

FREEDOM DAY: HR CONSIDERATIONS

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- **SELF-ISOLATION AND THE 'PINGDEMIC'**
- **EMPLOYEE VACCINATION STATUS**
- **COVID-19 TESTING FOR WORK**
- **EMPLOYEE COMPLIANCE WITH YOUR COVID-19 RULES**

LEGAL REQUIREMENT OR ADVICE TO SELF-ISOLATE

- Individuals are **required** by regulation to self-isolate if they:
 - have a **positive Covid-19 test result**
 - are notified to do so by **NHS Test and Trace** as a close contact of a confirmed case
- It is an offence for an employer who is aware that an individual is required to self-isolate knowingly to allow the individual to attend the workplace
- However, a 'ping' from the NHS app is advisory only:
 - No legal requirement to self-isolate or tell their employer
 - No specific offence if an employer allows an employee to come into the workplace

WHAT TO DO ABOUT THE 'PINGDEMIC'?

- Employers have a general duty under health and safety law to their workforce
- A 'ping' indicates contact with a confirmed Covid-19 case
- An instruction to ignore a 'ping', or pause or delete the app, will not sit well with that duty
- However, you can ask employees to pause the app in the workplace in accordance with the app's guidance. For example, if:
 - phones are left in lockers; or
 - employees work with screens between them
- See our **HR Guide – Covid-19 and absence management procedures** and accompanying vlog

CAN YOU ASK EMPLOYEES IF THEY ARE VACCINATED?

- Yes, but remember your data protection obligations:
 - Identify your purpose and legal bases
 - Carry out a DPIA
 - Inform employees
 - Limit access
 - Minimise information held

VACCINATION: THE ER ISSUES

- No jab, no job?
 - Reasonable instruction
 - Discrimination considerations
 - Unfair dismissal
- Encouraging, rather than requiring, vaccination?
- Tensions between employees

EMPLOYEE COVID-19 TESTING

- Employers can no longer access free LFD tests for workplace testing:
 - Continue workplace testing anyway
 - Stop testing
 - Ask employees to access free LFD tests themselves and test at home
- If testing at home, less visibility and control and therefore compulsory testing more difficult
- Will you ask employees to confirm or provide evidence that they have tested at home?

YOUR COVID-19 WORKING SAFELY RULES

- Government imposed rules on social distancing, face coverings, remote working, etc. for the workplace have been lifted
- Under health and safety law, employers are under a duty to take all reasonably practicable steps to ensure a safe working environment:
 - Conduct risk assessments to identify risks in the workplace
 - Take appropriate actions to mitigate those risks
- Government guidance: <https://www.gov.uk/guidance/working-safely-during-covid-19/offices-factories-and-labs>
- Your measures could include social distancing, hygiene practices, face coverings, LFD testing, etc.
- Communicate your requirements (compulsory) and expectations (voluntary)

WHAT IF EMPLOYEES DON'T COMPLY?

- Is the employee worried or dismissive about Covid-19 risks?
- If your risk assessment recommends a Covid-19 safety measure, it is likely to be a reasonable instruction to require compliance
- But remember to listen to any employee reason for non-compliance
- If an informal approach is unsuccessful, follow your disciplinary procedure:
 - Is it serious enough to suspend them?
 - Investigate
 - Consider sanctions and mitigation
- Manage tensions between employees

RESOURCES AND SUPPORT

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- Coronavirus FAQs on our website, updated to reflect the lifting of restrictions on 19 July 2021
- HR Checklists, Guides, Policies and vlogs
 - HR Checklist: Covid-19 return to the workplace
 - HR Guide: Covid-19 and absence management procedures
 - Covid-19 Checklist: Determining your approach to overseas holidays and quarantine requirements
 - Template Home and Hybrid Working Policy
- Make UK's health and safety experts can provide tailored support conduct risk assessments or workplace audits and identify appropriate Covid-19 safety measures
- Make UK members can speak to their adviser for support on HR issues and non-members can call us on **0808 168 5874** or email enquiries@makeuk.org