

IOSH Thames Valley Branch – H&S legal update

Interesting times...

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Introduction – who are RPC?

- **Full service law firm**
- **Accredited in Legal Week's Best Legal Adviser Report since 2009**
- **Offices - London, Bristol, Hong Kong, Singapore**
- **97 partners, over 700 staff in total**
- **Health and Safety practice recognised in Legal 500 and Chambers directories**

We live in changing times ...



What others say ...

“Change is the process by which the future invades our lives....”

– Alvin Toffler

“May you live in interesting times....”

– Traditional Chinese curse

The future invading our lives...



Agenda

- Covid 19 – change and continuity
- Government guidance on return to work
- Significance of workforce consultation
- Enforcement – what to expect next
- Other news

Covid-19 – timeline

- 31 Dec 2019 - WHO China office informed of pneumonia, unknown cause, Wuhan
- 13 Jan 2020 - first case of novel coronavirus outside of China confirmed
- 29 Jan 2020 - UK's first two patients test positive for Covid-19
- 5 March 2020 - Covid-19 termed a notifiable disease under Health Protection (Notification) Regs 2010
- 11 March 2020 - WHO characterises Covid-19 as pandemic
- 23 March 2020 - UK lockdown announced
- 25 March 2020 - Coronavirus Act 2020 - Royal Assent
- 11 May 2020 - Return to Work Guidance published
- 1 June 2020 – 3rd amendment to Health Protection (Coronavirus, Restriction) (England) Regs 2020
- 15 June 2020 - current UK confirmed cases 295,889; confirmed deaths 41,698

Return to Work guidance

- Published 11 May 2020
- Eight sectors
 - Construction and outdoor work
 - Factories, plant and warehouses
 - Other people's homes
 - Labs and research facilities
 - Offices and contact centres
 - Restaurants offering takeaway/delivery services
 - Shops and branches
 - Vehicles
- HSE guidance – Working safely during the coronavirus outbreak – A Brief Guide

Workplace Notice

Staying COVID-19 Secure in 2020

We confirm we have complied with the government's guidance on managing the risk of COVID-19

• FIVE STEPS TO SAFER WORKING TOGETHER •

- ✓ We have carried out a **COVID-19 risk assessment** and shared the results with the people who work here
- ✓ We have **cleaning, handwashing and hygiene procedures** in line with guidance
- ✓ We have taken all reasonable steps to **help people work from home**
- ✓ We have taken all reasonable steps to **maintain a 2m distance** in the workplace
- ✓ Where people cannot be 2m apart, we have done everything practical to **manage transmission risk**

Risk assessment

- Reg 3 Management of Health and Safety at Work Regs 1999
 - suitable and sufficient assessment
 - review where *“there has been a significant change in the matters to which it relates”*
 - *“where as a result of any such review changes to an assessment are required, the employer or self-employed person concerned shall make them”*

Covid-19 Risk assessment guidance

- Similar principles across sectors
 - work from home if possible; if you can, you should
 - NB Health Protection (Coronavirus, Restrictions) (England) Regs 2020 – offence amended
 - emphasis on handwashing/sanitation
 - social distancing guidelines
 - requirements of vulnerable individuals
 - PPE

Sharing the risk assessment

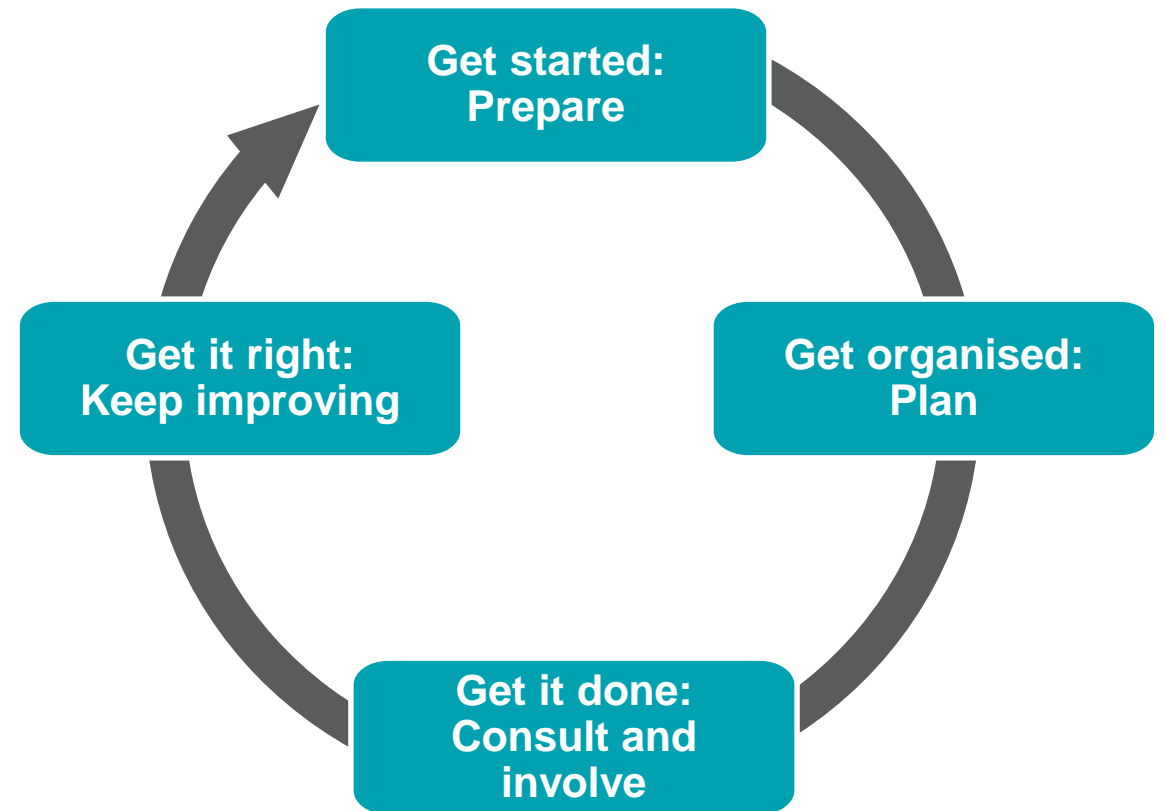
- Guidance – share results with workforce
 - if possible, publish on your website
 - *“we would expect all businesses with over 50 employees to do so”*
- Law – requirement to consult is an enforceable duty

Consulting with workforce (1)

- Safety Representatives and Safety Committee Regulations 1977
 - appointed representatives where Trade Union recognised
- Health and Safety (Consultation with Employees) Regulations 1996
 - employees direct or
 - safety representatives – NB they are elected, not appointed
- Duty of employer to consult – section 2(6) HSWA1974
- Expectation of two way meaningful engagement
- Complements, but does not override, the right to manage
- HSE guidance
 - Approved Code of Practice L146
 - HSG263 – *“Involving your workforce in health and safety”*

Consulting with workforce (2)

- 1977 Regulations
 - Trade Union appointed representatives
- 1996 Regulations
 - Employees direct
 - Elected representatives of employee safety
 - Fair and transparent election process
- Requirements for representatives to be appropriately trained



Consequences of not consulting

- HSE enforcement – will shape assessment of overall system
 - potential for enforcement notices
- s 44 Employment Rights Act 1996
 - *“employee has the right not to be subjected to any detriment by any act, or any deliberate failure to act by his employer”*
 - right to refuse to attend place of work *“in circumstances of danger which the employee reasonably believes to be serious and imminent...”*

Enforcement – what next?

- HSE proactive inspection of construction sites to be resumed
- £14m HSE funding boost announced
- Visits to sites/premises to be conducted within social distancing
Regs/guidelines
- HSE - *“Our regulatory approach will continue to take proportionate account of the risks and challenges arising from the pandemic”*
- Remember – they will look for risks other than Covid-19
- Political pressure?

In other news ...

- Brexit?
- Fire Safety?
 - Grenfell Tower enquiry ongoing; Phase Two yet to commence
 - Fire Safety Bill 2019–21 - currently progressing through Parliament
 - Aims to clarify Regulatory Reform (Fire Safety) Order 2005
 - Other measures
 - Cost/resources?

Conclusion

- We have a way to go with Covid-19
- Appreciate change as a new normal
- Regularly review Risk Assessment
- Read and act upon the Return to Work guidance
- Document your reviews and decisions
- Workforce consultation
- Here's to "less interesting times"!



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