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UK COVID-19: WORKPLACE TESTING: IS IT GOOD FOR EMPLOYERS' HEALTH?

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SUMMARY

The government is encouraging employers to regularly test their employees for Covid-19. This article looks at some of the implications of introducing a workplace testing regime and suggests an alternative approach to carrying out such testing in the workplace.

New health secretary Sajid Javid has stated it is the government's intention that step 4 of the lockdown roadmap will take place on Monday 19 July 2021, or "terminus day" as it has been called by the prime minister.

It has been speculated that the work from home guidance may remain in place beyond stage 4 of the roadmap, but the government's intention at this stage appears to be for all restrictions to fall away on the 19 July. However, despite the easing of restrictions the government has confirmed that testing will remain central to controlling the spread of Covid-19, especially as we move into the winter months when cold/flu symptoms will become more prevalent. In view of this, the government have stated that they would like as many employers as possible to sign up to regularly test their employees for the virus.

Despite this encouragement, employers should be aware that the government's working safely during coronavirus guidance makes it clear the introduction of any such testing is optional and not mandatory. The government is recommending that employers offer their employees two lateral flow tests per week, either directly or through a third party provider.

However, where an employer decides to offer workplace testing, there are a number of legal and logistical challenges which should be carefully considered. Some of these challenges are as follows:

- Personal data relating to health would be collected when processing the results of the tests. Such data is classed as 'special category data' and additional safeguards must be taken in

order to protect it.

- When carrying out such testing, employers would need to consider carefully the logistical arrangements, including the relevant health and safety regulations. For example, the testing would need to be carried out in a safe manner and appropriate setting in order to reduce the risk of transmission during the process. Employers should also factor in the 30 minutes required for the test to return a result, with a safe waiting environment provided during this time.
- Consideration should be given as to who is tested, especially when multiple people attend the workplace each day. For instance, would testing apply to everyone attending the workplace or just employees, and would everyone get tested every time they attend?
- A process would need to be in place for the safe exit from the workplace of people who have tested positive.

This is somewhat burdensome and, as such testing is not mandatory, employers may decide instead to encourage their employees to arrange their own tests, at home and in their own time, especially as they can now obtain free lateral flow tests from the NHS. Such encouragement could be accompanied by information which highlights the value of testing in order to minimise the impact of Covid-19 on both their colleagues and society as a whole.

As home testing avoids the practicalities of employer-based tests, this is a sensible approach and one that, from our experience, is favoured by the vast majority of employers. It also has the added advantage that people who unknowingly carry the virus don't have to travel on public transport to their workplace in order to be told to go home and isolate.

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