

Welcome to Woodfines Solicitors' newsletter for **ESS** clients. UK employment law changes constantly and it can be hard for employers and HR professionals to keep up to date with the latest changes.

This executive summary has been compiled by the specialist employment solicitors at Woodfines Solicitors and is intended to highlight key recent developments in employment law, together with implications and potential actions for consideration by our **ESS** clients.



Whilst COVID and furlough in employment has been the hot topic for the last year or so, it would seem that good news envelopes us in moving forward from the pandemic with the rollout of the vaccination programme.

In itself this is great news as not only can individuals see the light at the end of the tunnel, but businesses can start to bring back their work force and prepare to drive forward in the roadmap out of lockdown.

We all know that employment law is fast paced and evolves from week to week. With the introduction of the vaccine, it is also undoubtedly going to throw up some issues for us as employers, e.g. do you allow employees time off for their vaccination, and can you force them to have it?







Whilst on the face of it, time off for medical appointments is not a legal obligation, it is not always possible for an employee to obtain an appointment outside of working hours. There is also no legal obligation to pay an employee for the time off that they have to attend a medical appointment.

COVID vaccines are a tricky subject as those who are classed as 'extremely clinically vulnerable' may also be a disabled person in law. This means, if an employer fails to allow time off for the vaccine, they heighten their risk of a potential disability discrimination claim for failing to make Reasonable Adjustments.

[Read the rest of the article here](#)

Your checklist for

Returning to work

-  **Have a COVID-19 Risk Assessment in place** This will determine whether your office space is covid safe for employees, customers, and clients to return. **Thinking points** - Office ventilation, regular cleaning, protective gear, and social distancing.
-  **Policies and Procedures** Have you got COVID-19 policies and procedures in place? Do they need updating? Make sure to regularly review policies and procedures.
-  **Decide who will return to work** As per Government guidelines, employees who can work from home should. Those who can't, should be consulted with on return-to-work patterns and a plan on how to do this. **Thinking point** - be mindful of different groups of people in the workforce and make sure to check with them first!
-  **Agree a plan to return to work** Agree with employees on how to safely return to work. Discuss what they need to do on return, such as covid tests, sign in's, hygiene, and social distancing.
-  **Employee check-ins** Check employees are following policies and procedures to stay safe in the office, have regular catchups to see how they are getting on, and encourage open communication.
-  **Manage foot-flow in office areas** Try to limit/or minimise office visits to keep the office space covid secure. Only allow for essential visits and keep track of visitors to the office. **Thinking point** - Have a 'sanitising station' in office areas and keep track of all visitors.

65%

of people expect to work from home at least two days a week after the pandemic

..... while almost a 31% believe that a return to five-day office working will not happen until 2022, if at all according to a survey by Sony Professional Solutions.

Case Updates

In **Rogers v Leeds Laser Cutting Limited** an Employment Tribunal has rejected an employee's claim that COVID-19 created circumstances of 'serious and imminent danger' allowing him to refuse to attend the workplace and gain protection against dismissal under s100 Employment Rights Act 1996 (ERA 1996).

On 29th March 2020, Mr Rodgers notified his manager that he would be staying away from the office "until the lockdown has eased" because he was worried about the risk that Covid-19 posed to his vulnerable children, who suffered with sickle-cell anaemia. Around one month later, Mr Rodgers was dismissed by Leeds Laser Cutting Ltd. Rodgers alleged that he had been automatically unfairly dismissed for exercising his rights under s100 ERA 1996.

The Employment Tribunal rejected Mr Rodgers' claim. The Tribunal held that a reasonable belief in serious and imminent danger in the workplace had to be judged on what was known when the relevant acts took place. On the facts, that belief could not be established and therefore s100(1)(d) and (e) were not engaged and the claim failed.

This is because, despite his apparent concerns about the risk of COVID-19 transmission, he had breached self-isolation guidance to drive a friend to hospital on 30 March 2020 (the day after leaving work). Rodgers' argued that COVID-19 created circumstances of serious and imminent workplace danger regardless of the employer's safety precautions. The Tribunal rejected this finding that accepting this submission could lead to any employee being able to leave the workplace, simply by virtue of the pandemic (and then rely on s100).

This is a first instance decision and so is not binding on other Tribunals but it might give a flavour of how Tribunals might approach this issue. It does, however, demonstrate the importance of implementing appropriate COVID-19 secure measures and communicating the steps that have been taken to employees.

The Employment Appeal Tribunal (EAT) considered this recently in **Sinclair v Trackwork Limited**. This case concerned s100 (1)(a) of the Employment Rights Act 1996, which makes it automatically unfair to dismiss an employee for carrying out health and safety activities.

Sinclair was employed by Trackwork and tasked with implementing a new safety procedure. Trackwork did not inform its other employees about Sinclair's mandate to do this, and they raised concerns about what he was trying to do. In particular, they complained about his 'overcautious and somewhat zealous' approach. He was subsequently dismissed for the 'upset and friction' that his activities had caused.

Sinclair claimed that he had been automatically unfairly dismissed under s100(1)(a) Employment Rights Act 1996 (ERA), which covers dismissal where the reason or principal reason is that the employee carried out health and safety activities having been designated to do so.

A dismissal will be automatically unfair if it is deemed to be on the grounds that the employee had health and safety duties. At the Employment Tribunal hearing the employer had argued that the employee had not been dismissed because of his responsibility for health and safety issues but rather because of the manner in which those responsibilities had been undertaken and the demoralising impact to colleagues that had resulted. The Employment Tribunal agreed that this was a valid distinction and the claim failed.

The Employment Appeal Tribunal (EAT) overturned the finding and allowed Sinclair's appeal, holding that s100(1)(a) ERA gives broad protection to an employee carrying out health and safety activities at the employer's direction. The takeaway from this case is that someone carrying out health and safety activities at the employer's behest enjoys a great deal of protection and the fact that they may become unpopular with colleagues in doing it does not (save in very limited circumstances) give grounds for dismissal.



Additional Support

ESS Microsite!

We are excited to announce that on top of all your current **Employment Support Service** benefits, we are in the process of setting up a dedicated microsite for all our ESS Clients.

In the next few weeks you will receive your personal login details, enabling you access to the following information:

- Relevant articles, blogs and podcasts
- Follow up video/slides from events and forums
- Handy templates
- ESS Newsletters
- Q&A section.

Once you have logged on to the site and had a look around, it would be great to have your feedback. Please do let us know if there are any other useful tools that we can add.



We are here to help



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