

**CORONAVIRUS BRIEFING NOTE 3**  
**EMPLOYERS LEGAL OBLIGATIONS:**  
**HEALTH AND SAFETY RISK ASSESSMENT**  
**FOR DIRECTORS, CHIEF EXECUTIVE OFFICERS AND IN-HOUSE LAWYERS**

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De Jure Chambers| 5 Chancery Lane | London | WC2A 1LG  
Telephone: 0208 798 0917 Email: [admin@dejurechambers.co.uk](mailto:admin@dejurechambers.co.uk) | [www.dejurechambers.co.uk](http://www.dejurechambers.co.uk)

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## **1. INTRODUCTION**

1.1. As part of its support for businesses and self-employed people during the coronavirus pandemic, the Government, through the: Department for Business, Energy & Industrial Strategy, has set out the following 5 practical steps for businesses to take to ensure work is carried out safely during coronavirus (COVID-19) pandemic<sup>1</sup>:

- 1.1.1. Carry out a COVID-19 risk assessment;
- 1.1.2. Develop cleaning, hand washing and hygiene procedures;
- 1.1.3. Help people to work from home;
- 1.1.4. Maintain 2 m social distancing, where possible; and
- 1.1.5. Where people cannot be 2 m apart, manage transmission risk

1.2. This Briefing Note No. 3 outlines employers' obligations in relation to the first of these steps, carrying out a COVID-19 risk assessment.

## **2. GOVERNMENT GUIDANCE ON COVID-19 RISK ASSESSMENT**

2.1. Government guidance requires that before restarting work you should ensure the safety of the workplace by:

- 2.1.1. carrying out a risk assessment in line with the HSE guidance;
- 2.1.2. consulting with your workers or trade unions; and
- 2.1.3. sharing the results of the risk assessment with your workforce and on your website.

2.2. The government guidance references *The Health and Safety Executive Guidance on "Managing risks and risk assessment at work"*<sup>2</sup> ("HSE Guidance") as a standard for risk assessment. Following an overview, the HSE Guidance outlines:

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<sup>1</sup> <https://www.gov.uk/guidance/working-safely-during-coronavirus-covid-19/5-steps-to-working-safely>

- 2.2.1. the steps needed to manage risk;
- 2.2.2. provides a risk assessment template and examples; and
- 2.2.3. further detail on managing risk.

### 3. THE LAW - CIVIL AND CRIMINAL LIABILITY

- 3.1. Employers have specific statutory duties under the 1992 'six pack' of health and safety regulations implementing the EU health and safety regime in the UK<sup>3</sup>. At the heart of this regulatory regime is the obligation on employers under Regulation 3 of the Management of Health and Safety at Work Regulations 1999 to carry out risk assessments (*See De Jure Chambers Briefing Note No. 1*).
- 3.2. Employers also owe their employees a common law duty of care to provide a safe place and system of work, safe equipment and safe staff. Both criminal and civil law are available for breach of these obligations. An employer found to commit a criminal offence may receive verbal or written advice; get an improvement or prohibition notice or be prosecuted.
- 3.3. Regulators such as the Health and Safety Executive (HSE) or local authority may bring a criminal prosecution and any person has been injured or made ill through your negligence as an employer, may be able to make a compensation claim against employer.
- 3.4. The employer may also be found liable if an employee or anyone who works for the employer has been negligent and caused harm to someone else.
- 3.5. If a claim is successful, a court may make a judgment against the employer, and award money ('damages') to compensate for the pain, losses and suffering caused. If HSE have to help you put things right, you'll need to pay for their time. This is called a 'fee for intervention' (FFI).
- 3.6. Please note:
  - 3.6.1. No one has to have been harmed for an offence to be committed under HSWA – there only has to be a risk of harm.
  - 3.6.2. If you meet your responsibilities under health and safety law you will considerably reduce the risk of being found negligent under civil law. Your starting point is a risk assessment and Health Surveillance under the "*The Management of Health and Safety at Work Regulations 1999*"
- 3.7. Risk Assessment
  - 3.7.1. Under paragraph 1 of Regulation 3, The Management of Health and Safety at Work Regulations 1999 ("MHSWR"), every employer must complete a suitable and sufficient assessment of
    - 3.7.1.1. "*the risks to the health and safety of his employees to which they are exposed whilst they are at work; and*
    - 3.7.1.2. *the risks to the health and safety of persons not in his employment arising out of or in connection with the conduct by him of his undertaking, for the purpose of identifying the measures he needs to take to comply with the requirements and*

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<sup>2</sup> <https://www.hse.gov.uk/simple-health-safety/risk/index.htm>

<sup>3</sup> The regulations are: The Management of Health and Safety at Work Regulations 1999 (MHSWR); The Provision and Use of Work Equipment Regulations 1998 (PUWER); The Manual Handling Operations Regulations 1992; The Workplace (Health, Safety and Welfare) Regulations 1992; Personal Protective Equipment at Work Regulations 1992; Health and Safety (Display Screen Equipment) Regulations 1992.

*prohibitions imposed upon him by or under the relevant statutory provisions and by Part II of the Fire Precautions (Workplace) Regulations 1997”.*

3.7.2.Paragraph 2 of Regulation 3 MHSWR provides similar specification for self-employed persons: “ *Every self-employed person shall make a suitable and sufficient assessment of*

*3.7.2.1.the risks to his own health and safety to which he is exposed whilst he is at work; and (*

*3.7.2.2.the risks to the health and safety of persons not in his employment arising out of or in connection with the conduct by him of his undertaking, for the purpose of identifying the measures he needs to take to comply with the requirements and prohibitions imposed upon him by or under the relevant statutory provisions”.*

3.7.3.Paragraph 3 of Regulation 3 MHSWR is of particular relevance to the COVID-19 pandemic. It requires that all prior risks assessments must be reviewed by the employer or self-employed person who made it if

3.7.3.1.there is reason to suspect that it is no longer valid; or

3.7.3.2.there has been a significant change in the matters to which it relates; and

3.7.3.3. where as a result of any such review changes to an assessment are required, the employer or self-employed person concerned must make them.

### 3.8.Health Surveillance

3.8.1.Every employer must ensure that his employees are provided with such health surveillance as is appropriate having regard to the risks to their health and safety which are identified by a risk assessment: *Regulation 6 MHSWR.*

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*Please contact us if you would like a briefing on Zoom or with any issues you would like further advice on issues identified.*

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