

## Covid-19: Returning to offices

### Introduction

The UK Health and Safety at Work Act (HSWA) 1974, is primary legislation supported by regulations and codes of practice that crucial to protecting people from the SARS-CoV-2 coronavirus and Covid-19.

As well as protecting workers, obeying the HSWA can be very business-friendly as, over time, its measures can minimise costs associated with illness and injury.

During the pandemic, the HSWA has been largely overshadowed by (UK) government guidelines, which has not always been helpful for either employers or workers. The response, especially to lightening lockdown regulations, has been far clearer in the Republic of Ireland. For workers, the UK government response needs guidelines such as these. In Ireland, the *Return to Work Safely Protocol; Covid-19 Specific National Protocol for Employers and Workers* is more than adequate.

▪ <https://enterprise.gov.ie/en/Publications/Work-Safely-Protocol.html>

The HSWA relates to organisations which recognise trade unions and those which do not. The obligations are very similar, except that consultation rules are different for unrecognised organisations.

The HSWA applies to places of work, in other words, wherever work takes place and covers visitors to an employer's premises as well as workers. Workers have mutual obligations not to endanger one another.

### The importance of reps

Where three or more NUJ members work in the same bargaining unit, they should form a chapel and elect health and safety reps. Having a chapel with safety reps allows the union access to more information and reps can carry out many of their responsibilities in work time.

Reps have knowledge and confidence to lodge grievances on behalf of the (individual) members concerned using the organisation's policies and procedures. If a resolution has not been achieved when the formal process has been exhausted, then reps should contact the relevant enforcement agency – usually a local authority environmental health department – to request an investigation and possible prosecution.

Health and safety law cannot be used in isolation. For example, UK equality legislation requires employers to provide reasonable adjustments for disabled employees. The Access to Work scheme offers assessments and funds to identify and implement reasonable adjustments. Reasonable adjustments should be reviewed as a matter of course for disabled

people who work at home or away from normal or previous place(s) or work.

▪ [www.gov.uk/government/publications/easy-read-get-help-at-work-if-youre-disabled-or-have-a-health-condition-access-to-work](http://www.gov.uk/government/publications/easy-read-get-help-at-work-if-youre-disabled-or-have-a-health-condition-access-to-work)

### Reps' responsibilities

Reps should be familiar with each stage of the health and safety process from a union perspective, knowing how to:

- request **risk assessments**
- challenge risk assessments if they do not appear to be "suitable and sufficient" or have been carried out by a competent person
- negotiate **precautions** that are "reasonable" (for workers and the organisation)
- carry out **inspections**
- monitor **reports** in incident books and call for **reviews** of risk assessments and precautions.

Even in organisations that do not recognise trade unions, the Health and Safety (Consultation with Employees) Regulations 1996 (as amended) says employers must make sure that "employees, or their representatives, are made aware of:

- (a) when their views are being sought about health and safety;
- (b) how they can give their views to...their employer; and
- (c) their right to take part in discussions on all questions relating to their health and safety at work." (Regulation 4, paragraph 112.)

Regulation 6 says appropriately (s)electd employee representatives can make "representations" about potential hazards which (could) affect employees and represent employees in consultations with inspectors.

<https://www.hse.gov.uk/pubns/books/l146.htm>

### The law and coronavirus/Covid-19

The Health and Safety at Work Act 1974 says all risks that can be "reasonably foreseen" must be assessed by a competent person. Risk assessments must be "suitable and sufficient" and carried out by appropriately competent individuals for employers.

Unions and reps can challenge RAs if they do not appear suitable and sufficient or that those carrying them out are sufficiently competent. RAs must be provided by employers, once requested in writing, within a "reasonable time", usually a few days.

**Reasonable precautions** should then be negotiated and agreed.

**Inspections** represent the next stage in this process. Where a trade union is recognised, health and safety

reps have the right to carry out inspections – which include talking to members – but they have to inform management that an inspection is taking place.

Management can be present if this is done face-to-face but should not be able to overhear conversations. Reps can carry out “inspections” by talking to colleagues on the phone or by sending out online questionnaires. Reps are legally allowed to do this in work time. Inspections should mirror risk assessments to indicate whether they were “suitable and sufficient”.

All exposure risks should be reported and documented in incident books including “near misses”. These reports should be regularly reviewed.

The HSWA covers all those on an employer’s premises – including visitors and contractors. If a freelance is on an employer’s premises, they should be covered. After that, the liabilities depend on the employment status and the nature of the (contractual) arrangement between freelance and employer/client (organisation). Don’t forget that the HWSA covers places of work rather than workplaces. So, risks must be assessed wherever and whenever anyone is working.

Risk assessments must take account of vulnerability – which varies greatly between individuals.

All hazards have two dimensions – the chance of someone encountering a risk and the seriousness if someone is affected. Risk assessments require both. Therefore, they must consider where and how someone may become infected and then, if someone does contract the virus, the seriousness of the disease that follows. Evidence has emerged that underlying conditions such as diabetes, high blood pressure, heart disease and ethnicity are factors that need to be identified and assessed.

People who are immuno-compromised, such as those on chemotherapy or on immuno-suppressant medications after an organ transplant, need to be considered. Some individuals with infections that could affect their immune function may be better protected against disease after infection because they are already on antiviral medication.

Age should be considered in the context of other health conditions.

No one can tell who has the coronavirus by looking at them. Therefore risk assessments must consider the probability of a worker encountering someone who is infected but asymptomatic and then the likelihood of transmission. Such risks cannot be eliminated but they must be minimised with reasonable precautions.

## No one has to work anywhere unsafe

Section 44 of the Employment Rights Act 1996 allows employees to challenge safety arrangements if they do not appear adequate or suitable without fearing recriminations, such as being sacked, moved or having pay deducted.

Employees can also leave, and refuse to return to, any place of work if the prevailing circumstances pose a serious and imminent danger to themselves and/or to

others which they cannot be expected to avert. They don’t have to wait for someone to be hurt.

The key factor is the employee’s own perception of the circumstances. (Clause 44.2) The employee must consider the hazard in the context of the knowledge, facilities and advice available at that time.

Employers should know about Section 44 because their staff are legally protected and can go home, and stay at home, on full pay, until shortcomings are remedied.

Someone who resigns from a job because they can prove an employer failed to maintain safe working conditions can claim “constructive unfair dismissal” and (unlimited) compensation. (However, only 3 per cent of constructive unfair dismissal claims succeed.)

Section 44 also protects reps and employees who raise concerns in organisations that do not have safety reps or committees or where employees feel they have to bypass reps and committees to raise concerns about hazards they reasonable believe to be (potentially) harmful.

Unions and union reps should support any members who invoke Section 44. No one should resign without first talking to the union and seeking legal advice.

▪ <https://section44.co.uk>

## Employment status

An organisation’s health and safety responsibilities vary according to *employment status*. Members who are unclear about their status should contact one of the NUJ officials for their sector.

## Risk assessment checklist

These points should be covered by all risk assessments. RAs must be carried out by employers and available to reps on request. This list can be used to ensure that RAs are “suitable and sufficient”. If these points are not covered, RAs should be challenged. If the responses remain inadequate, chapels and reps should consider lodging (collective) grievances or putting the concerns into formal dispute procedures. They can also be used as the basis for inspections.

The most basic questions are:

- Could a worker encounter someone with (asymptomatic) coronavirus infection in the course of their work? Could an asymptomatic worker infect someone else? Could someone contract the virus from a contaminated surface? Has each place of work or location visited during the course of work been individually assessed (as risks vary so greatly).
- Who is working where? Are they at home? Are they going out? If they are going out, where are they going?
- If someone is working at home, does the equipment they are using comply with display screen regs? The Display Screen Equipment Regulations 1992/2002 say assessments should cover lighting (including reflection), noise, leg room and work surfaces as well as posture, with appropriately positioned screens, keyboards and other peripherals. Using laptops for long periods may contravene DSE requirements –

because of the relative positioning of the keyboard, screen and a touchpad mouse.

- If people are in an office or newsroom, are measures for social distancing in place? What arrangements have been made to reduce this to the minimum necessary?
- Who has been vaccinated? And with which vaccine? Can they provide evidence of vaccination? Remember that people who have been vaccinated should test positive for antibodies, using either lateral flow or PCR tests. Arrangements should allow people to get booster vaccinations as easily and conveniently as possible. What arrangements are being made to seek evidence of vaccination while respecting confidentiality, data protection and human rights legislation?
- Regular testing can enhance safety at work. However, lateral flow tests do return many false positives so PCR tests should then be carried. Anyone whose PCR test is negative should be allowed to return to work.
- Are people working in teams? If they are, and someone has to self-isolate, what provisions are in place for the entire team to self-isolate and work from home?
- Are thermometers available (to use safely) to screen everyone entering an employers premises? Who is doing this work and are they appropriately trained and safe?
- What measures have been put in place to check individuals' medical history, both past and recent, in line with confidentiality policies and procedures and data protection legislation?
- Is anyone coming to an office or newsroom using public transport? Are allowances being paid to cover additional costs such as car use, fuel and parking for those who do not wish to use public transport?
- Are vulnerable workers (those with underlying health conditions and pregnant women) working from home? (Particular sensitivity may be needed during the first trimester regarding immunity and other factors.)
- Are workers living with or caring for vulnerable people working from home?
- What social distancing control measures are there in offices/newsrooms and anywhere else work takes place? Do they comply with the HSWA 1974?
- Have all the organisation's operations been risk assessed for stressors in line with the HSE *Stress Management Standards*? These assessments should include the stress-related impact of all sickness absence and the effect of external stress on work, co-workers and others (as it could become manifest as third-party harassment).
- Do sickness policies potentially penalise people for absence?
- Have furlough arrangements been risk assessed as potential stressors? What aspects of the arrangements have been taken into consideration? Were/are they suitable and sufficient? Are furloughs being rotated?
- What are the direct infection and indirect work-related stress risks for those with underlying health conditions (and who may be "shielding")? COSHH

requires assessments to take account of those who may be additionally vulnerable to infections because of the state of their immune systems. While this varies greatly between individuals, immune system function can fluctuate greatly for pregnant and breastfeeding women, those in middle- and old-age (according to other medical conditions), and those who are immunosuppressed by post-transplant medication and some cancer treatments, for example. Some taking anti-viral medication as prophylaxis against other infections may, paradoxically, be at less risk of becoming infected, despite exposure, than others.

- Have premises been risk assessed for legionella before being reopened?
- Coronavirus risks should be assessed beside other (potential) hazards. Is someone covering anything to do with Covid-19 potentially exposed to stress, in the form of (individual or collective) third-party harassment?

The NUJ Health and Safety Committee has produced a separate information sheet on *Home Working Inspections* covering display screen equipment and repetitive stress injury or upper limb disorders.

## Reasonable precautions

The precautions put in place should be based on what is found to be necessary in risk assessments. Employers and workers often have different perspectives on what is "reasonable" so these must be negotiated and agreed, within the terms of the HSWA.

Reps should be aware that government guidance may not be consistent with the HSWA. For example, social distancing is a reasonable precaution as is being provided with PPE. (The clue is in the name – personal protective equipment.)

In *Working safely with Covid-19 - a guide for workplace reps*, published in February 2021, the Labour Research Department (LRD) pointed out that the Westminster Department for Business, Energy and Industrial Strategy (BEIS) had by then published guidance for 14 different types or work environment, but they applied only to England.

The LRD added: "The BEIS guides provide non-statutory guidance and do not supersede any legal obligations relating to health and safety, employment or equalities and it is important that employers continue to comply with these existing obligations."

The Unite union said: "... the guides "do not go far enough" to ensure that all workplaces are safe."

This list should be used as guidance in negotiating reasonable precautions. It is not exhaustive and may be updated.

- Is ventilation adequate and calculated with regard to the number of people occupying an particular space, the length of time they will be there and how much they are moving around?
- What protocols or procedures are in place for contact between people in newsrooms and offices?

- Is personal protective equipment (PPE) provided (at the employer's expense)?
- Is there a hygiene protocol providing for regular hygiene breaks of sufficient length during the day? Washing hands is a first line of defence against coronavirus infection and should be done regularly.
- Is there access to enough sinks with hot water and soap for the number of people in an office or on the premises? Are these facilities for the sole use of the organisation or are these facilities shared with others?
- Are supplies of hand sanitiser (with a minimum 60 per cent alcohol and tissues easily available in offices and provided for those working elsewhere? Have bins been provided for the safe disposal of used tissues and paper towels?
- Are cleaning arrangements adequate, especially around toilets and washbasins and are cleaners appropriately trained and provided with PPE?
- Are adequate cleaning materials available for wiping desks, phones, computer keyboards, microphone windshields and other equipment between each use and different users or interviewees? Are rubber gloves available for this? Have bins been provide for the safe disposal of gloves and cleaning materials?
- Do the premises have appropriate signage alerting all workers, contractors and visitors of the need for high standards of hygiene?
- Are all safety protocols clearly displayed (ideally laminated) in all areas use by workers, contractors and visitors?
- Is there a protocol for what to do if a worker, contractor or visitor develops Covid-19 symptoms during work or on the organisation's premises?
- Have workers been reminded about the risks at filling stations? Have car users been provided with gloves, hand sanitiser and wipes?
- Having sufficient staff available, on duty or on call to carry out the work required during any particular shift or day, is a reasonable precaution in itself.
- Ensuring that no disciplinary dimension whatsoever is associated with sickness policies is an essential and exceedingly reasonable precaution against individuals being tempted to be in places of work where they could infect others. Similarly, suitable and sufficient remuneration arrangement should be considered as a reasonable precaution.
- Rotating those involved may reduce furlough-related stress. This should be considered as a reasonable precaution against stress. Employers who do cannot provide sufficient documentation to establish that this is not reasonable and who do not therefore implement reasonable precautions may face negligence liabilities.
- Reasonable precautions include making sure that no one is denied work and arranging for work to be done safely.
- Do all precautions apply universally to all employees, contractors and visitors?
- Does the organisation have a Covid-19 risk assessment register? Does this record who (including visitors and contractors) has seen and acknowledged

the risk assessments, reasonable precautions and incident reporting procedures? Also, is it updated whenever risk assessments and precautions are updated?

## Raising issues and seeking support

If any member feels uneasy about the risk assessments or reasonable precautions offered by an employer, they should talk to the union.

Start with a chapel rep (if you're in a chapel), or someone in your branch or an NUJ organiser. Most should have health and safety training and know how to advise, accompany and represent you.

Nearly all these factors are covered by health and safety legislation and regulation in the Republic of Ireland and the UK as well as being in EU directives incorporated in the national laws of member states. UK employers are responsible for the health and safety of their employees wherever they work – even outside the country.

The NUJ has a wide range of health and safety notes produced for chapel reps, branch activists and the union's staff. Safety reps have legal rights to inspect places of work – including homes. The notes include a checklist for such inspections so risk assessments and reasonable precautions can be monitored to ensure they meet minimum legal requirements.

If you have any doubt whatsoever about coronavirus safety and you're anxious, contact the union – because that's also a cause of stress that also needs attention.

## Further reading

*Working safely with Covid-19 - a guide for workplace reps*, Labour Research Department, LRD Publications, February 2021.

<https://www.lrd.org.uk/index.php>

The NUJ has a subscription to online versions of LRD publications that makes them available for reps. To arrange access to these, please contact:

[tuttraining@nuj.org.uk](mailto:tuttraining@nuj.org.uk)

Information about ventilation and air conditioning is on the HSE website.

<https://www.hse.gov.uk/coronavirus/equipment-and-machinery/index.htm>

## Contacting an NUJ official

Every NUJ member is in one of seven “industrial” sectors – books, magazines, newspapers and agencies, broadcasting, PR and communications, freelance, new media. Names, e-mail addresses and phone numbers can be found at <https://www.nuj.org.uk/contact-us.html> and look for “full-time officials”.

Links checked August 2021. The information is the best available at this time. Issued by the NUJ Health and Safety Committee.