



## Guiding principles

Returning to the workplace

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The hardest thing is saying hello  
Return-to-workplace: guiding principles

# Legal Insights





## Health and Safety

### Key considerations

Effective planning is key to ensuring a smooth transition back to work and the protection of employees. Set out below is a summary of key steps for multi-national employers to consider:

- duty of care - as employees in different sectors return to work on a phased basis ensure that such assessments and implementation measures are tailored to the business and working environment and take account of local legal requirements/guidance, including on social distancing, the provision of personal protective equipment (PPE), any additional measures for vulnerable workers and any consultation requirements. The return to work safely protocol and relevant sector guidance must be considered. A COVID-19 response plan prepared, risk assessments should also extend to conducting data protection impact assessments where proposed solutions involve the processing of personal data
- consult with workforce - once you have undertaken or updated your risk assessments, you should consult with your workforce to obtain their comments on any proposed new ways of working so that they 'buy into' the new arrangements rather than potentially challenge them – the Protocol reiterates the collaborative approach to be taken. Your Lead Worker Representative(s) must be sufficiently trained to undertake their obligations
- personal protective equipment - where PPE is to be provided, ensure it meets local health and safety standards, is suitable for the associated work activity, fits correctly and that sufficient stock can be maintained
- screening measures - check the legality of measures such as temperature testing, health screening, contact-tracing or antibody tests. Where these are to be used, ensure appropriate related-processes are in place, including provision of privacy notices, training, security of data, procedures for denying entry to the workplace based on results and reporting
- training - train managers and your lead worker representative on the employer's measures and provide them with information, training and support to deal with staff queries and concerns and enforcement of policies. Consider if refresher training on risk assessments and work instructions is required for the workforce
- plan for HSA health and safety inspections – ensure robust evidence of compliance can be readily provided of COVID-19 measures in the event of health and safety inspections. Establish a procedure for responding to any such audits
- survey of premises – prior to allowing the workforce to return to site, undertake a site survey to ensure the working environment is safe. This will include, alongside a general evaluation of the site, a review of fire safety measures, water systems (to manage the risk of legionella bacteria) and statutory inspections on certain items of equipment and machinery (e.g. lifts) which may have expired during the closure of business operations
- wellbeing and welfare - consider if additional support is required for the workforce in view of any changes arising in the re-start of business operations
- looking ahead – consider contingency plans for any future recurrence of COVID-19 or a similar crisis, taking learnings from the current COVID-19 experience

In some jurisdictions, like Ireland, carrying out a risk assessment for certain hazardous work activities is a legal requirement under the 2005 legislation. For those jurisdictions which do not operate within this framework, the below checklist will still offer a framework of key issues to take into account. Such a risk assessment would consider appropriate control measures to manage the risks of contracting COVID-19, for example:

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- to what extent can the business continue to support remote working where this is possible, taking into account whether a safe working environment can be provided for remote workers, given that the situation is likely to last into the medium and long term
- an appropriate social distancing plan – this may include staggered start and finish times to the working day or alternating days or weeks when employees may work from the business premises
- providing suitable information and instruction to employees and contractors on what to do if they suspect they have contracted COVID-19
- ensuring there are sufficient handwashing facilities within the premises, taking into account social distancing
- considering whether the frequency and intensity of cleaning needs to be increased (for example if hot desks are to be used, taking into account how these will be cleaned to an appropriate standard before another employee works in that area)
- providing PPE where this is identified as necessary and is available
- ensuring suitable ventilation of workplace environments
- consider whether there are any clinically vulnerable people who must take particular care to minimise contact with others outside of their household or clinically extremely vulnerable employees who must practice shielding, in accordance with government guidance

Employers have a legal duty, so far as is reasonably practicable, for the health, safety and welfare at work of their employees and anyone else who may be affected by the employer's business, including visitors and members of the public.

## Additional practical considerations

If premises have been unoccupied, or operated by skeleton staff for a period of time, consideration will need to be given to ensuring that the premises are ready for occupation by the wider workforce. Factors which are likely to be relevant in most jurisdictions will include:

- ensuring that there are an appropriate number of first aiders and fire marshals available on any given day, taking into account the number and location of employees at work
- conducting appropriate property management inspections to ensure that, for example, risks of legionella are considered and controlled as low occupancy buildings can give rise to the risk of legionella bacteria building up in stagnant water
- putting in place barriers or markers to aid with social distancing
- take into account a period of time to engage with employees on the changes to working practices, to ensure compliance with any changes from day 1 of returning to the premises
- consider how employees will be trained and monitored to ensure compliance with any changes to working practices on the premises

Thought should be given to whether any instances of employees being diagnosed with COVID-19 need to be reported to the regulator and a process should be put in place to ensure this is carried out, where required. Following on from this, employers should consider whether notification of a positive diagnosis should be shared with the wider workforce, to limit the spread of the disease and whether there are any local required procedures to follow. Any such disclosures should be made only after taking into account any data protection and privacy concerns.



## Employment

### Employers' responsibilities

As set out, as companies prepare, or at least begin considering employees returning to their places of work, it is important that employers assess the risks faced by their employees and visitors and implement measures to mitigate those risks.

**Key steps include:**

- informing employees and, where relevant, recognised unions or other employee representative bodies about proposed return to work measures
- reviewing flexible working arrangements. Identify whether existing contracts, and working arrangements, permit any required additional flexibility – if not, consider how this might be achieved
- reviewing policies governing business travel, holidays, sickness, caring for dependants and home working. Ensure a reasonable and consistent approach
- reviewing relevant insurance policies and guidance issued by insurers
- devising arrangements for dealing with staff who may be at particular risk of contracting COVID-19, or who report symptoms and may have COVID-19

### Employer's duty of care – the legal position

Employers have a legal duty, so far as is reasonably practicable, for the health, safety and welfare at work of their employees and anyone else who may be affected by the employer's business, including visitors and members of the public.

Legislation, in Ireland and in many countries, requires employers to undertake a suitable and sufficient assessment of the risks to the health and safety of employees and anyone else who may be affected by the employer's business. In addition, the government has published a "Return to Work Safely Protocol" (the "[Protocol](#)") designed to support employers and workers to put measures in place that will prevent the spread of COVID-19 in the workplace once businesses begin to reopen, in accordance with the "Roadmap for Reopening Society and Business" (the "[Roadmap](#)").

**Key steps include:**

- each workplace must appoint at least one lead worker representative charged with ensuring that COVID-19 measures are strictly adhered to
- employers must develop or update their response plan for dealing with COVID-19 in their workplace
- employers should develop a framework for identifying and isolating potentially infected individuals
- employers must ask employees to complete a return to work form at least three days prior to their return to work
- employers should "implement temperature testing in line with Public Health advice" which will presumably follow the Protocol
- employers must provide information to employees in relation to the importance of hand hygiene, ensure tissues and hygiene facilities are available and bins are emptied regularly
- this may include a no hand-shaking policy, staggered rest and canteen breaks, avoiding face to face meetings and workplace gatherings etc. Where 2 metre distancing is not physically possible, screens and face masks may be appropriate
- employers will provide COVID-19 induction training for all workers

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- the Protocol also provides that support should be put in place for workers who may be suffering from anxiety or stress. This might include advising them of the control measures taken and also directing them to the Employee Assistance Programme (if applicable) or referring them to Occupational Health

## Social distancing

The Irish Government has issued guidance on social distancing advising that a 2 metre distance should be maintained where possible. Where 2 metre distancing is not physically possible, screens and face masks may be appropriate. Vulnerable staff who are at higher risk of severe illness from COVID-19, should be preferentially supported to maintain a physical distance of 2 metres but preferably, should work from home if possible. Employers should pay particular attention to vulnerable staff in carrying out risk assessments and implementing measures to address risk areas.

### Key steps include:

- considering workplace arrangements to ensure social distancing can be adhered to, which may include adjustments to the working environment and limiting the number of employees in the workplace
- informing employees about social distancing and infection control measures
- advising what they need staff to adhere to in relation to these measures
- allowing home working where possible, especially for staff who are at increased risk

If an employer fails to implement appropriate measures then it will potentially leave itself exposed to employees asserting that they have grounds for refusing to attend work, on the basis that doing so would place them in danger.

## Protocol implementation

Assemble a project team and appoint a worker representative to oversee the creation and implementation of protocols. Include members specialising in management, employee relations, facilities, insurance, travel and events, communications and occupational health. For those who adopt this approach, it will help to ensure consistent and reasonable treatment, thereby reducing the risk of claims.

### Protocols are particularly desirable for dealing with employees:

- who are under mandatory quarantine
- who have self-quarantined
- who have travelled to high risk destinations
- who appear to be at risk or are ill with COVID-19
- who are in vulnerable groups (e.g. over 70s)

## Flexible working

Many of the world's governments provided guidance on social distancing that encouraged employees to work from home, where possible. Staff contracts may entitle the employer to require staff to work flexibly and this may be imposed in limited circumstances, even where there is no contractual right. Employers should, in any event, normally consult with staff before exercising their rights to require flexible working and should listen sympathetically if staff have personal reasons why they cannot work flexibly.

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### Key considerations:

- if the employer needs employees to work outside the terms of their existing contracts, then it may have to agree the flexible arrangements with the individual employee, or where applicable with a works council/recognised union/other employee representative body
- if consent is required but cannot be obtained, the employer should take legal advice before proceeding to implement changes
- employers need to be able to justify the need for flexible working and evidence it behaved reasonably and proportionately when implementing different working arrangements
- if the reason for flexibility is personal to the employee, in that the employee is at risk of having been infected, then the employer would usually have good grounds for requiring the employee to work from home, provided their enforced removal from the workplace lasts no longer than is necessary and they are provided with support

## Staff who are unable or unwilling to attend work

Some staff may be able but unwilling to attend work, for example because they are concerned about contracting COVID-19 or due to childcare responsibilities with schools remaining closed or partially closed. Employers should listen to the reasons for their concerns and to try to find an agreed resolution. Where work can be undertaken from home, employers should consider how this might be achieved.

### Unable / unwilling to work:

- employees may be site-based or unable to work due to caring for dependants, in these cases it may be possible to agree that time away is taken as holiday or unpaid leave, or there may be statutory pay leave and pay available.
- employees concerned about contracting COVID-19 should have access to a communication point to ensure that their concerns can be discussed.
- employers may also be able to provide support and advice via an existing Employee Assistance Programme
- before taking action to address employees refusing to attend work due to risk of infection, employers should ensure that they have undertaken a risk assessment and have taken steps to mitigate any workplace risks which might cause employees concern, especially for any employees who are at increased risk
- employers should also ensure that they deal with requests to remain away from work in a proportionate, reasonable and consistent manner

### "Reasonable" requests:

Employees may be willing but unable to work because they are caring for dependants, schools are shut or their transport is disrupted. Employees will have a right to request a reasonable amount of unpaid time off work to deal with domestic emergencies for example force majeure leave. Staff may also request flexible working, which the employer may consider.

## Pay entitlement

Whether salary should be paid is dependent on the reason for the non-attendance.

### Sick Pay

Staff who cannot work because they have been infected with COVID-19 will be entitled to sick pay if it normally provided by the employer in the usual way. Employees may be entitled to illness benefit paid by the State subject to having made the requisite PRSI contributions.

### Carers



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Pay for staff members unable to come to work due to caring responsibilities, for example where schools are closed or where they are caring for sick dependants, should be determined in accordance with their employment contract and the employer's usual policy, ensuring that all requests are treated in a reasonable and consistent manner.

Note that employees have a statutory right, to take a reasonable amount of unpaid time off work to as force majeure leave to deal with domestic emergencies affecting their dependants, including unexpected disruption to arrangements for the care of their children.

Carer's leave allows employees to leave work temporarily to provide full-time care and attention for someone who needs it. Employee can take carer's leave for a minimum of 13 weeks and up to a maximum of 104 weeks. Eligible employees may be entitled to carer's benefit paid by the state.

## Self-isolation

The position of staff absent from work due to self-isolation will often be determined by whether that self-isolation is has been expressly ordered (for example, as medically advised by a doctor or the Health Service Executive ("HSE")) or is the individual's own decision.

Public Health guidance makes clear that individuals should self-isolate where they have been advised by the HSE or a GP to self-isolate as they may be a possible source of infection or on account of travel abroad. Eligible employees in the Ireland are entitled to receive statutory illness benefit.

It will be paid for a maximum of 2 weeks where a person is self-isolating due to being a possible source of infection, and for a maximum of 10 weeks if a person has been diagnosed with COVID-19 (Coronavirus). If a person has been certified for less than 10 weeks, they will be paid for the duration of their certificate

## Safe place to work

Employers are obliged to maintain a safe place of work and should consider taking appropriate steps to prevent staff who are infected (or who are likely to be infected) from coming into the workplace. See Health and Safety above.





## Employers' liability

### Employers' liability and risk mitigation

In most jurisdictions employers have a general responsibility to take care of their employees' safety. Whilst the COVID-19 crisis may present a unique challenge to an employer's duty of care, it does not remove it or fundamentally alter it.

Although the Government will have issued its own guidance in relation to understanding what steps firms should be taking to protect their staff against the spread of the virus, many of the fundamental concepts will be similar, although the details may differ on a sector by sector basis. The guidance issued by each government will also change over time as the situation in each country develops. The key is to ensure that the regulations and government guidance in each jurisdiction is complied with consistently. There are some general steps that should be considered by way of a general approach across multiple jurisdictions. Things to consider in the context of each business include:

- a new COVID-specific risk assessment should form the basis of any measures implemented. How can the risk of transmission in the workplace be eliminated or at least reduced to the lowest reasonable level. In addition to a multi-jurisdictional assessment, specific assessments taking into account the local law and guidance will be necessary for some employers. A template for the local assessments may be helpful and achieve some consistency of approach over multiple jurisdictions
- special consideration should be given to particularly vulnerable groups – it may not be safe enough for them to return to work as early as others
- re-assess pre-COVID working models. Can some roles be done from home? Is more flexibility in terms of hours, location, job description necessary?
- employees who can work from home, should continue to do so
- adequate hand washing provision should be available - if possible, providing soap, water, hand sanitizer and tissues and encourage staff to use them
- avoid face-to-face meetings and use protective screens where possible
- keep canteens closed
- make regular announcements to remind staff and/or customers to follow social distancing advice and wash their hands regularly
- stagger arrival and departure times
- where it is possible to remain a safe distance apart, use floor markings to mark the distance, particularly in the most crowded areas
- where it is not possible to remain two metres apart, consider providing additional safeguards, such as faceguards, to reduce risk and prepare a policy in respect of their use

If an employer can implement and maintain these measures along with any specific local requirements then they will stand a good chance of establishing that they have discharged their duty of care to their staff.

### Injury claims and COVID-19

In order to succeed in any injury claim the employee must show that his or her employer was in breach of the duty owed to them and that the breach caused the injury:

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- normally an employee would have to show that he contracted the virus at work due to a breach of duty on the part of his employer
- this may present a real challenge – it is simply not possible to identify where the contact was made that actually caused the infection
- this difficulty means that the courts will probably adopt a different test that is used where a direct line of causation is impossible to prove in practice
- this test will vary in line with the local law applicable to the claim but technical legal difficulties of this nature are not likely to be allowed to stop claims being brought
- in any workplace where the guidelines have not been consistently enforced, and in the context of a disease that many people may have symptom free and unknowingly, although the test will vary in line with the local law applicable to the claim, technical legal difficulties of this nature are not likely to be allowed to stop claims being brought

## Evidence collation

What the courts will want to know is what measures were put in place, whether those measures were adequate and whether they were consistently enforced.

### Questions will include areas such as:

- could the work be done at home?
- was the risk assessment adequate?
- were appropriate and effective protective measures put in place?
- were the local guidelines and regulations, including the protocol and Covid 19 response plan complied with and imposed consistently?
- was the risk assessment updated as and when further guidance was issued?

Risk assessments need to be enforced and kept under constant review as the situation and government guidance changes.

Statements explaining, and justifying, the risk assessment process and risk control measures put in place will be helpful, as will be the minutes of meetings documenting health and safety decisions. These documents will be needed to defend any claims brought. Make sure that such documents are kept safely for an extended period of time as claims may be brought many years out from now. It is much easier to collate this evidence whilst the process of risk assessment and implementation of new working practices is carried out than in 6 or 12 months' time.

## Vicarious liability

There will be instances where employers have put in place all reasonable measures, but a small number of employees fail or refuse to comply. In some jurisdictions an employer may be liable for the breaches of duty of its employees without any fault on its own part.

For example:

- if an employee ignores social distancing rules and one of the members of staff he gets too close to becomes sick, an employer can be vicariously liable
- this is true even if markers are on the floor, signs erected and every opportunity to remind employees of the rules, has been made

The best course of action for an employer to take is to make it as difficult as possible for employees to go against the measures which have been put in place. If a member of staff is careless in complying with the

risk assessment then, depending upon the level of breach, employees should be warned, sent home or in some instances dismissed entirely. It should be treated in the same way as any other health and safety breach under the firm's disciplinary procedure.

## Claims and damages

It is important to remember that there remain many unknowns surrounding COVID-19. For instance, we do not yet know if there will be any long-term residual symptoms which may affect those who have contracted it or how prevalent such long-term issues will be within the population.

We anticipate that for the majority of COVID-19 claims, it will involve minor symptoms resulting in a few weeks bed rest. These will be akin to minor whiplash or holiday food poisoning claims, attracting limited damages. These claims will present a particular risk to large-scale employers such as national supermarkets, where large numbers of employees are coming into contact with the general public on a daily basis.

The total cost of many low value claims such as these will likely outweigh a much smaller number of high value claims. Nevertheless, one large claim for a smaller business that finds itself uninsured could prove disastrous. We expect:

- high value damages will arise where long recovery periods have prevented an employee returning to work in a previous capacity or at all, resulting in large future loss of earnings claims
- there is considerable potential for damages being increased with claims including allegations of serious Post Traumatic Stress Disorder. This will be where the physical symptoms have been such that claimants have understandably feared for their lives. Psychological injuries of this type can affect a claimant's ability to work and care for dependants
- at the top end of the scale, we will inevitably see fatality claims where the deceased had dependants relying on his or her income

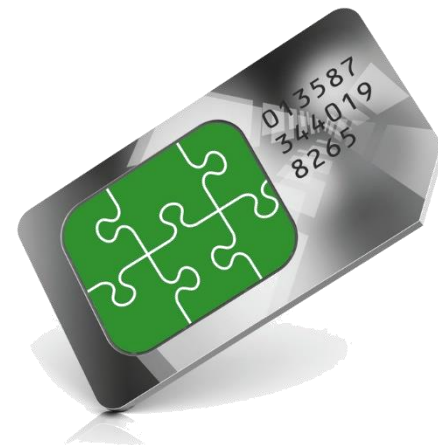
Another category of claim employers should be prepared for, is from members of the infected employee's household. Given how contagious COVID-19 is, it is foreseeable that other members of the same household will also become ill, if the virus is brought into the home. If a claimant can establish that their employer breached their duty of care and caused the original infection, then there is a real risk that the employer will be deemed liable for the infected family members' claims too, providing that they are within the same household.

The key to avoiding claims will be to understand that the assessment and control of the risk presented by COVID-19 is not a "one time" activity. Few employers will attract liability because they have not adequately identified the risks – many will do so because they have failed to ensure that the control measures that they put in place, are consistently obeyed in the longer term.





## Data and privacy – EU



### Screening measures and privacy

When considering screening measures such as temperature testing, health screening, contact-tracing and antibody tests, organisations need to understand the privacy implications of doing so and how to comply with applicable data protection rules. Data concerning health is a special category of personal data under the GDPR, and therefore is strictly protected.

#### Important to know:

- capturing an identified individual's temperature on a testing device (even if the result is not recorded) as well as using that data for any purpose (e.g. making a decision not to allow entry to the individual) would likely be considered as "processing" data under GDPR
- the temperature information would also likely be classed as special category personal data

Organisations that wish to carry out testing will need to consider whether they comply with the regulations first and foremost and, make a decision as to whether it is necessary and proportionate (and in line with public health advice).

### Data management and screening measures

Companies need to consider how screening measures are conducted so that personal data processing does not occur or is minimised. If personal data is necessarily going to be collected then a legal basis for that collection is required:

- consent isn't always available or the best option for this sort of personal data collection, particularly in respect of employees' health data
- consent can be withdrawn at any time, and if the individual does not have a genuine choice, consent may be invalid
- reliance on an argument that testing is in the substantial public interest may be more successful but this still could be challenged in certain cases
- clear communication, and fair processing notices, will need to be provided to visitors and anyone testing will need to carefully consider minimising data collected and its retention

### Regulatory approaches

Ireland's Data Protection Commission (DPC) has stated that data protection legislation should not be a barrier to businesses implementing steps to contain, manage and mitigate risks against COVID-19. It has reminded businesses that any measures taken in response to COVID-19 which involves the collection of special category personal data (such as health data) should be proportionate and necessary and decisions made in this regard should be informed by the guidance and/or directions of public health authorities, or other relevant authorities.

The DPC has also acknowledged that employers have a legal obligation to ensure the health and safety of employees, as well as a duty of care, and that data protection law does not prevent them from doing this.

Having regard to the steps being considered by employers to protect staff, employers will need to consider their data protection responsibilities (particularly in determining if it is proportionate and necessary) and guidance issued by public health authorities when determining if it should test staff upon their return to the office. Among other things, data protection impact assessments should be conducted, notices provided and processes put in place to ensure that individuals' rights can be exercised effectively. In addition, the data minimisation principle should be put into practice and organisations should explore whether they can achieve the desired result through less privacy intrusive means.

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Over the course of April and May 2020, we have seen various commentary emerge from European governments and their data protection authorities – this has not always been consistently supportive – but will likely evolve and inform a collective view on the use of testing and other screening measures.

# Checklists

Checklist

<input checked="" type="checkbox"/>	estimate sales
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## Health and Safety: business restoration planning checklist

 <b>COVID-19 risks</b>	
<b>Risk assessment</b>	COVID-19 control measures, social distancing plan, consider symptom testing (and the management of personal data), consider a specific enclosed room to isolate any person displaying symptoms
<b>Health</b>	Guidance and instruction on COVID-19 management and notification of symptoms
<b>Hand washing facilities</b>	Increase facilities and frequency of washing
<b>Contingency plan</b>	Consideration for a second wave of COVID-19
<b>Cleaning procedures</b>	Increase frequency and intensity of cleaning operations, introduce pre-use clean, post-use clean of workstations, equipment, machinery, cabs of vehicles and regular touch points (rails, buttons), provision of additional cleaning and disinfection facilities, consider the use of single-use items in kitchens, regular housekeeping in bathroom and kitchens
<b>PPE</b>	Is this required? Would it alleviate workforce concerns? Disposable masks, gloves, aprons
<b>Ventilation</b>	Open windows in premises, cabs
 <b>SMS &amp; SSoW</b>	
<b>RA and SSoW</b>	Revisit risk management documentation to implement necessary revisions, communication and implementation, ensure effective change management strategy
<b>PPE and equipment</b>	Consider additional PPE and installation of equipment - plexiglass barriers, personal hand sanitiser, gloves, overalls (change of clothes) if required, disable touch screens, remove high-touch equipment (white boards, remote controllers), institute a clear desk policy, create designated storage areas for personal items, encourage workforce to use own stationary and equipment
<b>DSE</b>	Revisit DSE workstation self-assessments for an increased workforce working from home, consider if reasonable adjustments are required
<b>Cohorting</b>	Consider cohorting to reduce number of teams and limit social interaction (teams, alternate working weeks, staggered arrival and departure times) and implement a handover process where required
<b>Lone working</b>	Consider policy and guidance where lone working now arises, ensure a system for regular communication and reviews



<b>Social distancing</b>	Update working practices - stagger breaks, side by side working or facing away working arrangements, enforce building control measures with two metre markings and signage and one direction foot-traffic, queue management - entering and leaving premises, use stairs rather than lifts, discourage lift shares (different guidance in England, Wales and Scotland)
<b>Supply chain</b>	Communication with supply chain in relation to safe deliveries procedure – control the entry points, staggered delivery times, plexiglass shields where appropriate, cleaning of packages, additional hand washing facilities
<b>Welfare</b>	Regular engagement with the workforce, introduce stress and wellbeing initiatives, consider virtual work support, monitor working patterns to tailor guidance and assistance



## Premises

<b>Security</b>	Review of security and general condition of the premises and undertake remedial works prior to re-entry, check electrical equipment and appliances
<b>Fire life safety</b>	Review fire safety arrangements, inspect firefighting equipment and life safety systems ensure quota of first aiders and fire marshals on site,
<b>Water risks</b>	Review legionella risk assessments, consider flushing regime and treatment
<b>Statutory inspections</b>	Review equipment and machinery (engineers categorised as essential workers)
<b>Site reorganisation</b>	Re-design spaces and reduce capacity in lobby, reception and canteen areas, consider office furniture reconfigurations, convert shared spaces and meeting rooms to single capacity, reduce the number of printers/copiers



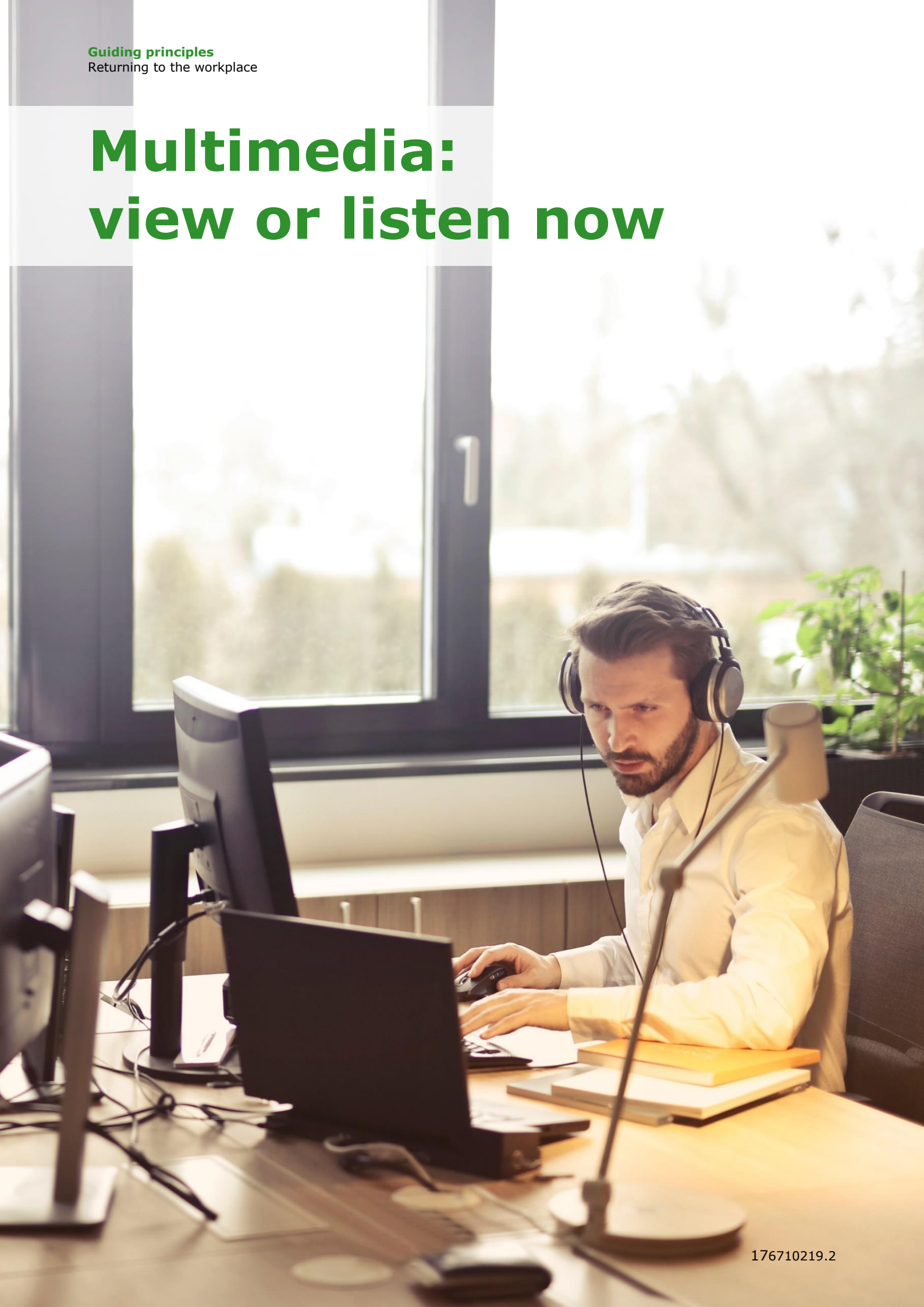
## People

<b>Consultation, guidance and instruction</b>	Develop and execute a comprehensive return to work plan, communication on COVID-19 control measures and ongoing support to mitigate workforce anxiety – consider a centralised Q&A platform, modifications to SMS and SSoW, regular updates on evolving government and PHE guidance, engage workforce in the back-to-work plan, ensure leadership alignment on re-entry, manage employee expectations consider the introduction or update to policies on home working, travel (to include “commuting” whether via public transport or employer provided/sponsored vehicles (vans, coaches etc)), sickness, health screening and reporting, data privacy and information security (home working risks)
<b>Training</b>	COVID-19 measures, refresher training, PPE guidance, changes in SSoW and re-skill training

## Employers' checklist: reopening workplaces

<b>Planning</b>	<p>Allow sufficient time for careful advance planning, including any consultation with representatives, before fixing a return to work schedule</p> <p>Be flexible – organisations should prepare to change approach to maintain safe operations reflecting a fast-moving and evolving situation</p> <p>Consider measures which may be necessary to make the business resilient in case of a further lockdown</p> <p>Be led by the local government guidance when published and take advice on local employment law requirements</p>
<b>Risk assessment</b>	<p>Revise assessments of the likely COVID-19 risks to employees by returning to work</p> <p>Devise measures to mitigate the identified risks</p> <p>Pay attention to the particular needs of high-risk and vulnerable employees, those living with individuals in such categories and consider discrimination risks in all decision-making</p> <p>Obtain a copy of the relevant guidance and follow it, consistently</p>
<b>Collaboration &amp; communication</b>	<p>Consider any local requirements to consult on any return to work measures, including any screening measures</p> <p>Take all possible steps to inform employees of the measures taken to reduce risks arising from COVID-19</p>
<b>Protocols</b>	<p>Put in place a Health &amp; Safety COVID-19 return to work protocol/policy, reflecting risk assessments and measures</p> <p>Ensure that managers are fully briefed and able to respond appropriately to staff concerns</p> <p>Adapt disciplinary and grievance policies to deal with COVID-19 specific issues such as failures to comply with social distancing</p> <p>Consider requiring all employees returning to work to confirm they have understood and will abide by new workplace protection rules (e.g. on screening, social distancing, hygiene practices and self-reporting illness)</p> <p>Establish anonymous reporting for workers to report unsafe practices and be prepared to address any such reports rapidly</p> <p>Ensure a senior team keeps up to date with government guidance and changes to it. Re-assess risk and protocols as guidance changes</p>
<b>Working arrangements</b>	<p>To the extent that the measures necessitate changes in working arrangements, audit employee contracts and policies to determine if the changes can be introduced without the need to change employees' terms of employment</p> <p>Consider a sustainable policy for staff who are continuing to work at home and/or are high-risk or otherwise vulnerable and ensure that it is applied consistently, fairly and reasonably</p>
<b>Data privacy</b>	<p>Under data protection law, information about an individual's health is a 'special category' of personal data which may only be processed in limited circumstances</p> <p>The processing of this data will require a lawful basis. Appropriate privacy notice information (for instance what and how it will be used and with whom it will be shared – as strictly necessary) should be made provided to staff and employers should ensure that the processing is necessary and appropriate for the stated purpose and is carried out in a proportionate manner. Maintaining the security of the personal data will be fundamental</p> <p>Take advice on maintaining employee confidentiality and privacy when instituting COVID-19 infection control and screening measures</p>

# Multimedia: view or listen now





## Multimedia resources

### Irish-based multimedia

EHS and Employment Clinic Webinar: A protocol to safely return to work

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# Contact a lawyer





## Contact us for expert advice

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