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## March 2021 Update

Welcome to this month's update - where we discuss the latest legislation and guidance.

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In this month's edition, we report on:

- Workplace COVID-19 testing scheme extended to smaller businesses
  - Can staff be forced to have a Covid vaccination?
  - Do employees have 'the right to log off' while working at home?
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### Workplace COVID-19 testing scheme extended to smaller businesses

It goes without saying that as an employer, you want to get people back to work safely as quickly as possible. For some businesses, it has not been possible for their employees to work from home. So, whilst the debate over mandatory vaccinations continues, it's good to know there is now another option.

We all know that having rapid testing of employees can make a big difference to productivity and of course profitability. That's why we were delighted when the Government extended the workplace testing scheme to businesses with more than 50 employees in February 2021. Previously it was only open to employers with more than 250 employees.

#### What does this mean?

If you have more than 50 employees, you will be able to offer a 30-minute lateral flow test to individuals without symptoms who cannot work from home.

This will enable those who test negative to return to work, whilst those who test positive will need to isolate immediately. This quick indicator will help businesses to plan with certainty and identify cases quickly before more team members are affected.

### **Are they accurate?**

To date, lateral flow tests have been hugely successful in finding positive cases that would not otherwise be detected and their use will help to protect business and their employees going forwards. And with one in three people asymptomatic, their use will help to ensure cases are spotted and dealt with effectively. Plus, they will provide vital information to help inform the government and other medical organisations about the spread of the virus.

### **What else do I need to do?**

Remember however that rapid tests are not the perfect solution. To be sure, they may need to be followed up with “confirmatory testing”, otherwise positive cases could be missed.

It is also worth stressing that employers need to ensure their workplaces continued to provide personal protection equipment for staff, improved ventilation, enhanced cleaning and hygiene operations as well as regularly review and update their risk assessment policies and procedures.

**Employers:** To access this scheme, employers need to sign up using the link below:  
<https://www.gov.uk/get-workplace-coronavirus-tests>

**Contact us:** For specialist HR advice and guidance, including access to relevant risk assessment documentation

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### **Can staff be forced to have a Covid Vaccination?**

As more and more organisations across almost 500 sites have joined the government’s testing programme, this has allowed workplaces to plan with more certainty and spot cases before they take out a whole team.

Asymptomatic individuals who may unknowingly be spreading the virus are a major concern for those industries who are unable to work from home, such as construction, manufacturing and care industries.

The news of the launch of the government's testing programme comes amid fierce debate around whether employers can or should make vaccination mandatory.

There is no clear indication that employers would be protected by current health and safety laws if they insisted employees have the vaccine before coming to work.

The question is whether an employer can make it mandatory for employees to have the job or whether they can make particular activities contingent upon having the job. We strongly advise employers against travelling such a route. It is wise to encourage employees about the benefit of having the vaccination and the importance of protecting yourself and your fellow worker.

It is wise to spend time to find out why an employee does not want the job and deal with each situation on a case by case basis.

If you feel it's important for staff to be vaccinated, it is wise to consult with staff over what steps to take. Any decision should be put in writing, for example in a workplace policy, taking into account those employees who cannot have the job due to safety reasons.

**Employers:** It is unwise to try and force employees to have the job as there are plenty of routes to make sure that the workplaces are safe and Covid secure.

**Contact us:** We can help your business make sure your Covid risk assessment is up to date

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## Do employees have 'the right to log off' while working from home?

With the increase in homeworking many employees feel obliged to be contactable outside their normal hours. As a result of the pandemic all of our homes have become offices, classrooms, gyms and relaxation spaces, all rolled into one. It is easy for the lines between work and home to become increasingly blurred as the months have dragged on.

Many people feel more and more obliged to be contactable outside of their normal working hours, as remote working technology means that it is easy to reach each other.

Staff are also not taking all their annual leave, as they are unable to travel anywhere, so often feel they may as well carry on working. As businesses struggle through the pandemic, pressures at work may be increased as well.

However, as these pressures overtime increase, many employees may simply burn out, particularly as some employees have reported working longer hours. Tired and stressed employees are more likely to make mistakes and be less productive, with a negative impact on both their physical and mental health.

This ultimately has an impact on the business, particularly if a burnt-out employee makes mistakes and then may also need to time off to recover.

The right to log off is not currently set out in UK law, although this may only be a matter of time as cases arise in Ireland and France. The EU is calling for this to be passed into EU law. Although the UK is no longer legally bound by this, if it is passed, it could have a persuasive element.

Be aware of the Working Time Regulations: In any case, the Working Time Regulations are still in place to protect employees from working excessive hours as well as employers' obligations under health and safety laws.

There is a 48-hour maximum working week set out in the regulations (unless an opt out is agreed) as well as an employee's rights to daily and weekly rest breaks. A study recently found that those who work from home regularly are twice as likely to work more than 48 hours per week as they feel the need to answer emails and messages outside of working hours.

Mental wellbeing plays a significant part here, given that stress is a major cause of work-related illness in the UK. Employers who put pressure on employees to be contactable outside of working hours may find themselves failing in their duty of care.

**Employers:** Check in with your employees on a regular basis to understand their working hours and discuss their wellbeing

**Contact us:** We can provide a Remote Working Policy for £60 for the month of March

**For more information or assistance Email:** [enquiries@employmentlawsupport.co.uk](mailto:enquiries@employmentlawsupport.co.uk)



**Silverstone**  
Business Forum

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Employment Law Support    Principal: Caroline Robertson  
Solicitor Non-Practising