

Exit from lockdown - Practical employment implications for businesses

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Governments in Guernsey, Jersey and the UK have released their plans for a phased release from the lockdown measures taken in response to the Covid-19 pandemic. Details of the plans are available on the local government websites and we do not propose to cover those in detail here.

We will be looking at the specific employment law implications and some of the issues that employers will want to consider in the initial stages of exit from lockdown.

Changes to restrictions are likely to be gradual and we are unlikely to return to 'normal' working practices in the short-term (if at all). Advice may change rapidly and business will need to plan ahead and be prepared to change, bearing in mind government advice, as well as employment legislation and health and safety issues.

As a central part of their preparations for lifting lockdown restrictions, businesses should focus on the views and concerns of their employees and speak to their staff about the options as well as any variations to contracts and policies.

Government advice

Check the local government advice to ensure that your business is permitted to operate. Make sure you are clear on what measures must be in place for your staff and customers before you can resume trading.

Risk assessment

Carry out a risk assessment to ensure a safe working environment for those that need to attend the workplace. Consider whether staff will be able to observe physical distancing while they are in the workplace and assess what changes you must make to fulfil your duty of care to your staff. Arrangements for the clinically-vulnerable and those who are shielding should be addressed. Reasonable adjustments for disabled employees should also be incorporated.

Physical workspace

Minimise the numbers of staff sharing workspace and equipment, eg consider reducing hot-desking, staggering shift times and continuing with home-working where that is possible. Have clear rules for face-to-face meetings and visitors to the workplace.

Working arrangements

It may not be appropriate for all employees to return to the office together. Consider rotating working hours and shifts and be prepared to vary people's working patterns. Some employees may have a preference, or may not be able to attend work in their normal working times. Employers in Jersey should ensure they understand the process they must follow if an employee makes a statutory request to change their hours, time or location of work.

Absence

Following the relaxation of lockdown restrictions there may be an increase in the number of people who are unwell with Covid-19 symptoms and those who need to self-isolate, but who are not unfit to work. Be clear about whether your sickness policy applies. Review any other policies relating to absence for dependents, eg if children have not fully returned to school but workplaces are operational.

Wellbeing

Speak to your employees to find out if they have any health or other issues that might affect a return to work. Consider options to support employees' mental health and well-being. Identify those who are in the 'vulnerable' or 'extremely vulnerable' categories for whom restrictions may not be lifted to the same extent and may need to remain at home isolating.

Discrimination

When planning for staff to return to the workplace, ensure that any such decisions are fair and consistent unless there is a clear business need for different treatment of staff. Be mindful of the risk of discrimination claims and make no assumptions (eg that people with disabilities won't want to return to the workplace, or that women will have childcare issues).

Review operations

Review whether some areas of the business might be under-utilised or over-utilised in the coming months and consider moving staff to busier areas and providing training in the necessary skills.

Varying contracts

If you have varied employees' contracts during lockdown, check whether you need to vary

contracts again before the employee returns to the workplace. Confirm in writing for how long any variation to the contract will apply. Discuss any plans with employees (or their representatives) before deciding to make a change to contracts.

Many of the issues covered in this briefing - including moving staff to different areas of the business, changing shifts and working hours - may require a variation to contracts, a review of your policies and consultation with your staff. Any such changes should be clearly documented.

Return date

Communicate a potential return date and any changes to employees as soon as possible, such as any changes to workplace layout (eg entrances and exits), new operating hours and physical distancing measures.

Managing staff

Consider the impact of ongoing physical distancing and remote working on training, performance review, and disciplinary and grievance hearings.

Communicate

Be prepared to inform and discuss with employees what actions might help the business to continue trading and retain staff. Employees are likely to understand the potential difficulties for the business at this time. Communication is key in the health and safety and data privacy contexts also.

Data protection

If employees will continue working remotely, even temporarily, take the opportunity now to reconsider whether the home and other remote sites provide a secure working environment. Review and confirm your policies on home working, and the use of electronic information and digital platforms.

As lockdown restrictions are eased and bespoke workplace arrangements are put in place in respect of staff and customers data privacy considerations may arise. A data protection impact assessment is a sound first step toward data law compliance in this phase. Revisit the business' privacy notice, data policies and procedures, and think about the legal basis upon which any additional personal information relating to personnel and clients is collected and further processed. The business shouldn't use more information than it needs to achieve its aims (eg health and safety obligations, duty of care etc.). Transparency is important; the business should communicate what further information it will collect, why and how it will collect that information, where it will be stored and for how long. Remember that data relating to an employee's health is classed as special category data and so will require enhanced protection and / or security measures. If the data will be shared, this should be disclosed also. Reassess the data security

measures that the business put in place when the pandemic took hold, for example, management practices in connection with staff health and wellbeing. Are the channels of communication, methods, and wider arrangements suitably discreet and secure?

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