

Risk assessment and Covid-19

1) The Government's "Living with Covid" strategy

On 1st April 2022, as part of its "Living with Covid" strategy, the Government replaced its Covid-19 guidance for workplaces with public health advice. As a result, there is no longer a requirement on employers to consider Covid-19 in their risk assessments - or to have specific Covid-19 measures in place.

The Government is aiming to move to an approach where Covid is regarded the same risk as other respiratory complaints. (Read more about the Government approach here: <https://www.gov.uk/guidance/people-with-symptoms-of-a-respiratory-infection-including-covid-19#symptoms-of-respiratory-infections-including-covid-19>).

The Government's strategy is to pretend that coronavirus does not exist – and it speaks volumes about the weakness of UK health and safety regulators that the HSE (Health and Safety Executive) concurs with the Government approach. They write in their guidance, "Coronavirus (Covid-19) – Advice for workplaces (hse.gov.uk) Risk Assessments" <https://www.hse.gov.uk/coronavirus/#:~:text=HSE%20no%20longer%20expects%20every,du e%20to%20their%20work%20activity>:

HSE no longer expects every business to consider COVID-19 in their risk assessment or to have specific measures in place. Employers may still choose to continue to cover COVID-19 in their risk assessments.

2) Relevant legislation which requires Covid risks to be assessed

Even though the Government has removed the legal necessity to have workplace Covid-19 risk assessments, there is a legal requirement on employers to consider Covid-19 in their risk assessments or to have specific measures in place - as the risk posed by the virus is ongoing and poses a foreseeable risk to workers' health, including ill-health and long Covid.

This requirement exists under Management of Health and Safety at Work Regulations 1999:

Reg 3.— (1) Every employer shall make a suitable and sufficient assessment of—

(a) the risks to the health and safety of his employees to which they are exposed whilst they are at work.

Given the Management of Health and Safety at Work Regs, the RMT advice for Regional Organisers is to negotiate with employers Covid-19 risk assessments, which are required as the infection rate and hospital admissions remain high; the pandemic is not over and the abandonment of Covid safety measures could lead to workplace outbreaks.

3) What to check for in Covid Risk Assessments

3a) Involvement of safety reps in the risk assessment process:

The safety rep's role is essential in monitoring that assessments are carried out thoroughly by a competent person, also for safety reps to contribute their workplace knowledge and experience, for safety reps to ensure control measures are suitable to protect workers (it is enshrined in health and safety legislation that an employer must minimise a risk if it cannot be eliminated completely) and for reps to ensure that assessments are reviewed as often as necessary.

3b) Covid Risk Assessments must be "suitable and sufficient":

That risk assessments are "suitable and sufficient" is a legal standard. What is meant by "suitable and sufficient" is not defined in Management of Health and Safety at Work Regulations, but the HSE in its approved code of practice explains this to mean that a proper check is made to identify the risks arising from or in connection with work.

Issues that should be considered for a risk assessment to meet the legal bar of "suitable and sufficient" are as follows:

- Demonstration that reasonable steps have been taken to identify hazards, e.g. by researching relevant legislation, guidance, medical research and advice from competent sources
- Consideration of all those who might be affected whether they are workers or others, such as members of the public
- Appropriateness to the nature of the work; it should identify the period of time for which it is likely to remain valid and it should be proportionate to the risk
- Insurance that the significant risks of hazards are addressed
- Insurance that all aspect of the work activity are reviewed, including routine and non-routine activities, all parts of the work activity, including those that are not under the immediate supervision of the employers, e.g. employees working off-site such as contractors.

Once employers have identified the risks, they should put in place mitigations to ensure that, where possible, the risks of transference are eliminated or reduced.

If you are a RMT safety rep working for a train operator, contractor and you are concerned that your workplace risk assessment does not meet the legal standard of "suitable and sufficient", then please contact your local RMT branch/Regional Organiser for advice.

3c) What to look for in Covid Risk Assessments in respect to respiratory/ Covid-19 risk assessments:

- Are Covid-19/respiratory disease risk assessments in place and being reviewed?
- Are the mitigations (the controls) effective and are they being enforced or complied with? (If not, why not? What can be done to address this?)
- Do the risk assessments reflect what is happening in the "real world"?

- Do risk assessments adequately consider the issue of ventilation?
- Are safety reps involved in CO2 monitoring where this is taking place?
- Is there sufficient space to avoid overcrowding in shared areas such as mess rooms and other staff areas?
- Mental health issues: are procedures in place that assist workers?
- Have equality issues been taken into account?
(We know that Covid-19 has not impacted on everyone equally, therefore employers must consider the equality impact in their workplace assessments)
- Is there enhanced cleaning of workplaces?
- Are there sufficient sanitiser stations around the workplace?
- Are any changes and updates to control measures briefed to staff?
- Is there adequate sick pay to enable workers to remain at home when they have symptoms?
- Is Covid-19 related sickness absence being included for Management for Attendance purposes?
(If it is please contact your Regional Office for advice)
- Has the employer considered how staff will travel to work, for example using public transport?
(If staff are travelling by public transport this is potentially a greater risk for spreading the virus, particularly if the transport is packed with passengers. Also, staff may be travelling using shared cars or vans)
- Has the employer considered that because the Government is now charging for lateral flow tests more people will be traveling when asymptomatic?
(As the cost for a family to test on a regular basis is exorbitant, these tests just don't get done)
- Are staff able to follow "work safe" procedures when necessary?
(If not, why not? What can be done to address this?)
- Has the employer considered the continued vulnerability of sections of the workforce to the virus and that the effectiveness of the vaccine wanes over time?
- Has the employer considered that the vaccines are not sufficient to prevent re-infection or transmission against the virus with the Omicron variant?
- Has the employer considered that as there is no longer a legal requirement to self-isolate for people more Covid-19 infected people will be in circulation and using public transport?
- Are arrangements in place to ensure face coverings are worn in crowded and enclosed spaces where there may be contact with people they do not normally meet?

- Is the employer continuing to provide enhanced cleaning and provision of sanitisers for both passengers and employees?
- Has the risk from long Covid been assessed?

4) Risk assessment reviews

The Management of Health and Safety, regulation 3.3. (a) states that the employer has a legal duty to review the risk assessment if there is reason to believe it is no longer valid or there is a significant change in the matters that are being assessed. Relaxing or removing Covid-19 control measures would certainly class as a significant change.

When employers look to ease their workplace Covid-19 controls and Safe Systems of Work, they must involve trade union safety representatives in this process.

RMT safety reps should ensure that their workplace risk assessments include frequent review dates, and, if necessary, insist that the assessment is reviewed in between these review dates.

When conducting a joint review of the Covid-19 risk assessments with RMT health and safety representatives, employers should particularly look at whether the previous assumptions they made about the effects of Covid-19 are sufficient considering changing circumstances. They should discuss this with their staff and RMT safety reps, as it is important that the risk assessment is a working document and that it reflects what is happening in the real world.

Employers should monitor incident rates and control measures and ensure that they have learnt lessons from any such incidents and judge whether their control measures are effective.

Risk assessments need to be reviewed if infection numbers rise or there are new strains of the virus (you can track Covid-19 data here:

<https://coronavirus.data.gov.uk/details/cases>).

Individual risk assessments

Individual risk assessments must continue to be in place for those who have underlying medical conditions.

Extremely vulnerable

Government guidance for those previously considered “Clinically Extremely Vulnerable” to Covid-19 can be found here:

<https://bit.ly/3NBSojm>

Immunosuppressed

There is specific Government guidance for those people whose immune system means they are at higher risk:

<https://bit.ly/3ab9MwY>

Staff that fall within this group should have an individual risk assessment. If they are not happy with the control measures in their individual risk assessment, they should ask for a referral to their occupational health provider.

Pregnant women

The Government has withdrawn its specific Covid-19 advice for pregnant women. Instead, advice for pregnant women is found with advice for those that were formerly referred to as CEV (Clinically Extremely Vulnerable):

<https://bit.ly/3NBSojm>

NHS advice can be viewed at:

<https://www.nhs.uk/conditions/coronavirus-covid-19/people-at-higher-risk/pregnancy-and-coronavirus/>

There is specific legislation to protect the health and safety of new and expectant mothers at work in the Management of Health and Safety as Work Regulations 1999, regulations 16-18.

The HSE provides guidance for both employer and workers on how to manage these risks and what to do if significant risks cannot be controlled.

Individual risk assessments should be reviewed on a regular basis.