



work place news *by Chloe*



Will home working become a right for all?

There has been much media furore over whether the government will force employers to allow employees to work from home – but it looks like a storm in a teacup, at least for now.

It's nothing new that the government intends to review on flexible working laws – it was part of their manifesto at the last election. But they have strenuously denied reports that they plan to make working from home an absolute legal right - or that they will mandate a return to the workplace as compulsory. How long can they sit on that fence?

Employers can expect a flexible working consultation, perhaps later this year, but for now the process and rules around flexible working requests remain the same.

Except - in the aftermath of the pandemic, it might be trickier for employers to refuse flexible working applications. This will especially be the case if the employee in question has been working effectively from home for several months.

Many employers are looking to keep at least partial flexibility – perhaps requiring a % of time employees need to spend in the workplace.

It will come down to what works for your business but, particularly where you've had employees working from home throughout the pandemic, consider the flexibility and tenacity they demonstrated.

Look at how you can reward that dedication through agreeing a working pattern that works for you both. The risk otherwise is that you may lose valuable people where the chances of them finding that flexibility elsewhere has increased.

The editor's welcome

This month we bring you the same information packed newsletter but we've ditched the faceless approach – after all we're all about relationships at Outset – with our colleagues and our clients.

This newsletter is brought to you each month by me – and if my colleagues prepare a piece I'll let you know. If there's anything you'd like me to write about please get in touch – otherwise I'll keep you informed of any key developments plus anything else I think you might find interesting.

As always, please follow us on [LinkedIn](#) for our latest updates and latest news.

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This month...

Furlough update

It looks like furlough is definitely coming to an end this time...

[Read more >](#)

Recent case law

Views about gender are a protected belief...

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Care home vaccines

Compulsory COVID-19 vaccinations introduced for care home workers...

[Read more >](#)

Compulsory Jobs for Care Home Workers

Following a 6-week consultation which ran from 14 April to 26 May 2021, the government confirmed on 16 June that compulsory COVID-19 vaccinations will be introduced for care home workers.

Some interesting highlights from the executive summary of the government's outcome report include:

1. Of the more than 13,500 consultation responses, overall, the consultation showed that a majority **(57%) of respondents did not support the proposal**
2. Drilling down into the categories, the responses from the adult social care sector were mixed, with some groups, for example **care home providers mostly supporting the proposed legislative change** while others, such as **service users and relatives of service users mostly opposed**
3. **The majority of respondents agreed with the proposal to grant exemptions on medical grounds.** There were also calls for exemptions for visiting emergency services who need to enter care homes and for women of childbearing age who are trying to get pregnant, are pregnant or are breast-feeding. There was a call for ensuring that the system for demonstrating vaccination status or exemption from vaccination is as simple and clear as possible.
4. **Respondents were concerned about the potential impact of the policy on staffing levels,** as well as the potential for disproportionate **impact on those with protected characteristics,** such as pregnant women and people from particular ethnic minority backgrounds.

The legislation that will be introduced, in order to protect all care home residents who are clinically vulnerable, will require all CQC-regulated service providers of nursing and personal care in care homes in England:

to allow entry to the premises only to those who can demonstrate evidence of having had a complete course of an authorised COVID-19 vaccine or evidence that they are exempt

This will include:

- all persons who enter a care home, regardless of their role
- all staff regardless of employment status including full and part time employees and workers, agency workers and volunteers
- any professionals visiting a care home, such as healthcare workers, tradespeople, hairdressers and beauticians, and CQC inspectors

[Continue reading >](#)



Outset news & events

Free employing European Nationals webinar

I'm hosting a webinar this week on Wednesday 30 June, 10-11am, covering sponsorship and right to work checks.

For businesses who want to employ a non-British national who hasn't qualified under the EU settlement scheme it's likely you'll have to look at sponsorship. Applying for a sponsor licence is a time consuming, costly exercise. Find out what's involved, and what it will cost your business.

It's not too late to register, ticket sales close today (Tuesday 29 June) at 7.30pm.

[Click here to book your free place >](#)

Outset to cycle London to Brighton in memory of colleague, Ashley

Last year in the middle of the pandemic, we very sadly lost our colleague Ashley to Leukaemia, after a characteristically strong battle with it.

We wanted to do something together, and in our own way to remember Ashley. He was a keen cyclist and we couldn't think of a better way to celebrate his life than to cycle from London to Brighton in his memory.

We are raising money for **Blood Cancer UK**, a community dedicated to beating Blood Cancer and **Macmillan Cancer Support**, who provides specialist healthcare, information and financial support to people affected by #cancer.

Some of us have never cycled before, or up until now, even owned a bike! But we're determined to finish this challenge for Ashley.

We'd be so grateful if you'd consider sponsoring us and supporting these fantastic charities.

[Please click here to donate on our JustGiving page >](#)

Manual right to work checks delayed until 1 September

Last month our newsletter included a detailed article about the end to the temporary online right to work checks. Unsurprisingly, the temporary arrangements have been extended, again, and are now due to end on 31 August.

As a brief reminder of what how you should be conducting your right to work checks:

Up to and including 31 August 2021

- checks can be carried out over video calls
- job applicants and existing workers can send scanned documents or a photo of documents for checks using email or a mobile app, rather than sending originals
- employers should use the online Employer Checking Service if a prospective or existing employee cannot provide any of the accepted documents

From 1 September 2021

- If the individual is able to provide a share code which enables you to use the online service (largely for those with EU Settled Status) you can do so
- Otherwise you will need to conduct a manual check:
 - **Obtain** - original, acceptable documents
 - **Check** - (in the presence of the individual) the documents are genuine, reflect the individual giving them to you and permit the person to do the work in question
 - **Copy** - the document clearly, make a note of the check on the copy, and keep it securely

Please refer to our [May edition](#) for further information about conducting right to work checks.

The requirement will only apply to those who need to enter the care home building and will exclude:

- friends or relatives of residents who are visiting
- persons providing emergency assistance
- those carrying out urgent maintenance work in the care home
- people who only work in the outdoor surrounding grounds of care home premises
- those under the age of 18
- clinical trial participants
- those exempt from the vaccine due to an allergy listed in the Green Book

The government is working with NHSX to explore the use of the NHS App (and its web-based or non-digital alternative) as evidence for demonstrating vaccination or exemption status.

Subject to Parliamentary approval, the new laws will apply from October 2021 (although there will be a 16 week grace period). The government also intends to consult on

extending the requirement to make both COVID-19 and flu vaccinations mandatory in other health and care settings.

Care home providers covered by the legislation will need to keep records of vaccinations and exemptions for the purposes of CQC inspections and will undoubtedly face challenges if employees refuse to be vaccinated.

If they are clearly covered by a medical exemption employers might be clear on the action to take, but what if a religious or risk reason connected to race is cited?

The government report states it intends to publish guidance to help care homes navigate what are inevitably going to be challenging and emotive subjects.

Employment law risks were a common concern in the consultation response – we'll have to wait and see how helpful the government guidance will be.

Furlough update

We haven't written about furlough in a while. Freedom Day (as the 21 June had been dubbed) has been delayed to 19 July. The government has stated the furlough scheme won't be extended and will end 30 September 2021.

The cynics among us might think – we've heard it all before – we might still get an extension at the last minute. But if you're still making use of the furlough scheme, are you ready for the employer contribution starting on 1 July? It will gradually increase until employers will have to revert to full pay for all of your employees as of 1 October.

For the duration of the scheme employees continue to be entitled to receive 80% of wages up to a cap of £2,500 per month for hours not worked, and employers must cover employers NI and pension contributions.

The changes to the level of grant over the rest of the scheme are:

	Government contribution: wages for hours not worked	Employer contribution wages for hours not worked
July	70% up to £2,187.50	10% up to £312.50
Aug	60% up to £1,875	20% up to £625
Sep	60% up to £1,875	20% up to £625

Hopefully we won't see more redundancy schemes but it might be unavoidable for some employers. If your post furlough plans involve the potential dismissal of 20 or more employees collective consultation obligations will be triggered, involving the election of employee reps and minimum consultation periods.

As with most large-scale change, communication is key and keeping your workforce informed will go a long way to fostering positive employee relations.

RECENT CASE LAW

Forstater v CGD Europe & Ors

Views about gender are a protected belief

The Equality Act prevents discrimination based on certain protected characteristics, with one of those being “Religion or belief”. The legal tests around what constitutes a “belief” extend to philosophical as well as religious belief and have developed over time with case law. *Grainger plc v Nicholson* is the leading case, which sets out a number of tests a belief must satisfy in order to be protected.

Forstater held a visiting fellowship with the not-for-profit Center for Global Development Europe. She became engaged with debates on social media and expressed her belief that sex is immutable and not to be conflated with gender identity.

She made remarks which some people found offensive and trans-phobic. It led to complaints from her colleagues and following an investigation the CGD did not renew her fellowship.

Forstater complained she was discriminated against because of her gender-critical belief. The Respondents (and intervenors) argued that her beliefs were inconsistent with human dignity and the fundamental rights of others (one of the *Grainger* tests).

The EAT considered whether Ms Forstater’s belief that there are only two genders constitutes a protected belief and concluded that it does. It rejected the argument that her belief fails to satisfy the requirements of the *Grainger* test mentioned above.

The EAT stated that a philosophical belief would only fail the test if it was the kind of expression of belief akin to Nazism or totalitarianism.

The EAT went to great pains to state that although it found Forstater’s beliefs are widely shared and, whilst offensive to some, do fall within the protection of the Equality Act, **it’s judgement does not mean:**

- the EAT has expressed any view as to the gender debate
- those with gender critical beliefs can “mis-gender trans people with impunity”
- trans people do not also have protection under the Equality Act – they absolutely do
- employers will be unable to provide safe environment for trans gender staff

This judgment demonstrates how difficult it can be for an employer who has to deal with a situation involving opposing views on an emotive philosophical subject (whether it be gender identity or something else).

Employers should not be quick to assume that the person causing the offense is automatically in the wrong – they might be, but determining this will require a careful investigation of all of the circumstances.



Believe it or not?

With the pandemic having impacted most businesses we’ve seen large scale redundancies and large numbers on furlough. But, as restrictions relax, retail and hospitality have been taking on more staff and unemployment rates in the UK fell for a third month in a row by April 2021.

We’ve had a look at unemployment rates around the world* including the highest, lowest and a few in between and the results are really quite interesting. See if you can guess who falls where in the list before looking!

Country	Unemployment Rate (high to low)	Reference period
Bosnia and Herzegovina	33.4%	March 21
Namibia	33.4%	Dec 18
Greece	16.3%	March 21
Spain	15.98%	March 21
Italy	10.7%	April 21
Iran	9.5%	Sept 20
France	8%	Dec 20
Portugal	7.1%	March 21
India	6.5%	March 21
Poland	6.3%	April 21
USA	5.8%	May 21
Australia	5.1%	May 21
China	5%	May 21
UK, Mexico, New Zealand	all at 4.7%	April 21
Germany	4.4%	April 21
Netherlands	3.3%	May 21
Japan	2.8%	April 21
Thailand	1.5%	Dec 20
Cuba	1.2%	Dec 20
Niger	0.7%	Dec 20
Belarus	0.2%	Dec 20
Qatar	0.1%	June 20

Guest article

BUSINESS TRANSACTIONS

7 reasons to refresh your shareholders' agreement

If you go into business with someone else, we regularly advise that you should put a Shareholders Agreement in place. There are some really key advantages to doing this - it can help avoid some seriously tricky situations, particularly if business owners fall out or want to go their separate ways.

It's also a good process to go through to help business owners understand each other's expectations going forward. One common misconception is that if you fall out with each other or a shareholder does something really bad, you will be able to force the sale of the other persons shares. There is no mechanism to do this without first putting in place an effective clause in a Shareholders' Agreement or carefully drafted bespoke articles of association.

Once drafted, it is very common for these agreements to be put in a drawer and forgotten about. This may well be fine if your business is not going through any significant changes but it can leave you with a binding agreement which is no longer fit for purpose if you don't revisit it when the time is right. Most recently, Covid-19 has triggered changing circumstances for many business owners that may need to be reflected in the shareholders' agreement.

A regular review and update is necessary to reflect business growth and evolution, continuing to protect all parties appropriately.

We've listed 7 key things opposite to consider when updating your shareholders agreement...

01 Decision making

Covid-19 has demonstrated the need to respond rapidly to a fast-changing environment and the businesses which have succeeded are those that have been able to quickly flex. If the agreement places too many hurdles to making decisions then adjusting the agreement to represent how the business needs to run practically may help prevent disputes or delays which in turn impacts on profitability. If you have recently appointed a new director to the board or shareholder dynamics have changed then it's likely you will need to update your agreement.

02 Founder exit

Changes in personal circumstances, a breakdown in working relationships or an external event, may result in a founder wishing to exit the business and trigger the need for an update. If a shareholder wants to step back and achieve a partial exit in favour of a remaining shareholder then it would be advisable to rework the agreement to reflect the new structure.

03 Changes to shareholder rights to income

A shareholders' agreement with greater flexibility may benefit a business' financial growth. It's not uncommon for shareholders to agree a fairly rigid dividend policy at start up stage, perhaps as time has passed you would like greater flexibility.

04 Seeking external investment

A shareholders' agreement may need to allow for raising capital through an equity investment and bringing on board further shareholders. The Shareholders' Agreement will very likely need to be reworked and depending on the kind of investment, the founders may choose (or be required) to adopt a more investor friendly model.

05 Resolving disputes

Shareholders' Agreements should offer a practical solution to a dispute or at least a well thought through path to achieving as painless an outcome as possible. The mechanisms for resolving a dispute come in many shapes and sizes and it's definitely not a one size fits all model.

As your business evolves, it is prudent to ensure that whichever mechanism has been included does the job you need whether it is to act as a deterrent to shareholders to entering into lengthy disputes or a clear guide to dealing with a mediation process.

06 Untimely illness or incapacity

No matter what age the founders of a business are, Covid-19 has thrown into sharp focus just how unpredictable life can be. Ideally, an agreement should include clear guidelines around decision making or what should happen if a shareholder develops a long-term illness or becomes incapacitated for a prolonged period for any reason.

07 Succession planning

Business owners should always be looking forward and need their eyes on the future. True succession planning needs to happen long before it is actually required. As businesses and their owners age, the Shareholders' Agreement should be reviewed to make sure that it anticipates and, if necessary, facilitates the likely changes required as founders decide to exit or retire.



AYDA KHANCHI
Business Transactions team

Read more about Ayda [here](#) or click here to send her an [email](#).

What do I do about...

an employee who wants to work abroad?



Some employers have experienced an increase in individuals opting to move abroad (often to their birth/home countries) and making a request to perform their role remotely on a permanent basis.

Particularly where employees have been working effectively from home for several months, it seems straight-forward enough that they should be able to perform their role from anywhere in the world. But it isn't necessarily that simple and employers need to ensure they've considered all of the potential implications before agreeing such requests.

Is it possible to have an employee based abroad if there is no group company?

In some countries it may not be possible to have an employee based there unless you have a local company to employ them or at least a payroll operator to pay them.

What are the tax implications?

Unsurprisingly, the tax rules are complex and vary depending on which country the individual will be working in, what reciprocal tax agreements are in place (if any) and how long they will be working there. For example, an individual might still be liable to pay income tax in the UK if their work benefits a UK based company, but not national insurance if they are paying social security in their country of residence and there is an appropriate agreement in place with the UK.

It's always best to seek specialist tax advice, and you should also consider whether you need to make a report to HMRC when an employee is going to be working abroad.

What are the employment law implications?

Unfortunately, another complex one.

Whether UK or local employment laws will apply in any given situation depends on a number of factors including the country the individual will be based in, what the contract says and how the work is carried out in practice (for example, whether the employee travels in the course of their employment).

What is important for employers to bear in mind is that regardless of what the contract states, for example even if it states that the law of England and Wales will apply, it is possible and probable that local employment laws will also apply. For example, if the local laws provide more statutory holiday than your standard offering, you may have to offer the higher amount in accordance with the law of the country the employee will be based in.

In most cases it will be necessary to seek local advice from a specialist employment lawyer in that country.

Do they keep the same contract?

Most employers will want to issue their standard UK contract. In theory that's fine, but an individual based permanently in another country will undoubtedly be affected by local employment laws. It will always be advisable to seek local employment law advice. In some countries, Germany for example, employees based there must have an employment contract issued in the native language so you will need to arrange for the contract to be professionally translated.

Do they need visa permission?

They certainly won't need a UK visa if they're based in a different country, even if the work they're performing is for a UK based country. A visa is only required if they are going to be physically in the UK and performing work and they don't otherwise have the right to work in the UK.

As for the country they are based in, in most cases they've chosen that location as they are native so there should be no visa requirements there either. That won't always be the case though and if they don't have the automatic right to work in the country they've chosen to reside in they will need to seek guidance on local immigration laws.