



LAW AND MORE

Louise Rodgers reports on the thorny subject of employment law and duty of care in the age of the lockdown, the pressures faced by businesses over the return to the office — and the signs to watch for with your staff's mental health



‘One thing I have noticed is that some employers are taking the view that “We are in a global pandemic, the situation is extraordinary, we can afford to be a bit bullish because this gives us a water-tight argument for terminating this person’s employment.”’ So says Joe Beeston of law firm Forsters when we speak after the free lockdown webinar (run by NLA with Forsters) on legal issues resulting from the pandemic, including employment law.

In the webinar Beeston covered three main processes: furloughing, redundancy and return to the office, all with one thing in common. The circumstances in which they are taking place are indeed unprecedented. This means that employment protection and health and safety legislation in this particular context have yet to be tested, and if these transitions are mismanaged it could lead to a slew of tribunal (or even criminal) cases further down the road.

Take the return to the office. In the absence of clear government guidelines, employers have been left largely to their own devices. Responsible employers have taken advice and will follow due process, including buttoning down the physical logistics of bringing people out of the sanctuary of their homes and back to the workplace and consulting with them about the process.

However, employers who take a more coercive approach—which could mean ignoring or underestimating the anxiety that some people inevitably feel about returning to an office base, or using public transport to get there—may be storing up problems for the future. For example, an employee could go on to develop a severe mental health issue and trace it back to being strong-armed back to work.

It all comes down to the duty of care that employers have for their people, says Beeston. A duty of care is a legal obligation, imposed on an individual or company, requiring adherence to a standard of reasonable care toward others and keeping their best interests at the forefront of any actions. It applies not just to the logistical issues of ensuring a safe workplace, but also to taking account of the psychological needs, constraints and concerns of staff teams.

During the pandemic, a new model has emerged of employers incorporating proactive strategies towards mental health. Now, says Beeston, with tentative plans being devised for back-to-the-office schemes, is not the time to take the foot off that pedal.

‘During the long months of remote working, some conversations with employees have become perfunctory,’ he says. ‘Perhaps, because of the amount of time we have spent communicating with people on screen, we have all become a little de-humanised. Difficult conversations around furloughing and redundancy are never easy, and in the virtual space they need to be handled even more carefully, with sensitivity to the individual’s situation.’

‘Employment law is all about fairness, as well as due process. Employers need to be asking themselves, what is fair and what is reasonable in this situation? Oh, and they should check their liability insurance.’



A CASE IN POINT: GRIMSHAW

Katie Atkinson, HR manager and associate, Grimshaw

‘We are not anticipating a full return to the office for the foreseeable and we are being extremely flexible about who comes back and when. A handful, mostly those who can’t

work from home any longer, are coming back in August. The rest will be drifting back from mid-September on a rota basis. We haven’t confirmed a date because there is still a lot to do and we’d rather get it right and be a little late than jeopardise people’s comfort with a return that they, and we, are not ready for.

Channels of communication have been open with our teams throughout the pandemic, up to and including conversations about the return to the office. We were surprised at how many people didn’t want to come back. They may not want to disclose the reasons for this, and we don’t want to delve too deeply into their personal circumstances, or mental health. But we do want to give them a safe space to talk about it if they want to.

Preparing the physical environment is the easy part. Two-thirds of our desks in the London office have been removed to allow for social distancing and there are arrows on the floor to facilitate a one-way system. We are sending people regular photographic updates and we are planning to make a video when it’s finished so that people can see the working environment and what we have been doing to make it COVID-safe.

We figure that it is too much to expect our leadership team to also be psychologists. But we have provided training for them all in managing the mental health and stress levels of their teams and they know how to signpost people to places where they can get more support, such as our employee assistance programme.

It’s fair to say that there was a flurry of activity to keep in touch with people at the beginning of lockdown, and that’s eased off a bit as the months have gone on. However, it’s so important that people still feel safe and supported wherever they are (in some cases people have left London, or even the country), so we need to keep the momentum up.

Our health and wellbeing team has been key to this by, for example, sending out postcards to check in with people and making sure that those on furlough are contacted as a group to update them on what’s happening so that they still feel part of the wider team.

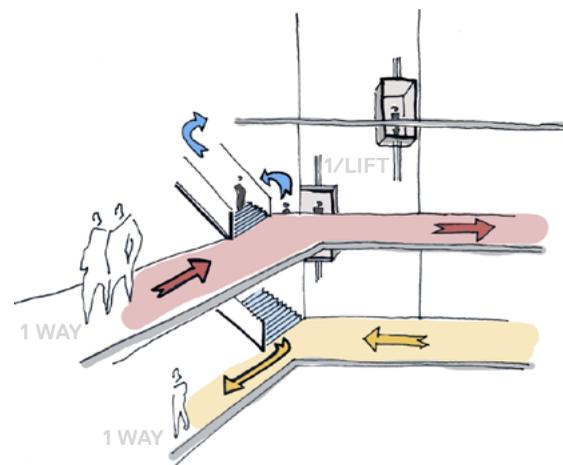
Of course, we have had some difficult conversations, including over performance issues. That’s never going to be an easy thing to do. But whether it’s over Zoom, on the phone or even face-to-face, talking in bullet points is just not good enough. We need to be kind to each other. Now more than ever.

The bottom line is that we try to be as open and honest as possible. If that means dealing with people’s individual concerns about the return to the office, then so be it. We are problem-solvers first and foremost, so we must remain open to all possible solutions. Our default answer to requests is “yes, let’s see how we can make this work”.



Supporting our Staff

Provide support to those staff who find it difficult to work from home, from staff in share houses, or with big families, to living in micro-homes, or with noisy neighbours.



Creative Circulation

Creative circulation to enable people to engage with more spaces throughout the work day, change their routines, and be active.

Grimshaw

Mental health: 7 signs that someone is in trouble

It is important to act if you are concerned for your own, a colleague, or an employee’s mental health. If you notice one or more of the following signs it may be time to intervene.

1. Decrease in productivity

Whether it is because of lack of sleep, anxiety or something else, mental health issues make it hard to focus and be productive. If you feel that a colleague’s or an employee’s productivity is down, bear this in mind when you talk to them about it.

2. Changes in demeanour

If someone is ‘not being themselves’ in some way, it can be a sign of a mental health issue. Have you noticed that someone who is usually optimistic and forward-thinking has become excessively gloomy or negative? It may be time to ask them how they are doing.

3. Increased presenteeism, or absence

Any changes in someone’s physical or virtual presence at work should be noted, as it may be an inability to ‘switch off’. Increased presenteeism is as much a sign that someone is neglecting their mental health as unexplained absences are. Lots of people haven’t taken any leave during the pandemic crisis and may need encouragement to do so.

4. Outbursts and mood swings

The anxiety and stress associated with mental health problems may mean that someone becomes unusually prone to mood-swings or gets more easily frustrated, irritated or angry. This may be noticed in how they react to minor setbacks with projects or respond to colleagues’ criticisms or feedback.

5. Avoiding interaction

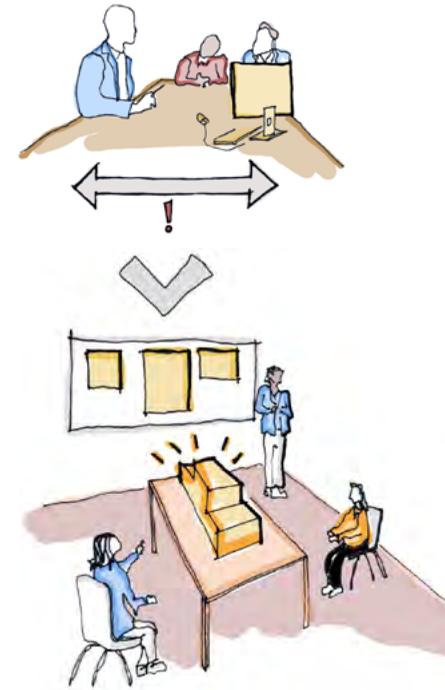
It can be easy to ignore someone who simply chooses not to engage, particularly if they withdraw from social interaction with colleagues. If you notice that someone has become absent from the weekly quiz or Friday afternoon virtual beers that they used to enjoy, it’s worth checking in with them separately to see how they are doing.

6. Lack of attention to self-care

People experiencing low mood or depression find it harder to take care of themselves. This may be difficult to spot if they are not physically in the office. Do you get the impression that this person is getting outdoors or taking any exercise? Do they appear always tired and lacking in energy? Do you think they are drinking too much alcohol? All these can be signs that all is not well.

7. Unnecessary fear or worry

In the midst of a global pandemic, it is inevitable that people are going to be more prone to fears or worries than usual. There is also the stress of being concerned about job security or money. If you sense excessive anxiety and paranoia in an employee or colleague, it could be a sign of a mental health issue. ●



Invest in Collaboration Spaces

Reduce informal collaboration around computers, and encourage more conversations around a table.



Fewer People, More Bikes!

Increase bike parking capacity on the office ground floor to encourage staff wellbeing and ease pressure on the public transport network.