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Returning to the office?

‘Hybrid working’ – A guide to the HR, Risk Management & Insurance considerations

Introduction

The COVID-19 pandemic has interrupted many businesses across the UK. While it's unclear how long COVID-19 will continue to affect organisations, many employers are looking to the future of employees returning to work.

Echoing the sentiments of health experts, a return to normalcy won't be like flicking a switch, but rather a gradual effort. In preparation for reopening your business and asking employees to come back to work, it's imperative that your company thoughtfully constructs a return to work action plan for its employees to keep everyone healthy and safe following the COVID-19 pandemic. In this guide we will cover Risk Management, Health and Safety requirements, HR considerations and Insurances you should take into account.

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HR & Employment Services

The Rise of Hybrid Working

In March 2020, many businesses were thrown into the world of remote working overnight and had to adapt quickly to an ever-changing situation in order to minimise disruption to their services. This brought a wave of new challenges to employers, particularly for organisations where working from home was not previously a possibility such as finding new ways of communicating with staff, adapting to new ways of working and keeping employees engaged and motivated during a challenging year.

Despite the challenges faced by organisations during the pandemic, employers and employees alike have seen many benefits of working from home, such as an improved work life balance, reduction in commuting costs, more time to focus on work without distraction.

With further easing of restrictions announced over the last few weeks, and as office working slowly makes its return in the coming months, many employers may find that employees have different views and preferences about how their work should continue after a significant period of homeworking. Whilst some will welcome a full return to the office when safe to do so, and others will express a preference to remain working from home full time, most employees are likely to prefer a balance of the two, a term recently coined Hybrid Working.

Hybrid working between home and the workplace, if carried out effectively, could strike the perfect balance between home and office work, attracting the focus and cost saving benefits of homeworking with the personal interaction and engagement of working with colleagues. As it is a fairly new concept for most employers, and every organisation is different, considerations will need to be made on how hybrid working could work in practice in their organisation, the practicalities of managing hybrid working and on how to deal with requests for hybrid working.

Flexible Working Requests

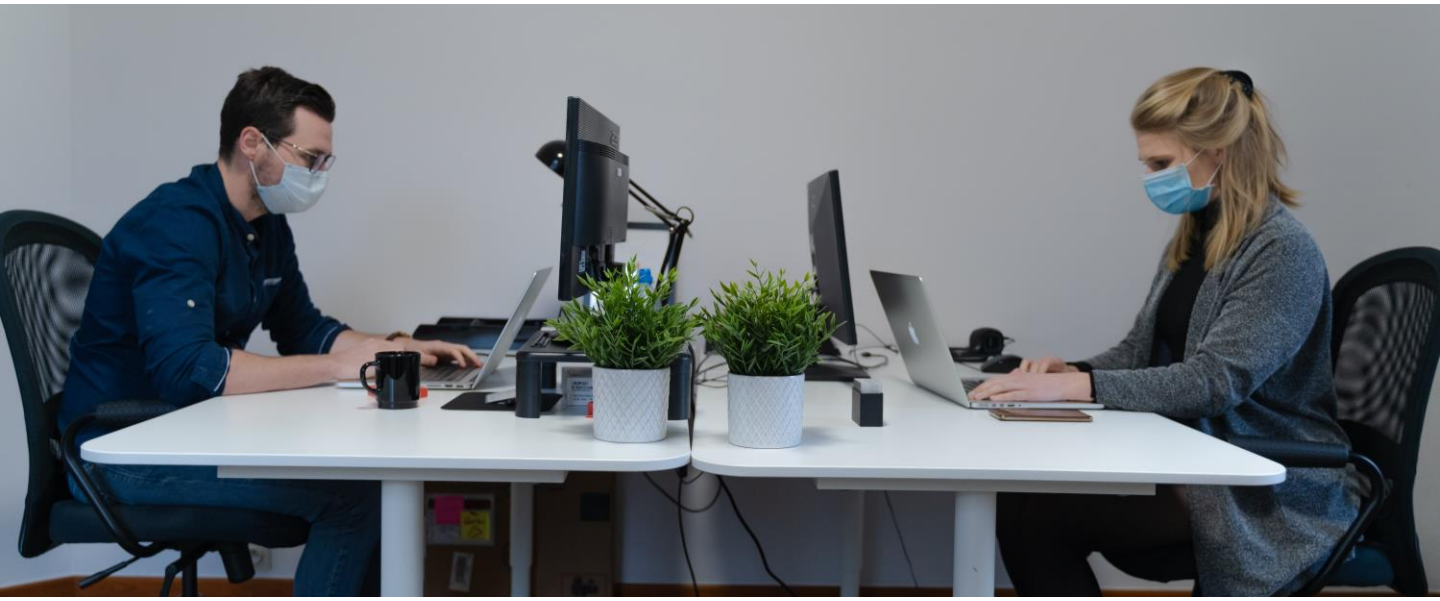
With hybrid working seeming to be the preferred working pattern for employees as the restrictions begin to ease, it is therefore likely that many employers will see an increase in flexible working requests, as they begin to make the transition back to office working. Whether requested informally to a manager or formally through the formal flexible working procedure it is important that the requests are given due consideration.

The concept and process for flexible working requests is already well established and set out in the statutory framework in NI and the ACAS Code of Practice in GB. Employees with at least 26 weeks' continuous service have statutory right to request flexible working, provided they have not made another statutory request during the previous 12 months. It is worth noting that this is a right to request flexible working, not a right to be granted their request. Those with less than 26 weeks' service, agency workers and office holders do not hold this statutory right to request however, employers can still choose to consider their requests under their flexible working procedure.

This is therefore an opportunity for employers to review their flexible working policies and procedures to include hybrid working as part of the policy and also to determine if they are fit for purpose. In a departure from pre-COVID 19 flexible working requests, it is possible that hybrid working may need to be considered team wide, so reviewing how this would work operationally for both the employer and the employees will be essential.

If employees have demonstrated that they have been able to work from home effectively during the past year, employers may find it difficult to reasonably deny requests for hybrid working, however that is not to say it is impossible. It is important to note that flexible working requests may only be refused where the employer has a clear business ground for doing so and are able to demonstrate how this business reason applies to the circumstances. Employers should ensure that the information provided in the decision is accurate and that they can substantiate any facts provided in the event they are disputed.

It will be important to consider, as with other forms of flexible working, the contractual implications of hybrid working, as formal requests made and granted through a formal flexible working request will amount to a change of terms and conditions of employment. It is therefore advisable to ensure managers are aware of this implication and we would recommend training on the policy and procedure for line managers.



Practical Considerations

As hybrid working requires the employee to work from both the workplace and from home, considerations will need to be made on the work equipment provided and if this will be shared between the workplace and home. For example, would it be more practical for an employee to be provided with a laptop/tablet rather than a desktop computer in order to more easily transport the IT equipment between the office and home and to minimise potential damage and health and safety risks in transporting the equipment. Naturally there will be financial considerations in this.

Employees working from home may also see an increase in expenditure in relation to their home electricity, heat or internet bills as a result of higher daily use during working hours normally spent in the office. Companies are permitted to pay employees a tax-free homeworking allowance of up to £6 per week or £26 per month to cover additional home working expenses, so this may also be a consideration.

Employers will also need to consider how business expenses such as mileage will be calculated for employees who are hybrid working, for example if this should be calculated from the office to the destination or from the employee's home to the destination.

Performance

A concern that is commonly raised by managers is how can performance be managed when teams are working remotely, as employee performance may be harder to observe from a distance. Employers will therefore need to consider how they will manage performance for employees working under a hybrid working arrangement. A greater importance may be placed on setting clear goals and objectives to measure and assess the performance based on outcomes rather than observations in the workplace. To this end, regular one-to-one conversations with employees to review these objectives and to provide regular feedback may be beneficial in managing performance in the remote environment.

Employee Engagement & Wellbeing

Effective communication will be essential to a successful hybrid working model. It will therefore be crucial for employers to determine how they will keep remote staff engaged and included in the team, and how they will support their wellbeing.

It is important that those working under a hybrid working arrangement are not placed at a detriment compared to their other colleagues as a result of their working arrangements and concerted efforts are made to encourage their engagement and inclusion, particularly if other team members are permanently office based, so they are not “out of sight, out of mind”. This will also apply to opportunities for promotions etc within the business, ensuring that those working flexibly have an equal opportunity for progression to their full time or office-based comparators.

Supporting Employee Wellbeing

Lockdown has been a difficult time for all and for lots of different reasons. However there has been a certain comfort in following rules that for the most part were clear. As lockdown restrictions begin to ease, feelings of uncertainty may begin to re-emerge and adapting to these changes can present new challenges. These can manifest in feelings of anxiety, anger, low mood and fatigue to name a few. Many employee benefit products will provide employee assistance programmes and mental health support and this is a good time to explore what is available to your employees and communicate that availability. If you are not aware of what is available to you, our Employee Benefits Consultants can carry out an audit and make recommendations. Mental Health training programmes are also available for employers to help identify and support those with mental health issues.

Health & Safety

Whether the workforce is working from home either part-time or full-time, employers have a duty of care for the health and safety of their staff in both environments.

Just like in pre-COVID-19 times, employers are required to carry out risk assessments relating to known risks (this includes homeworkers). If office premises are to be re-opened, you must also carry out a COVID-19 risk assessment and communicate it with staff.

Don't forget that in a post-COVID-19 climate further actions are required to avoid the risk of:

- Musculoskeletal injuries due to poorly set up workstations at home
- Increased risk of exposure to COVID-19 due to poorly managed office space
- Anxiety or depression arising from a change in working location/ practices, workloads or lack of communication and interaction with others
- Lack of training / lapse in refresher training

Having identified the hazards related to working within a hybrid workplace, developing communication and training materials is key, consider the following:

- General workplace induction
- COVID-19 precautions
- Fire awareness
- Emergency evacuation
- Manual handling
- Electrical awareness
- COSHH
- Working with display screen equipment
- Stress and mental health
- Working from home

Insurance

COVID-19 raises several concerns, particularly if guests, customers or employees allege they became sick due to your business' negligence. However, sickness is not the only consideration. A number of insurers are excluding COVID-19 at renewal and depending on the insurer and trade, some will exclude Public Liability and/or Employers Liability. With this in mind, it's important to take the following insurance considerations into account:

Public Liability Insurance

Public liability insurance protects your business from financial loss should you be liable for property damage or personal injury caused by your services, business operations or employees to third parties. It can protect you from costs associated with bodily injuries, damage to third-party property, personal injuries, medical expenses, legal concerns and more. When it comes to COVID-19, public liability policies should provide cover and allow you to defend claims. However, for a claim to be valid, the claimant would have to allege the disease was contracted due to the insured's negligence and detail how, when and where they got sick—which could be difficult.

Directors and Officers (D&O) Insurance

Court actions and Legislation has thrust your business decision making under the spotlight. As a director you are responsible for ensuring the firm has been diligent in its decision-making. With the additional pressures of health & safety obligations and HMRC implications etc, you are only human and mistakes happen. Shareholders and other stakeholders could take legal action against your business should you fail to respond appropriately to COVID-19 concerns. Specifically, stakeholders may contend that your senior management failed to develop adequate continuity plans or detail how COVID-19 could impact the company's financial performance. It should be noted that most D&O policies exclude cover for bodily injuries but may offer some protection depending on the specific allegations. As such, it is important to review the scope of your D&O policy to confirm you are covered in the event of an incident.

Employment Practices Liability

As aforementioned in the HR implications earlier in the document, there are grounds to check with your insurance broker as to whether you have this cover in force and the detail/limits of indemnity. There is likely to be friction when asking employees to return to an office environment and this could be an imperative extension to your Directors & Officers insurance, to fortify your internal HR procedures.

Employers' Liability Insurance

In instances where an employee believes they contracted COVID-19 at work, several employers' liability concerns come into play. Notably, when it comes to workplace illnesses, most claims are only valid if the illness is occupational in nature. Contagious diseases are generally excluded from employers' liability policies. However, cover may be triggered if the illness arose due to or in the course of the worker's employment. In general, these scenarios are examined on a case-by-case basis but could include instances when a health care worker contracts COVID-19 at the medical facility at which they work, an airline employee contracts COVID-19 from a passenger, or a hospitality worker contracts COVID-19 that is later linked to a large event at which they worked.

Home Working

There are a couple of areas to pick up on here. First is the Public Liability exposure. Most home insurance policies do not cover homeworking automatically so you need to check that your provider can note it. Where each home insurance provider may differ is with extending cover to work visits to the home i.e., clients walking through your front door. In the unlikely event of a trip or slip in the home by a visitor, you want to ensure that your home insurance will cover a claim, or your commercial office or commercial combined insurance policy is extended to your employees' homes.

There is also a threat to data protection and cyber-crime exposures, whilst piggy backing off the home server or losing vital personal data such as credit card details or passwords. Fortifying employee's IT equipment with encrypted software and putting in force a robust cyber insurance policy can help to eliminate the potential downtime and financial losses.

Equipment away from the Premises

Your business will have computer equipment leaving the office during hybrid working patterns. Most of this will be laptops and desktops but depending on your needs, there could be more specific equipment or machinery too. Most policies can be extended to include these items away from the office/main insured address, so it is important to check this. It would also be wise to keep and update an equipment risk register as you may find that once you have totted up all of the equipment, especially any new laptops purchased etc, that your sum insured is not adequate.

Review your existing insurance policies and their provisions to identify potential gaps in cover. Speak to one of our highly trained and professional insurance brokers who can help guide you through what insurance covers you should have in place for hybrid working.

Risk Management

Workplace Risk Assessments

As businesses manage the return of staff to work premises and the continuing operation of buildings through the pandemic, a number of issues need to be considered for the safety of those entering buildings.

To help you decide which actions to take, you need to carry out an appropriate COVID-19 risk assessment, just as you would for other health and safety related hazards.

While the complexity of risk assessments will differ from business to business, they typically involve the following steps:

Identifying the hazards

When it comes to COVID-19, businesses need to think critically about their exposures, particularly if an infected person entered their facilities. When identifying hazards, it's a good idea to perform a walkthrough of the premises and consider high-risk areas (eg breakrooms and other areas where people may congregate). It's also important to consider what tasks employees are performing and whether or not they are especially exposed to COVID-19 risks when performing their duties.

Deciding who may be harmed and how

Once you've identified hazards to your business, you need to determine what populations of your workforce are exposed to COVID-19 risks. When performing this evaluation, you will need to make note of high-risk individuals (e.g. staff members who meet with customers or individuals with pre-existing medical conditions).

Assessing risks

Once you have identified the risks facing your business, you must analyse them to determine their potential consequences. For each risk facing your business, you'll want to determine:

- How likely is this particular risk to occur?
- What are the ramifications should this risk occur?
- When analysing your risks, consider potential financial losses, compliance requirements, employee safety, business disruptions, reputational harm and other consequences.

Controlling risks

With a sense of what the threats to your business are, you can then consider ways to address them. There are a variety of methods businesses can use to manage their risks, including:

- Risk avoidance: Risk avoidance is when a business eliminates certain hazards, activities and exposures from their operations altogether.
- Risk control: Risk control involves preventive action.
- Risk transfer: Risk transfer is when a business transfers their exposures to a third party.
- For COVID-19, control measures could include cleaning protocols, teleworking procedures and mandated personal protective equipment (PPE) usage.

Monitoring the results

Risk management is an evolving, continuous process. Once you've implemented a risk management solution, you'll want to monitor its effectiveness and reassess. Remember, COVID-19 risks facing your business can change over time.

Indoor Ventilation

Building ventilation is always an important part of a healthy building environment as it brings a stream of outside air into the building and removes stale air. Ventilation is also a very important way of diluting any airborne pathogens within the stale air (including COVID-19) and there is good evidence showing that room occupants are more at risk of catching an illness in a poorly ventilated room than in a well-ventilated room. This is because in a poorly ventilated room occupants are exposed to a higher concentration of airborne pathogens, and the risk will increase with a greater amount of time spent in such an environment.

To minimise the risks of airborne aerosol transmission the general advice is to increase the air supply and exhaust ventilation, supplying as much outside air as is reasonably possible. Recirculation or transfer of air from one room to another should be avoided unless this is the only way of providing adequate ventilation rates to all occupied rooms.

Our Group are able to assist property managers in assessing their property ventilation risks and advise on suitable solutions, using professionally registered engineers.

Avoiding Legionnaires' Disease

When properties stand empty for several weeks or longer, unused by humans, other serious issues can arise that are far removed from COVID-19. Unseen and potentially forgotten during a pandemic, bacteria such as legionella can take advantage of being left alone in a disused water system. The risk of legionella spreading through the water system to cause serious risk to health is clear and it is one that cannot be ignored.

Any man-made water system, whether it uses hot water, cold water, or both, can run into problems within a matter of days. Typically, a water system that's left unused for 10 to 14 days is all it takes for legionella and other potentially harmful bacteria to begin colonising a water system.

Calling in a water safety specialist to conduct a detailed risk assessment and make sure all your water systems are safe to use once more is an investment well worth making.

Other property issues to consider when emerging from lockdown

Electrical safety checks are required under the Electricity at Work Regulations 1989 & BS7671 (18th edition electrical regulations). A competent electrical contractor should be consulted about any requirements to restart electrical systems.

Gas safety inspections and maintenance are still a statutory requirement and have not been suspended due to the COVID-19.

Emergency systems:

- Fire detection system testing and maintenance must be brought up to date. Active fire protection systems such as sprinklers, fire suppression and smoke control systems, fire extinguishers etc. should have up to date maintenance and inspections.
- Fire doors and emergency exit routes should be checked for obstruction during the lockdown period and that closing or opening mechanisms are still operating correctly. Any changes to escape routes or assembly points may need signage to be changed.
- Emergency lighting systems must be tested and demonstrated to work fully and effectively and batteries checked by conducting a full 3 hour test. BS5266-1 Emergency lighting and BS EN 50172 Escape Lighting apply, along with Society of Light and Lighting Guidance in Lighting Guide 12 on Emergency Lighting.
- Lifts and escalators Passenger lifts and lifting equipment must comply with the Lifting Operations and Lifting Equipment Regulations 1998 (LOLER) requirements. The maintenance contractor should confirm that the lifts are compliant and fit for service, although their use should be discouraged wherever possible.
- Where heating systems have been isolated, annual pre-heating season service checks should be undertaken prior to restarting the system.
- BMS systems should be checked to ensure that operation is as expected, and any changes regarding ventilation rates, building opening times, etc. are implemented. Plant operating times may need to be extended to accommodate changes to working hours and patterns.
- Access control and Security systems, these may need to be reviewed to ensure operation is still as expected, or for isolation of certain areas of the building. Timings to operation or occupancy may need to be incorporated into the control system to accommodate staggered or shift working.
- Portable appliances, simple user checks should be sufficient to establish the safety of portable appliances such as kettles, microwaves etc, where an existing portable appliance testing (PAT) system regime is in place. However, use of such appliances should be carefully considered as they present a potential risk of transmission via surface contact.
- Specialist services, where appropriate, expert advice should be sought in relation to specialist services such as generators, UPS systems, catering equipment, process cooling, fume extract systems etc.

Contact us

Arden Insurance is part of the Willis IRM Group, which has an experienced team of HR, Risk Management & Health and Safety and Insurance Experts who can assist you with your specific business needs.

Contact us at risk@ardeninsurance.co.uk or on +44 (0) 203 857 5373 for more information on any of the content in this guide.

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