

How to manage risk during a pandemic

With the end of lockdown in sight, operators must now form a viable plan for health and safety. *Keith Morton* explains the key points

The problem

As lockdown is gradually relaxed, the hospitality and leisure industry faces enormous challenges. How can you ensure regulators won't be taking enforcement action against your business?

The law

The criminal law requires that all employers and the self-employed take effective steps to manage health and safety. The duties include:

- Ensuring so far as reasonably practicable the health, safety and welfare of employees and all those who may be affected by their undertaking (such as customers);
- Undertaking suitable and sufficient assessments of the risks to which people affected by their undertaking (such as employees and customers) are exposed;
- Recording risk assessments in writing if you have more than five employees;
- Taking reasonably practicable measures to reduce as far as possible foreseeable risks of harm;
- Ensuring that employees are provided with adequate personal protective equipment (PPE) where the risk of harm has not been adequately controlled by other means;
- Covid-19 is a notifiable disease. If anyone is diagnosed with or dies as a result of it and the likely exposure was work related, it must be reported to a regulator.

Expert advice

The law treats safety as a relative concept. Safety is judged according to the general and industry-specific knowledge and standards of the time, by reference to what might reasonably have been foreseen by a reasonable and prudent employer. The duty to undertake risk assessments is the central building block for complying with that duty.

A risk assessment is about identifying reasonably practicable measures to eliminate or reduce foreseeable risks of harm arising from work. It is a blueprint for action, not a piece of bureaucratic paperwork.

The risk of harm, potentially very serious harm or death from Covid-19 is a new risk to which employees and customers may now be exposed. Everyone is now on notice of this risk. Businesses should prepare now for how this risk is to be managed as the lockdown eases.

It is going to present enormous challenges in the hospitality and leisure industry so long as social distancing remains a key element of reducing the risk. Businesses should plan how they may be able to maintain social distancing, ensure high standards of hygiene and provide PPE.



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The industry must press the government and trade bodies for authoritative guidance in particular on the extent to which social distance guidelines might be relaxed if other measures are in place (such as PPE).

Guidance is not of itself law, but if it is followed you are likely to comply with the law. If it is not followed, you must be able to demonstrate you have taken other equally effective measures. The tension between survival and operating safely is very real for many businesses.

Do not cut corners – the courts frown upon organisations that put profit before safety. Regulators will be on the lookout for businesses that do not manage the risk of Covid-19 effectively – a cluster of cases linked to one business will attract their attention.

To-do checklist

- Keep up to date with coronavirus-related regulations generally and specifically for the hospitality and leisure industry;

- Press for and keep up to date with government and industry guidance specific to the hospitality and leisure industry;
- Ensure you have recorded a suitable and sufficient risk assessment that reflects current guidance and that this is kept under review;
- Make sure your insurance is up to date and covers you for responding to health and safety investigations and prosecutions.

Beware

Failure to comply with health and safety legislation is a criminal offence. It can result in reputational damage and a range of enforcement action, including a Notice of Contravention (for which you have to pay), enforcement notices and prosecution.

On conviction the penalty includes imprisonment for individuals and very large fines for companies and organisations. Fines are now commonly more than £1m for organisations with a turnover exceeding £50m a year. In cases of very serious compliance failures leading to death, prosecutions for manslaughter are possible.

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