

Insights

UK COVID-19: HOW SHOULD EMPLOYERS RESPOND TO THE ANTICIPATED SCRAPPING OF SELF-ISOLATION RULES?

EMPLOYMENT LAW HORIZON SCANNING – PUBLICATION #2

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SUMMARY

Welcome to the second iteration of our 2022 Employment Law Horizon Scanning blog. This iteration will focus on the anticipated removal of the legal requirement for individuals to self-isolate if they test positive for Covid-19, the expected move to scrap free testing and the impact these measures will have on employers.

WHEN IS THE REQUIREMENT TO SELF-ISOLATE DUE TO A POSITIVE TEST EXPECTED TO END?

On 9 February, the Prime Minister announced that he expects all Covid-19 rules in England to be scrapped by the end of February, including the requirement for individuals to self-isolate if they test positive. When this announcement was made, it was based on the assumption that the “*current trends in data continue*”. With hospitalisations and case numbers continuing to fall it is therefore expected that the plan to scrap all remaining rules in February will remain.

The Prime Minister is expected to confirm these measures this coming Monday, 21 February, when he presents the Government’s “Living with Covid-19” strategy. He is also expected to announce that free PCR and lateral flow tests will be scrapped. It is anticipated these changes will take effect a few days after the announcement, so at the latest before the end of next week. Even if there is some delay, we can expect the changes to be made soon.

HOW WILL THESE CHANGES IMPACT EMPLOYERS?

It will no longer be a criminal offence for an individual to attend the workplace whilst positive with Covid-19, and the likelihood of individuals testing before attending the workplace will reduce substantially once the free provision of testing kits ends. There is also likely to be a wider societal

shift in respect of attitudes towards Covid-19, with individuals increasingly likely to view it in the same manner as flu or the common cold. The lack of legal rules and changing societal views is likely to result in individuals attending the workplace whilst either positive for Covid-19 or showing symptoms. It would be unusual for example for someone to take a week off work because of a cold. It may well be the case that only individuals with serious and/or debilitating Covid-19 symptoms will take time off work, much the same as with flu.

Unsurprisingly, and regardless of the law, these changes may raise difficult issues for employers, especially if individuals attend the workplace whilst positive for Covid-19, whether because of a test and/or because they have symptoms. At the same time, many employers are also currently seeing more staff return to the office and might want to avoid individuals refusing to attend the office because they feel it is unsafe, especially in light of changes to self-isolation rules.

Employers need to strike a balance between living with Covid-19 but at the same time ensuring the safety of staff. Employers may want to review existing policies so they can adapt to a changing Covid-19 environment, reflected both in law and in everyday practice.

WHAT STEPS SHOULD EMPLOYERS BE CONSIDERING IN LIGHT OF THE GOVERNMENT'S PROPOSED MEASURES?

Employers should continue to follow the [government's working safely guidance](#) as this will help reduce the risk of a successful claim in respect of s100(1)(d) and (e) of the Employment Rights Act 1996.

In addition, the end of the legal obligation to self-isolate does not prevent employers from having their own, more restricting rules on workplace attendance, if they choose to do so. Typically, these rules would be contained in the employer's policies and may, for example, stipulate that individuals who (a) test positive for Covid-19 and/or (b) who are displaying symptoms of Covid-19 are required to work from home for a specified period of time. Employers may also require that employees attending work with possible Covid-19 symptoms should take a test and, if positive, should also work from home.

Employers might also consider taking the following steps:

- Purchasing some home-testing kits for employees who are displaying symptoms of Covid-19 and wish to take a test;
- Continue to encourage employees to be vaccinated; or
- Keep in place rules on face-coverings, hand washing and other safety measures, which do no harm but might further reassure employees that the workplace is safe.

More restricting rules than the government requires will be at the employer's discretion and as part of their normal health and safety risk assessments and management of working arrangements. If

the government says it is lawful to attend the workplace with Covid-19 or with symptoms, it becomes difficult for an employee to argue it is wrong for their employer to allow it. However, employers should keep an eye on the mood of the workplace on Covid-19 issues as a fearful workforce is not going to function fully and may also prevent the workforce returning as expected.

In summary, the government scrapping all rules on Covid-19 does not mean Covid-19 has gone for good. It is sensible for employers to continue to be cautious, keep employees feeling safe, have a clear policy in place, keep an eye on what the market is doing and be adaptable to further change. One certainty is that the rules, guidelines and general public consensus will continue to move at a pace.

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