



PENNINGTONS  
MANCHES  
COOPER

# ROADMAP TO REOPENING

THE TOP 5 QUESTIONS WE HAVE RECEIVED THIS WEEK: 15TH MAY 2020



## 1. DO I HAVE TO ALLOW EMPLOYEES TO WORK FROM HOME?

Where employees have been able to work from home then you should continue to allow them to do so, in accordance with the government guidance. If employees can only perform some of their duties or their output has decreased as a result of working from home, then employers should consider if it is appropriate for employees to return to the workplace for at least some of their hours (subject to any PPE and social distancing requirements). Alternatively, employers could offer part-time working (with the employee's agreement).

If employees are working from home, employers should ensure that they have appropriate equipment to perform their duties at home. Appropriate home working risk assessments should be undertaken for an extended period of homeworking.

Consideration should also be given to the remote management of staff and how their mental wellbeing may be affected - especially staff who may feel isolated.

If an employee is not able to carry out their duties from home and there is work available for them, then companies are able to require staff to return to the workplace subject to appropriate health and safety considerations.



## 2. WHAT CAN I DO IF AN EMPLOYEE REFUSES TO RETURN TO WORK?

There are a number of reasons why an employee may refuse to return to work, which will dictate how the employer treats the refusal.

Where an employee has been advised to shield by the NHS the government guidance is clear, they should be on furlough leave.

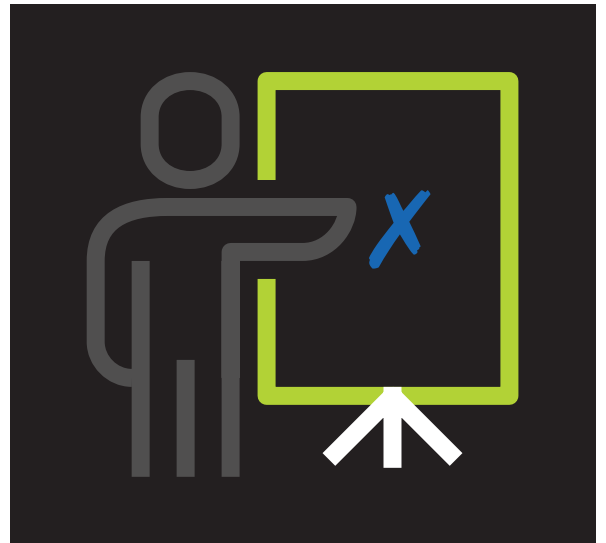
If they can't attend work because of childcare or other shielding issues employers can consider placing (or leaving) the employee on furlough leave, putting the employee on paid leave or they can require the employee to take holiday, or a period of unpaid leave (such as a sabbatical).

For staff with a shielded person at home, employers can maintain that the employee should return to work and take steps in their household to limit their exposure to that person, though this approach could lead to adverse publicity.

It is the employee's responsibility to ensure they can get to work but if they refuse because they do not want to use public transport employers could offer flexible hours to avoid peak travel periods. However, employers may also consider other options such as furlough leave or unpaid absence for those staff that use public transport for their commute.

Employees may refuse to return because of the perceived risk to their health, but if an employer has implemented appropriate health and safety precautions they can require staff to return to work. Other options include asking the employee to take holiday or a period of unpaid absence. Employers should, however, be wary of these individuals raising grievances and arguing some form of whistleblowing protection at a later date.

If an employer needs work to be undertaken for their own financial survival, the final step for employees who refuse to work is disciplinary action for failure to follow a reasonable management instruction or being absent without leave.



### EMPLOYMENT

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### 3. WHAT CHANGES DO I NEED TO MAKE TO THE WORKPLACE FOR STAFF TO RETURN TO WORK?

**Before staff can return to work, employers need to consider what needs to be implemented in their workplace to limit the risk of Covid-19 transmission.**

The first step is to achieve social distancing within the workplace. The number of staff attending the workplace at any one time may need to be reduced and/or staff may need to work staggered shifts. Even with fewer people, employers need to consider physical work areas and ensure that there is a 2m distance between staff when working. It is recommended that staff work side by side rather than face to face.

Also, think about places beyond the workspace such as toilets and communal areas. Where possible, the number of staff in these areas should be limited.

Employers must consider personal protective equipment (PPE) such as hand sanitisers, disinfectant wipes and face masks. The level of required PPE will depend on the employee's role. Customer-facing roles are likely to require a higher level of PPE (such as screens), although these could also be used in non-public facing roles.

Clear guidance should be issued on handwashing, cleaning work spaces, and what employees should do if they have Covid-19 symptoms. If you plan to offer tests and temperature checks, consider the data protection issues.



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### 4. GIVEN THE OBVIOUS IMPACT ON THE ECONOMY (AND PRESENTLY ON MY BUSINESS) CAN I PAY OUT DIVIDENDS BASED ON A STELLAR PREVIOUS FINANCIAL YEAR?

**Prudence is the watchword. If a director oversteps the mark and pays out at a time of economic upheaval - when on a reasonable retrospective view the dividend should have been cancelled or suspended - then they risk an uninsurable personal liability.**

Given the current climate, it is recommended that any company considering payment of a dividend should first seek specialist legal and accounting advice and also take time to review the position with the trusted NEDs. In our view, it is likely many will conclude that on balance a short deferment makes more commercial sense.

[A more detailed note is available by clicking here.](#)



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## 5. WHAT DO I DO WHEN MY CUSTOMERS CAN'T / WON'T PAY ME?

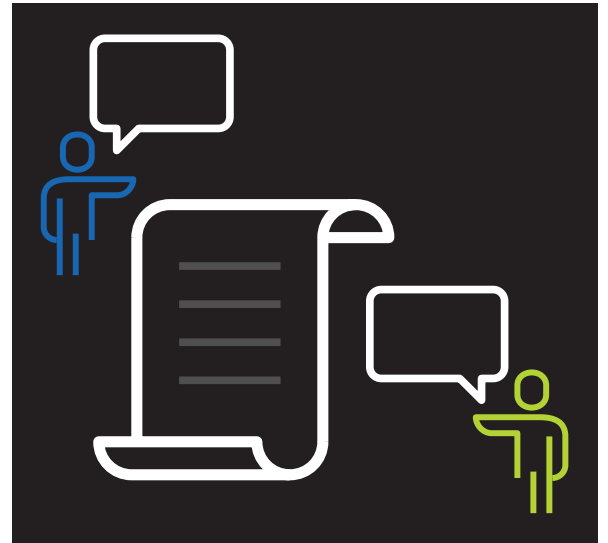
You need to have meaningful and regular engagement with customers about the shared challenges to identify issues/ solutions before there is a problem. You must be clear of your rights and responsibilities – what does the contract and the current emergency Covid19 law say? Can you rely on a retention of title clause, lien (i.e. a right to withhold property until a debt is paid), force majeure, self-help remedies etc?

Have you fully understood what is going on with your customer? Is there a genuine short-term cash flow issue that can be resolved or will the customer never pay and you need to cut your losses? If you are unsure at any stage, seek legal advice.

If the customer can't pay – can you agree on a deferred payment plan on preferential terms (e.g. with provision for interest and security / personal guarantees)? Any such agreement should be legally binding and consider commercial provisions such as an accelerated payments clause/ a right to receive monthly management accounts to monitor performance.

If the customer won't pay – set a clear deadline for payment and, if proportionate to incur costs, take immediate escalating action:

1. solicitor's letter of demand;
2. consider a statutory demand; and/ or
3. summary court proceedings.



### COMMERCIAL DISPUTE RESOLUTION

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For a selection of briefings and practical guidance to help minimise risk in this period of uncertainty visit our [coronavirus resource hub](#).  
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*The information contained in this Q&A is general in nature and is not intended to constitute legal advice.*