



THE POST PANDEMIC OFFICE – LEGAL RIGHTS AND RESPONSIBILITIES

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Cordelia Rushby, Consultant Solicitor, Keystone Law

Webinar

Monday, 15 February 2021, 03:00pm GMT

A Word From Today's Chairman



Professor Michael Mainelli

Executive Chairman

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Today's Agenda



- 15:00 – 15:05 Chairman's Introduction
- 15:05 – 15:25 Keynote Address – Alexandra Carn & Cordelia Rushby
- 15:25 – 15:45 Questions & Answers

Today's Speaker



Alexandra Carn

Partner

Keystone Law



Cordelia Rushby

Consultant Solicitor

Keystone Law

THE POST PANDEMIC OFFICE, LEGAL RIGHTS AND RESPONSIBILITIES

Alexandra Carn & Cordelia Rushby

15 February 2021

KEYSTONE LAW

THE POST PANDEMIC OFFICE

Legal Rights and Responsibilities

1. Health and Safety
2. Compliance risk management
3. Confidentiality and staff retention

POLL

Has your business already published a COVID-19 office risk assessment?

- Yes
- No
- Don't know

Has your business advised homeworkers on how to undertake a home office risk assessment?

- Yes
- No
- Don't know



THE LAW

- An employer has a **common law duty** of care towards its employees to take *reasonable steps to prevent foreseeable harm* occurring to them.
- Section 2 HSWA (The Health and Safety at Work Act 1974) Imposes a **statutory duty** on employers *to ensure the health, safety and welfare of every employee* (and members of the public) in the workplace “*so far as is reasonably practicable*”. This includes physical and mental health.
- These duties apply to employees – including homeworkers!

THE LAW

- **H&S Regulations** support the HSWA and require certain action of employers
 - Compliance with those regulations assists to establish that an employer has acted reasonably and discharged their duty of care.
- **Enforcement**
 - HSE spot checks to ensure work places are “COVID-secure”. Wide powers to search, request documents, shut down unsafe working practices.
- **Guidance – Returning to office working**
 - The Health and Safety Executive (HSE) and the Department for Business Energy and Industrial Strategy (BEIS) has issued non-statutory guidance on how to open workplaces safely while minimising the spread of COVID-19.
 - This is all available on the GOV.UK site

HOW DOES AN EMPLOYER PROVE COMPLIANCE WITH THEIR COMMON LAW AND STATUTORY DUTY OF CARE?

Employers have the same liability for accident and injury to home workers as office workers.

The duty:

- Assess the risk in the workplace, taking into account all current available information and guidance.
- Set up a safe system of work and then effectively implement and monitor that.
- Ensure all staff are adequately trained and supervised.

COVID

2 Key Regulations:

- The Management of Health and Safety at Work Regulations (MHSWR)
- The Control of Substances Hazardous to Health Regulations (COSHH)

MHSWR requires an employer to carry out Risk Assessments relating to known risks

A COVID-19 risk assessment must be done before re-opening a workplace after a period of closure

COVID

- COSHH requires an employer to control and reduce the risks posed by hazardous substances in the workplace. This includes “biological agents that are hazardous to health” which includes viruses
- COSHH imposes an obligation on employers to control and manage the virus, just as they would any other hazardous substance in the workplace. Employees must comply with all risk assessments

COVID RISK ASSESSMENTS

In order to reduce work place risk you first have to identify it!

This requires a full workplace audit:

- Premises? Shared premises? Contractors? Staff? Equipment?
- Are employees in any of the “vulnerable groups” with a significantly higher risk of complications. Age, Gender, BMI and Ethnicity, Pregnant, medical complications
- Questionnaires or Disclaimer?
- Privacy Policy review?

THE QUESTION

Taking into account the control measures in the risk assessment, and subject to current GOV guidance*, should staff only be working from home, or with the appropriate prevention and control measures can they work safely in the office?

- The COVID work place risk assessment must be shared with the whole workforce
- Where there are 50+ workers it must be published on the website.

COMMUNICATION OF THE RISK ASSESSMENT AND NEW COVID PROCEDURES

- Communication, training and supervision are essential for compliance with the HSWA duty of care
- A *COVID Office Policy* can be used to set clear standards around what is expected of staff and to support implementation of the COVID Risk Assessment
- Employers must set a clear policy for those who become sick at work, in terms of notifying close contacts, requiring self-isolation and requiring testing of other staff in their work area, ensuring decontamination

HOMWORKING – IT'S NOT NEW!

HSE guide to “Lone Working”

- *“Those who work by themselves without close or direct supervision... including homeworkers”*
- Duties are owed to all employees AND contractors, freelancers, the self-employed,
- Employers obligation is to manage the risk: to physical and mental health

Action required:

Consider work type, assess risk, train, supervise and monitor workers, keep in contact.

HOMWORKING – LATEST GUIDANCE

- How will you keep in touch?
- What work activity will they be doing and for how long?
- Can it be done safely?
- Are control measures needed to protect them?

Action required:

Dialogue. Risk Assess. Provide copy of RA to all workers.
Monitor its implementation. Adapt.

RISK ASSESSMENT FOR HOME WORKING

1. Risk- Poor workstation ergonomics leading to musculoskeletal issues

Ergonomics: Provide guidance on setting up work space & creating the right environment; temperature, lighting, eye fatigue, posture, rest breaks. Individually assess vulnerable workers & those with extra needs.

NOTE: Infographics PDF (Chartered Institute of Ergonomics and Human Factors).

Display screen equipment:

Good news: HSE say NO increased risk from DSE work for those working at home temporarily so a formal home station assessment is NOT required. BUT review if homeworking extended.

NOTE: HSE “Workstation checklist” Good practice to require completion

RISK ASSESSMENT FOR HOME WORKING

(continued)

2. Risk: Reduced technical support and supervision leading to stress and poor performance

- Training: IT, databases, online communication tools. Identify individual training needs, provide training, check back at regular intervals as circumstances change.
- Supervision:
- HSE recommend “regular contact to make sure they are healthy and safe”. Establish system for regular contact and responding to issues raised.
- What is the system for reporting: technical problems? health issues?
Emergency Point of contact? Who will respond?

RISK ASSESSMENT FOR HOME WORKING

(continued)

3. Risk: Mental health issues arising from isolated working

Stress and mental health: Workers who feel disconnected isolated or abandoned are likely to suffer increased stress and mental health issues. How do they raise the flag? What is the system for responding?

Additional pressure on family members from presence of homeworking member:

Review existing staff & family benefits. Many PHI/Health Care Plans include direct access counselling and mental health services. Check with your Insurers. Remind staff of how to access the services during periods of remote working.

EMPLOYEE'S DUTIES – IT'S NOT ALL ONE WAY!

Section 7 HSWA – Health and Safety at Work Act 1974

Regulation 14 MHSWR – Management of Health and Safety at Work Regulations 1999

Employees:

- Have a duty to take reasonable care for their own health and safety;
- Must use equipment in line with training and instructions provided by employer;
- Must co-operate and comply with all COVID-19 procedures and risk assessments;
- Must inform their employer if they consider they are exposed to a risk at home.

POLL

After lockdown will you work the same hours in the office as before?

- Yes
- No
- Don't know



MENTAL HEALTH – THE LAW

- Personal Injury
 - breach of the common law duty of care
- Breach of Contract
 - breach of express or implied term in the employment contract
- Unfair dismissal
 - Employment Rights Act 1996
- Discrimination
 - Equality Act 2010
- Harassment
 - Protection from Harassment Act 1997

MENTAL HEALTH STATISTICS

Diagnosis per week per 100 people

- Mixed anxiety and depression: 8
- Generalised anxiety disorder: 6
- PTSD: 4
- Depression: 3
- Phobias: 2
- OCD: 1

CLAIM STATISTICS

	2019/2020	2018/2019	2018/2017
ALL:	103,973	121,075	109,698
DDX:	8,178	6,919	5,477



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MENTAL HEALTH – THE SOLUTION

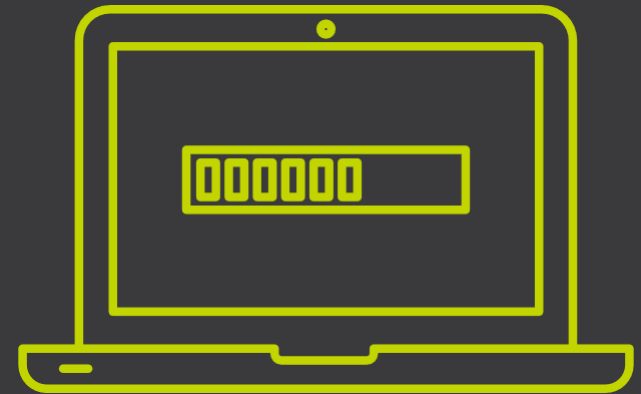
“We used to work from home, now we live at work”

- Policies
 - Health and Safety, Whistleblowing, Homeworking, Stress at Work
- Working Time
 - Recharge days, “no meeting” days, monitoring
- Other initiatives
 - Mediation apps, Pub, mentors

COMPLIANCE MATTERS

FCA Market Abuse Speech – October 2020

- Own devices
- Mixing business and personal data
- BYOD Policy



CONFIDENTIALITY – THE LAW

- Express duties
 - contract of employment
 - trade secrets not “mere confidential information”
 - stating confidential does not make it so
- Implied duties
 - good faith and fidelity
- Fiduciary duties



PROTECTING CONFIDENTIAL INFORMATION

- Undertakings
- Injunctions
- Springboard injunctions
- Damages
- Account of profits
- The Database Right

PROTECTING CONFIDENTIAL INFORMATION

- Limit circulation
- Mark confidential
- Limit electronic access
- Regular monitoring
- Contractual provisions

STAFF RETENTION – THE RISKS

- Taking confidential information to new employer
- Team moves
- Post-termination breach of covenants



STAFF RETENTION – THE SOLUTION

- Working outside normal working hours
- Unusual amount of downloading
- Using USB devices
- Accessing unusual documents
- Ringfencing clients
- Personal email
- Contractual terms



FOR FURTHER INFORMATION



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Questions And Answers





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Thank You For Listening



Forthcoming Events

- Tuesday 16 Feb (10:00) Financial Centres Of The World 2021: Focus On Luxembourg
- Thursday 18 Feb (10:00) Automated Horizon Scanning – Does This Really Reduce Organisational Risk
- Friday 19 Feb (11:00) Post Covid-19 Business Model And Policy Choices For Digital Finance In Europe
- Monday 22 Feb (08:30) Space: The Final Frontier Provides An Exciting Future For Our Global Community

Visit <https://fsclub.zyen.com/events/forthcoming-events/>