

# Employment law and Workplace Health

WELCOME TO CLARITY

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# Remit of today's talk

- A look at some of the legal provisions which govern and protect workplace health in the UK
  - Consideration of how employers have been using these in the course of the pandemic to support healthy working in a changed environment
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# Health and Work – where to find the law

- Health and Safety at Work Act 1974
  - Management of Health and Safety at Work Regulations 1999
  - Working Time Regulations 1998
  - Equality Act 2010
  - Employment Rights Act 1996 – constructive dismissal / whistleblowing
  - Coronavirus-related ill health
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# Health and Safety at Work Act 1974/ 1999 Regs

- Employer obliged to provide a safe system of work, so far as reasonably practicable
    - Employees protected from anything that may cause harm
    - Obligation to risk-assess workplace and address risks
    - Train employees and provide equipment
  - Employees also have a duty to protect their own health and safety and that of colleagues
  - Directors responsible personally
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# Coronavirus implications – home workers

- Employees suddenly working from home
    - Ergonomics of work stations – are people physically safe/healthy?
    - Work systems – are these sufficient to protect employees? Does the employee still receive the support that they need?
  - Restrictions on ability to supervise on-site due to rules on entering peoples' homes
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# Coronavirus implications – home workers

- Offer assistance/flexibility to all employees in their new working arrangements
  - Performance management processes – keeping up the momentum
  - Good communications – constructive dismissal claims/discrimination claims
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# Coronavirus implications – workplace still operative

- Covid-related physical changes to workplace/provision of PPE
    - Requirement to keep people safe (HSW Act)
    - Need for reassurance – alleviate fears re returning to work
    - Need to supervise and manage new ways of working – take appropriate action when rules not being followed
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# Working Time Regulations 1998

- Annual Leave – is a health and safety based legislative requirement – people need rest from work
    - Entitlement to minimum of 5.6 weeks paid A/L
    - Inclination of employees may have been not to take A/L (due to restrictions on foreign travel)
    - Government passed legislation allowing carry forward of 4 weeks (max) for up to 2 years BUT
    - Not good practice not to take holidays for extended periods when working
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# Working Time Regulations 1998 – annual leave in practice

- Policy decisions made re the taking of A/L
  - 2 steps:-
    - Check - does contractual documentation allow the employer to dictate when A/L is to be taken?
    - If not, WTRegs allow the employer to request that A/L be taken, with notice (2xholiday length)
  - Most employers made an early decision to insist on A/L being taken
  - Those on furlough entitled to receive full pay for any periods of A/L during furlough
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# Working Time Regs and working from home – breaks and rest

- Working hours – record-keeping – are employers compliant?
  - Breaks – Contractual? Supervision?
  - Breaks – Working Time Regulations
    - 20 minutes every 6 hours
    - 11 hours uninterrupted rest between working days
    - 24 hours uninterrupted rest in any 7-day period
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# Equality Act 2010

- Contains provisions in relation to non-discrimination
  - Health-related provisions:-
    - Disability discrimination
    - Age-based discrimination
    - Gender-based discrimination (transgender)
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# Types of Discrimination

- Direct Discrimination
  - Indirect Discrimination
  - Harassment
  - Victimisation
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# Disability Discrimination – reasonable adjustments

- Duty to make reasonable adjustments in event that employee is “disabled”
  - Duty remains when employees at home
  - Duty remains when employees are in an adapted workplace
  - Particular attention must be paid to those whose disabilities make them less able to cope with change or whose anxiety might be more likely to be triggered by the pandemic
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# Employment Rights Act 1996 – constructive dismissal

- Section 94(1) – an employee has the right not to be unfairly dismissed by his employer
  - Section 95 (1) – for the purposes of this Part an employee is dismissed by his employer if..(c) the employee terminates the contract under which he is employed (with or without notice) in circumstances in which he is entitled to terminate it without notice by reason of the employer's conduct
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# Constructive dismissal

- Must be a material breach of the contract by the employer – cannot be insignificant
  - Can be
    - One-off material breach
    - Series of minor breaches culminating in a “last-straw”
  - Implied term of trust and confidence is an important contractual term – breach of the duty trust and confidence entitles employee to resign
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# Constructive dismissal

- Employer's handling of the pandemic might trigger constructive dismissal claims either through
    - A series of poorly handled minor infractions
    - A single event which is such as to render return to work impossible
  - Employee might raise a grievance first but does not have to – may suffer 25% reduction in award by not doing so
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# Whistleblowing

- **Public Interest Disclosure Act 1998**
    - “An Act to protect individuals who make certain disclosures of information in the public interest”
    - Protection from both detriment and dismissal
  - **“Qualifying disclosures” – section 43B ERA**
    - Must relate to particular types of failure
    - In the reasonable belief of the worker tends to show:-
      - A criminal offence is being /has been/likely to be committed
      - Failure to comply with a legal obligation
      - Miscarriage of justice
      - Danger to health and safety
      - Environment has been/likely to be damaged
      - That any of the above is likely to be deliberately concealed
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# Who is protected by the legislation?

- Section 43K - “Workers” – includes
    - Employees
    - Contractors
    - Agency Workers
    - Home Workers
    - Work experience students
    - NHS independent contractors
    - Police officers
    - Student nurses and midwives
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# Coronavirus-related ill-health

- Entitlement to Statutory Sick Pay (SSP) from day 1 of absence (if Coronavirus-related)
  - £95.85 per week – when ill, shielding, self-isolating (for more than 4 days), or about to undergo a medical procedure and have to self-isolate for 14 days in advance
  - Furloughed employees who are sick can continue to receive furlough pay (80% of pay up to £2500 per month)
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# Coronavirus-related ill health – unintended consequences

- Those who cannot work because they catch coronavirus - £95.85 pw
  - Those who cannot work because they are doing the right thing by self-isolating - £95.85 pw
  - Those who cannot work because they suffer a long-term illness & must shield - £95.85 pw
  - Those who cannot work because coronavirus has impacted their employer's business - £576.92 pw
  - Supports commerce, but makes health protection measures costly for individuals
  - Can be counteracted by employers bearing the cost, but employers are worried about the economy....
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# A complex web of provisions

Discrimination  
protections

Health and  
safety rules

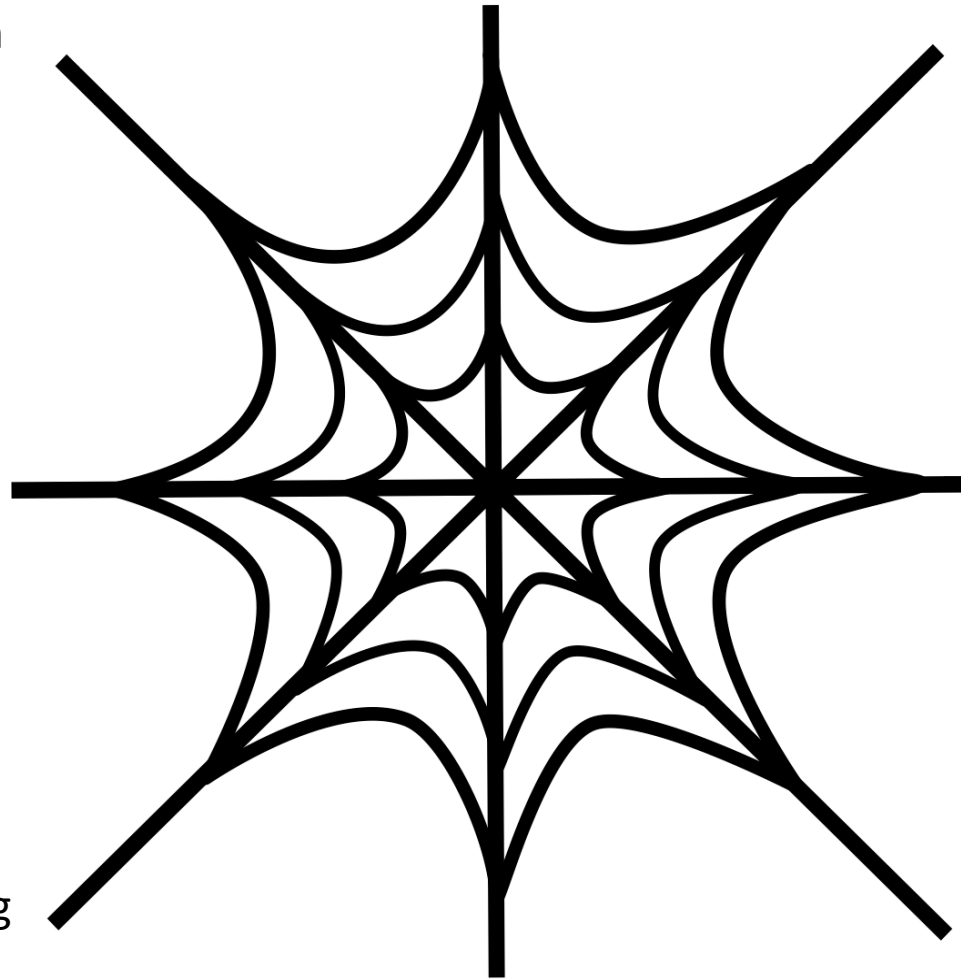
Constructive  
dismissal

Working Time  
entitlements

Whistleblowing  
protections

Pay for absence

Managing safety procedures



# Questions

