

A message from Howard Beckett

Assistant General Secretary, Political & Legal Affairs

Your legal right to a safe place of work - S 44. & S 100 of the Employment Rights Act 1996

A lot has changed in the past few weeks, some things have not. One of the most important of these is that, despite the ever-changing advice and the new and hastily introduced laws:

Your employer is obliged under the law to provide you with a safe place of work

Unite is receiving on a daily basis reports of workplaces failing to operate the very basic requirements of social distancing (on the factory or shop floor, in vehicles and rest facilities) proper, regular and clean facilities to ensure frequent handwashing and the appropriate personal protective equipment.

This is not acceptable nor lawful and we have instructed our lawyers to prepare for legal action should employers consistently refuse to implement these very basic and life saving measures.

As the UK Government encourages those who cannot work from home in England to return to the workplace and more employers look to re-open or increase staffing levels in workplaces this becomes more important than ever.

Members must know their individual rights

There are some protections for employees. The most relevant are those which protect employees from being subjected to a detriment or dismissal (contained in S44 & S100 of the Employment Rights Act) on grounds that:

- (i) *'in circumstances of danger which the employee reasonably believes to be serious and imminent and which they could not reasonably be expected to have averted, they left (or proposed to leave) or (while the danger persisted) refused to return to their place of work or any dangerous part of their place of work'; or*
- (ii) *'in circumstances of danger which the employee reasonably believed to be serious and imminent, they took (or proposed to take) appropriate steps to protect themselves or other persons in danger.'*

It is for individuals to make their own decisions in their own workplace as to whether there are 'circumstances of danger' which they 'reasonably believe' to be 'serious' and 'imminent' so as to justify leaving the workplace or (while any danger persists) refusing to return or taking appropriate steps to protect themselves.

This advice is intended only to communicate what the law is; however if members suffer a detriment or dismissal on the basis of a genuine and reasonable belief then **UNITE WILL SUPPORT YOU**.

You should contact your rep or officer if you can before or as soon as possible after you have removed yourself from danger.

The UK Government has released various sector guides to working safely during the outbreak that can be [accessed here](#). They contain some helpful bits of guidance including agreement that Covid-19 risk

assessments must be completed in consultation with unions and shared with the workforce. However, the guides do not go far enough to ensure that all workplaces are safe and, as is confirmed within each of the guides, they provide non-statutory guidance and do not supersede any legal obligations relating to health and safety, employment or equalities and it is important that businesses and employer's continue to comply with their existing obligations. **Where following the Government (or any other) guidance presents unacceptable risk, our members' health and safety must take priority.**

Below is a summary of the advice from Unite's Health & Safety team on some of the steps necessary for a safe return to workplace. If a workplace isn't safe, then members should not be asked to work in it.

Safely returning to the workplace

INTRODUCTION

Current international public health activity is aimed at reducing the spread of coronavirus. The two main methods of preventing the spread of infection are hygiene measures and social distancing.

Unite is advocating a risk assessment approach using a hierarchy of control common in good health and safety management and various pieces of health & safety legislation, as recommended by the Health & Safety Executive. We are advising no work should start without an up-to-date risk assessment in place, this is particularly important in workplaces that are ramping up or re-opening based on current UK Gov advice. There needs to be robust systems in place identified by the assessment with detailed hygiene procedures and control measures for social distancing.

Consultation with the union and our representatives will be the key to formulating best practice, this will include full meaningful discussions around creating and implementing risk assessments and health and safety management systems to protect workers. Unite's detailed health & safety advice regarding Covid-19 risk assessments can be [accessed here](#)

Below is a summary of what should have been considered and be in place before workplaces re-open or work is ramped up:-

PRE START CHECK LIST (not exhaustive)

- Identify those employees that can return to duty
- Deliver a COVID19 Social Distancing briefing to employees
- Ensure office and depots pace have in place social distancing guidelines and infection control measures
- Ensure adequate work vehicles are available to maintain social distancing
- Ensure employees have adequate hygiene products and PPE
- Review safety principles & risk assessments with Trade Union Representatives
- Check if returning employees have symptoms instruct to remain home on full pay
- Confirm whether they have a vulnerable person in the household and discuss whether they need to remain home
- Ensure enhanced cleaning and maintenance programmes are in place prior to ramp up and address the risk of cross contamination with Covid-19 by cleaning staff
- Check all equipment and service to ensure in safe working order
- Ensure cleaning staff have new PPE on a daily basis
- Ensure social distancing guidance and posters are in all locations and prominently displayed
- Reps and mangers to conduct regular site "walkabouts" with workers to ensure employees are complying with social distancing principles

WORKPLACE PROCEDURAL INFECTION CONTROLS AND FACILITIES

This will vary depending on the workplace, but below are some examples of workplace infection controls that employers should be implementing:-

WORKPLACE ACCESS

- Visitors to sites should be curtailed unless essential and business critical such as delivery drivers, outside maintenance or repairs, welfare facilities need to be provided.
- Monitor congestion to enable social distancing of 2 metres:
- Introduce staggered start and finish times to reduce congestion and contact
- Remove or disable entry systems that require skin contact e.g. fingerprint scanners
- Promote good hygiene, wash or clean hands before entering or leaving premises
- Provide the necessary facilities to do this, warm water soap or hand sanitiser
- Regularly clean common contact surfaces in reception, office, delivery areas
- Drivers should remain in their vehicles if the load will allow it and must wash or clean their hands before unloading goods and materials.
- Access to toilets and washing facilities needs to be given to delivery drivers.

TRAVEL ARRANGEMENTS

- Avoid public transport - only use if there is no choice and it is safe to do so
- Car sharing would only be recommended if living in same household
- Travel alone in own transport if this is available to you
- Use a bicycle if this is feasible or walk if in walking distance
- Every effort made to provide additional parking spaces for cars and bicycles

ENHANCED CLEANING IN THE WORKPLACE

- Enhanced and regular cleaning across all areas of the workplace utilising approved cleaning products includes all building touch points
- Enhanced and regular cleaning of escalators
- Taps and washing facilities
- Toilet flush and seats
- Door handles and push plates
- Hand rails on staircases and corridors
- Lift and hoist controls
- Machinery and equipment controls
- Food preparation and eating surfaces
- Telephone equipment
- Key boards, photocopiers and other office equipment
- Rubbish collection and storage points should be increased and emptied regularly throughout and at the end of each day.

WORKING WITHIN 2 METERS

Unite's position is that social distancing should be applied at all times, within the workplace being no exception.

However current UK Government guidelines may lead to a situation where the employer wants to put in place a system for working under 2 metres for certain tasks. Where this happens reps should insist that a risk assessment is undertaken specifically for those tasks using the following principles.

- Full consultation with union safety reps regards the assessment
- The assessment identifies why the task needs to continue
- Whether the task can be abandoned or postponed
- If the employer advocates the task/job continues:
- Follows the hierarchy of control set out in [Unite's Covid-19 risk assessment guidance](#) and puts in place:
 - (i) Collective controls as described;

- (ii) If barriers are not practical, includes selection of appropriate PPE;
- (iii) A full method statement safe system of work is produced

ABILITY TO STOP WORK ON HEALTH AND SAFETY GROUNDS: AGREEMENT

Union reps should seek to agree with their organisations an agreed procedure whereby the worker can stop work on health and safety grounds. As follows:

1. Create a safety check list that the worker can fill out prior to start of a job/process
2. Part of the document to contain a stop work element that employee can sign off
3. Supervisor is informed and discusses resolution if not resolved supervisor signs off
4. Task/job is halted
5. Task is reviewed by management and union reps

If such a procedure cannot be agreed, there are still protections for members and these are explained in the note on the first page of this document. **Members have the right to remove themselves from the risk of serious or imminent danger.**

I reiterate the key message again in relation to this, if you suffer a detriment or dismissal because you removed yourself from risk of serious or imminent danger then **UNITE WILL SUPPORT YOU.**

You should contact your rep or officer for advice as soon as you have removed yourself from danger.



Howard Beckett

Assistant General Secretary for Political and Legal Affairs

18.05.20