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JULY 2021

Learning to live with the virus

HR HEADS UP

Beststart HR – Driving Productivity

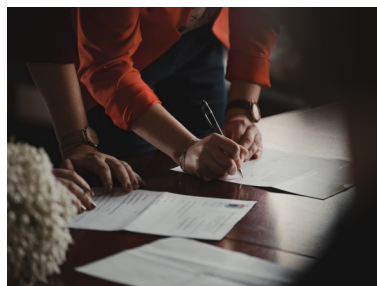
The Government announced their intention to move England back to a more normal footing by removing all restrictions; they are already reducing the furlough scheme. Whilst time will tell as to the wisdom of these decisions, business owners and organisations still need to grapple with what this means for them, as well as the everyday HR challenges.

This issues' featured articles...



The removal of COVID restrictions

England will move to Step 4 from 19 July, removing all the legal framework around restrictions. As an employer what does this mean?



Skilled Worker visa

Our guest expert, Lucy Elbourne of North Star Law advises on visas after the end of Brexit.



Can employers enforce vaccination?

A question we are being asked more and more, we give guidance.

Our Productivity Wheel and the new normal



Unlike many HR Consultancies and HR help-lines, we focus on maximising the contribution your people make to your business. We do this through our 'Productivity Wheel'.

This has always been a challenge but in a world where organisations are considering new ways of working with enhanced flexibility, considering how you balance productivity with flexibility has become even more challenging.

Beststart HR's *complimentary* HR Audit, based on our Productivity Wheel, is a thought-provoking process guiding employers to consider all areas of their people-related strategy, processes and practices and whether they remain fit for purpose post-pandemic.

The outcome of the audit is a structured report, which can be used as a road map for changes needed and support required.

Contact your HR Consultant or email enquiries@beststarthr.com to organise your HR Audit.

BESTSTART HR *Driving Productivity*

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Strategy

Step 4 – what does this mean for employers?

The Government has confirmed that England will move to 'Step 4' of the easing of lockdown on the 19 July. The key message of Step 4 is caution with businesses and the public required to exercise common sense and consider risk. The removal of the legal framework provides employers with an opportunity to adopt practices more flexibly in line with their requirements; however, in turn, the 'grey areas' will no doubt cause confusion and potentially conflict.

Working from home

The guidance will no longer be to 'work from

home if you can', instead employers can start to plan to return to the workplace, if they have not done so already. The Government is recommending a gradual return over the summer months and due to the planning required, many employers are scheduling for September onwards.

For any workforce that is still predominantly working from home, what are the stages and considerations:

1. Consult with your staff on their expectations, requirements and concerns. This can be via a survey, focus groups, team or individual meetings. This provides essential information to inform the company decision making.
2. Decide on what you would like your working arrangement to be in the future – entirely onsite; predominantly at home; or hybrid? Then how you intend to implement this and when.
3. Communicate your decision, with good notice to all employees.

4. For any form of return to the office, complete a risk assessment and implement measures as advised by the Government guidance to reduce risks.
5. Share risk assessments and associated guidance with employees and train them to ensure everyone understands and is clear on their responsibilities.
6. Speak to employees individually and address any specific concerns or objections. Many individuals may be worried or suffer anxiety about the return.
7. Prepare the office in terms of cleaning, IT updates and equipment.

For anyone considering a change to home-working or hybrid working permanently, changes will need to be made to contracts of employment, policies and procedures, health and safety arrangements, and data security processes. In addition, you will need to consider culture, training, collaboration, team cohesiveness, performance management and managers' capability to manage in this new environment.

COVID-Secure requirements

COVID-Secure requirements will be lifted and replaced with 'Working Safely Guidance'. This guidance will provide 'precautions' to reduce risk in the workplace. Employers will continue to have a legal duty to manage risk and the best way to do this is by carrying out suitable risk assessments that include the risks of COVID-19. It is essential that updated risk assessments are communicated to employees and they are trained and supported to implement them. Further detailed guidance on this will be provided by Beststart HR shortly.

Self-Isolation

From 16 August 2021, employees who have been *fully* vaccinated and have been in close contact with someone who has tested positive and/or who have been 'pinged', will no longer need to self isolate. People are only considered to be fully vaccinated two weeks after their second injection. Instead, fully vaccinated people will be advised to take a

PCR test. If any person, no matter what their vaccination status, tests positive for COVID-19 they will still be required to self-isolate for 10 days from when the symptoms started (or the test date if no symptoms are present). Any person that is not fully vaccinated that has come into close contact with a person who has tested positive must self-isolate for the full 10 days. Businesses must consider carefully the GDPR implications of collecting, using and storing medical data when implementing this process.

Strategy

Redundancy reminder

As we approach the end of lockdown restrictions, we are starting to see how the UK will operate after the pandemic. For over a year employers have had to make difficult choices based on a very unstable environment. This may have involved restructures/redundancies or retaining employees on furlough in the hope that business would go back to how it was.

Furlough is due to end on 30 September and has started to cost employers from 1 July. If you haven't already done so, now is the time to consider if your staffing levels meet the proposed demands post-COVID. If you have roles that you feel will no longer be required in your business structure going forward, you may need to consider redundancy.

If you think a redundancy process may be required, please ensure you follow the appropriate process which will vary depending on the numbers impacted. You also need to take into consideration you can no longer claim furlough for any contractual notice periods and all employees must receive all of their contractual holiday that has not been taken during the last year, this cannot be reduced and must be paid at the full rate (not at the 80% furlough rate).

Email us at enquiries@beststarthr.com for help reviewing your staffing needs.

Establish Standards

Tackling hate crime

As an employer you may be faced with situations where harassment in your workplace could be considered a crime. For example, if an employee informs you they have been subject to physical attack, sexual assault, threatened with violence, or a victim of 'hate crime'.

'Hate crime' is where the perpetrator is motivated by hostility or demonstrates hostility towards a *protected characteristic* of a victim.

'Protected characteristics' covered by hate crime include disability, race, religion, sexual orientation and transgender identity. A hate crime can include verbal abuse, intimidation, threats, harassment, assault and bullying, as well as damage to property.

If you do find yourself in a situation where an employee states that they believe they have been a hate crime victim, it is advisable to get advice prior to making any decisions to ensure you limit the risk of prejudicing the process.

A Law Commission recommendations report addressing reforms to the law, including equalising protection across the existing protected characteristics such as age and gender, is expected to be presented to Government this year.

What does this mean for an employer?

You should consider promoting awareness of hate crime; supporting your managers in how to deal with incidents; and your internal policies should make clear that acts of racism, bullying or harassment and hate crime will be dealt with under disciplinary procedures and could lead to dismissal for gross misconduct.

For more information on how to stop hate crime in your organisation, call Beststart HR on 01438 747 747.

Image courtesy of Stuart Miles at FreeDigitalPhotos

A few words from our CEO



The pandemic has dominated every aspect of our lives since March 2020 and I know many Directors and business owners are worn down with the challenges, good and bad, that this has presented us with. However, with the vaccination program going well and the Government removing the legislation, including COVID-Secure, we need to prepare for life working alongside the virus. This will continue to create uncertainty but when has our future in business been guaranteed?

Now, over the summer months, is the time to prepare for the business and strategic

challenges and set plans for September onwards. Working with many clients across a range of industries, I appreciate how diverse these challenges are: from coping with the thought of yet another summer of no revenue, making survival less and less certain, to having the work but not the staff – where there are resourcing challenges. One thing that COVID has taught us is that SMEs in the main are incredibly resilient, flexible and adaptable to whatever is thrown at us – three things that we will need to continue to be in the coming months and years. However, to maximise your chance of success, reach out now to your trusted advisors and sit down with them and strategise, plan and take control of your people-related challenges.

Wellbeing

Compulsory vaccinations/testing – can you oblige someone to have one as a condition of employment?



Currently, there are no statutory provisions in place that can force individuals to become vaccinated against COVID-19.

Can a business force an employee to be vaccinated?

In effect, no. Employers that try to enforce mandatory vaccination policies on their workforce may be exposing themselves to a potential claim for discrimination or unfair dismissal if someone was dismissed for refusing a vaccination.

There could be many reasons for an employee refusing a vaccination, including reasons relating to disability, religion or philosophical belief. In such cases, if this results in disciplinary action from their employer (as set out in their vaccination policy), they may be able to issue a direct or indirect discrimination claim and/or claim constructive unfair dismissal which will most likely be successful at an Employment Tribunal as these characteristics are protected under the Equality Act 2010.

A better course of action for organisations would be to help employees to make informed decisions regarding their vaccination by sharing impartial, factual information from trusted sources.

When could businesses force staff to have vaccinations?

Every employer has a duty of care to ensure they are providing a safe working environment under the Health and Safety at Work Act 1974. With this in mind, if employees are working in close contact with clinically vulnerable people e.g. within a care home, it can be argued that requiring each employee to be vaccinated and using disciplinary action, if they refuse, is reasonable.

However, employers will need to prove that the vaccination will significantly reduce the risk on the clinically vulnerable patient i.e. reduce the risk of transmission to the patient. This is what the Employment Tribunals will refer to as a reasonable request for mandatory vaccinations in high-risk workplaces.

If employers are looking to create a mandatory vaccination policy, they should also keep in mind the likely data protection implications of holding this data. As it is classed as medical data it falls under a special category of data protection law because it is significantly more sensitive.

Strategy

IR35 reminder

The off-payroll rules, sometimes known as 'IR35', make sure that workers (also known as contractors), who would have been an employee if they were providing their services directly to a business, pay broadly the same Income Tax and National Insurance contributions as employees. Since its introduction in April 2000, the basic process and application has not changed.

What has changed, from the 6 April 2021, is that all medium and large-sized private sector businesses are now responsible for deciding if the off-payroll working rules apply to a worker/contractor who provides a service or services to them, through their own limited company or other type of intermediary.

The new IR35 rules do not affect small businesses, as defined by the Companies Act 2006, where they meet *two or more* of these criteria:

- ◆ Annual turnover is no more than £10.2 million;
- ◆ A total of fixed and current assets (before deducting current liabilities, long-term liabilities and deferred tax provisions) over £5.1 million; or
- ◆ No more than 50 employees.

It is the responsibility of the end organisation using the services of a worker/contractor who determines whether that worker's/contractor's work falls inside the new rules. Employers should carry out an audit of all contractors currently working within their business to determine who may be affected and then create a plan to produce status determination statements for each.

Contact Beststart HR to discuss your situation, we can provide templates and guidance to help you with this audit.



In many cases, newly arrived EU citizens may already have a visa which enables them to work – for example, if they are married to a British citizen, or hold a student visa (which in most circumstances permits at least part time employment). However, for those who have no connection to the UK other than their proposed employment, the Skilled Worker visa may be the only option available.

Skilled Worker visa

The Skilled Worker visa replaced the old Tier 2 system at the end of 2020, and can be used by employees of any nationality. The Skilled Worker visa is employer driven – the employer must obtain a Sponsor Licence and issue a Certificate of Sponsorship to the employee. The Sponsor must commit to monitoring the employee and notifying the Home Office of any changes in the employment, such as a change in work location, when the employee leaves the company, or is absent without permission.

The Skilled Worker visa has several advantages over the old Tier 2 system, including the following:

- ◆ There is no longer any requirement to advertise a vacancy to the UK workforce – rather, the employer should keep evidence on file to show that there is a genuine vacancy i.e. that the job was not created purely to allow an individual to obtain a visa.
- ◆ The skill level for sponsorship has been reduced to A-level, rather than degree level roles. This means that whilst entry level hospitality jobs cannot be sponsored, most trades and office-based roles will now be eligible.
- ◆ The minimum salary levels have been lowered.

Strategy

The successor to the Tier 2 immigration

By North Star Law Ltd's Solicitor and immigration expert, Lucy Elbourne



The end of the Brexit transitional period on 31 December 2020 has made the employment of EU nationals in the UK more complicated. Any EU citizens who were resident in the UK prior to the end of 2020 are eligible for the EU Settlement Scheme, which gives them the full right to continue to live and work in the UK. An application to the scheme must have been made on or before 30 June 2021.

However, any EU nationals who are only now planning their move to the UK are subject to the same immigration rules as any other nationality. The only exception is Irish citizens, who continue to have the right to live and work in the UK without a visa.

- ◆ The Tier 2 (General) visa had a 6 year limit, and once they had left the UK an individual would need to spend at least 12 months outside of the country before being eligible for a new visa. Under the Skilled Worker route both the 6 year limit and 12 month 'cooling off period' have been abolished.

Actions to consider

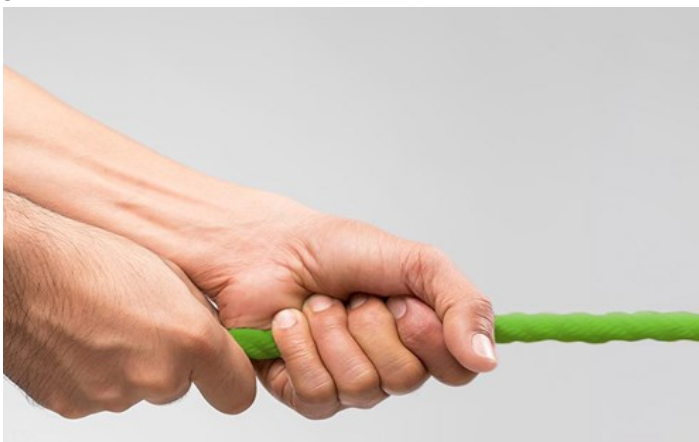
Employers should be prepared for new right to work checks which came into place from 1 July 2021. From that point onwards EU citizens will need to prove that they have a visa to work in the UK, or have applied under the EU Settlement Scheme. It is only new employees from July who are subject to the new checks – the Home Office has confirmed that retrospective checks will not be required on existing employees.

Whilst employers cannot demand that any current employees prove that they have applied to the EU Settlement Scheme, they may wish to remind them of the 30 June deadline.

Finally, employers should consider applying for Skilled Worker licence. This will involve making an application to the Home Office, submitting evidence that the business is operating legally in the UK. The licence application process takes approximately 4 to 6 weeks.

Need more information?

Please contact North Star Law's immigration expert, Lucy Elbourne, at lucy.elbourne@northstarlaw.co.uk if you need help dealing with right to work checks or any immigration or sponsor licence related matters.



PRODUCTIVITY AUDIT

Talk to us about our Productivity Audit. If you have 20+ employees, one of our experienced HR Consultants can carry out your Productivity Audit, giving an expert review using our Productivity Wheel of how your organisation and people management combine. Our HR Audit is comprehensive – much more than a 'tick box' exercise that serves little purpose and offers minimal, if any, protection to you as an employer.

And you haven't heard the best part yet... There's no charge for the Audit and no obligation on you to take a service from us afterwards.

It's on us!

GET IN TOUCH

For further information regarding our services or for a friendly chat about a current HR problem, please contact us directly.

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