Guidelines for Offices and Contact Centres](#)(Guidelines) have been updated to reflect the new approach. In this briefing, we consider the new guidance, together with other relevant changes for office-based employers concerning face coverings, the “rule of six”, self-isolation and test and trace at work.

### **Should office workers work at home or in the office?**

It depends. Described as a change in emphasis, the new guidance is that office workers who can “work effectively” from home should do so over the Winter. It goes on to say that where an employer, in consultation with the worker, judges that the worker can carry out their “normal duties” from home then they should do so.

Anyone who cannot work from home is able to attend the office, provided that it is COVID-19 secure in accordance with the Guidelines. The Guidelines set out a range of measures to be adopted but emphasise the importance of social distancing (and mitigation where this is not possible) and good hygiene measures such as regular hand washing and cleaning.

### **Does this mean that employers cannot ask office workers to attend the workplace?**

Not necessarily. A blanket requirement to attend the office will be contrary to the guidance. However, if the conclusion is that a worker is unable to carry out their normal duties from home, then it will usually be reasonable to require them to attend the office if it is COVID-19 secure (subject to any special measures that may need to be taken for vulnerable workers – see below).

Before requiring a worker to return to the office, the employer should consult with them to determine whether it is necessary and to consider the impact of factors such as their journey to work, caring responsibilities, protected characteristics and other individual circumstances.

**Can a worker attend the office if they can work from home but prefer to work in the office?**

Potentially, yes. Even if a worker is able to carry out his or her normal duties from home, the guidance offers enough flexibility to allow them to attend the workplace if they need to do so in order to work “effectively”. Employers can leave this to the discretion of the worker to determine what this means for them; however, it may be helpful to provide a list of indicative examples to ensure consistency of approach. For example, this could include the need to access physical resources in the office or to meet with clients and/or colleagues to work on projects where face-to-face communication is important. It could even extend to a worker’s need to work in a quiet environment or to work alongside others for wellbeing or mental health reasons.

However, employers should deter workers from attending the office simply out of a desire to be present in the office, but where this is not necessary for the performance of their normal duties or in order to work effectively.

**Are there special rules for workers who are classified as “clinically extremely vulnerable” or who are otherwise vulnerable or high risk?**

Yes. From 1 August 2020 [clinically extremely vulnerable](#) workers have been allowed to return to their workplace (provided it is COVID-19 secure). However, the advice remains that such workers should work from home wherever possible. Where an extremely clinically vulnerable worker cannot work from home, then they should be offered the option of the

safest available on-site role, enabling them to maintain social distancing guidelines (i.e. 2 metres or 1 metre with risk mitigation where 2 metres is not viable). In some cases, their working pattern may need to be adjusted and/or they may need to perform an alternative role on a temporary basis. Employers must also pay particular attention to workers who are not clinically extremely vulnerable themselves, but who live with someone who is.

In addition, employers must give special consideration to workers who:

- are classified as [clinically vulnerable](#) (e.g. pregnant workers); or
- fall within a “higher risk” group identified by [Public Health England](#) (e.g. older males; those with a higher BMI; those with certain health conditions such as diabetes; and those from certain BAME backgrounds).

The guidance does not expand on what “special consideration” means in this context, however, it is likely to require the employer to take a similar approach to that taken towards extremely clinically vulnerable workers wherever possible.

Furthermore, employers must also take into account specific duties owed to those with certain protected characteristics.

For example, the duty to make reasonable adjustments for disabled workers or the duty to suspend a pregnant worker on full pay if it is not safe for them to perform their role and there is no suitable alternative role available.

Before requiring a worker to return to the office, the employer must consider whether a worker falls into one of these groups and, if so, what special measures should be taken in response.

### **Do workers have to wear face coverings in the office?**

No. On 24 September 2020, [new rules](#) came into force requiring

certain workers to wear face coverings in the workplace. Most of these are workplaces operating within the retail, leisure and hospitality industries, although certain workers in the customer-facing financial services sector must now wear face coverings.

More generally, the Guidelines state that the wearing of face coverings is not required in office settings but that employers should “support” workers who choose to wear a face covering. Attention is drawn to the fact that there is “growing evidence that wearing a face covering in an enclosed space helps protect individuals and those around them from COVID-19”. Yet the Guidelines go on to say that the Government does not expect to see employers relying on face coverings as risk management for the purpose of risk assessments.

### **Does the new “rule of six” mean that no more than six workers can be in the office together?**

No. On 14 September 2020, the [“rule of six”](#) came into force, making it unlawful for people to socially gather indoors or outdoors in groups of more than six. Fines of up to £6,400 can be imposed where the rule is breached.

However, anyone who is working does not count towards the six for the purposes of the rule. Indeed, there is no limit to the group size for workplace meetings, although the Guidelines recommend avoiding in-person meetings where possible. Where meetings are necessary, they should be held in a COVID-19 secure way, with social distancing measures in place, hand-sanitiser available and held either outdoors or in well-ventilated rooms.

### **What are the new rules concerning workers who are self-isolating?**

From 28 September 2020, [new rules](#) came into force governing self-isolation. The rules provide that any worker who is

[required to self-isolate](#) must notify their employer and must not physically attend work (although they may work from home if they are able to and are well enough to do so). A worker who physically attends work when they should be self-isolating may be fined between £1,000 and £10,000.

It is also now unlawful for an employer to require, encourage or allow a worker who should be self-isolating to physically attend work. Employers who breach this rule may also be punished with a fine of between £1,000 and £10,000. It would, therefore, be sensible for employers to remind staff of the circumstances in which they are required to self-isolate. Employers should require staff who need to self-isolate to notify them as soon as possible and stay away from the workplace (and it should be highlighted that a failure to do either may be treated as misconduct).

### **What do office-based employers need to know about NHS Test and Trace?**

Guidance on the [NHS Test and Trace scheme](#) for employers, workers and the self-employed was updated on 30 September 2020. The guidance is wide-ranging, but the key points for employers to note are as follows:

- If a worker develops COVID-19 symptoms, they are encouraged to alert close contacts within 48 hours. The guidance states that where a co-worker is a close contact, the person who has developed symptoms should consider asking the employer to alert those co-workers on their behalf. If an employer does so, it should not name the affected individual.
- If a worker tests positive for COVID-19, co-workers who are close contacts will be notified and told to self-isolate by NHS Test and Trace. The employer will not need to notify the close contacts and, if asked, should not name the individual who has tested positive.
- Employers should ensure that workers who are required to

self-isolate do so by telling them to stay at home and not physically attend work. Employers should also allow workers to work from home if they remain well and it is practicable for them to do so (e.g. by finding alternative work that they could perform from home).

- Where a self-isolating worker cannot work from home, the employer must ensure they are paid statutory sick pay (**SSP**) if eligible (or give them the option to take annual leave if they prefer). If SSP is to be paid, the employer should ask the worker to obtain an isolation note where it needs evidence of the absence (e.g. for the purposes of reclaiming SSP from the Government).
- If there is more than one COVID-19 case in the workplace the employer should contact their local health protection team to report the suspected outbreak.
- Although office-based employers are not required to collect customer or visitor data for NHS Test and Trace, the guidance says that all businesses are encouraged to create and display official [NHS QR code posters](#) if they have indoor areas where individuals are likely to congregate or sit down in close contact (e.g. in a reception area).

**BDBF is currently advising many employers and employees on the challenges presented by the coronavirus. If you or your business needs advice on any coronavirus-related matter please contact Amanda Steadman ([amandasteadman@bdbf.co.uk](mailto:amandasteadman@bdbf.co.uk)) or your usual BDBF contact.**

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