

# Coronavirus job retention scheme including flexible furlough

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## Background

The Coronavirus Job Retention Scheme ('CRJS') was originally announced on 20 March 2020 and introduced the concept of **furlough**.

The scheme has been extended twice but will (supposedly) end on 31 October 2020.

Guidance followed on 26 March 2020 and has since been updated several times, most recently on 1 July 2020.

The furlough scheme changed significantly on 1 July 2020 and allows employers to place employees on furlough for periods of less than three weeks.

A summary of the changes can be found at:

<https://www.gov.uk/government/publications/changes-to-the-coronavirus-job-retention-scheme/changes-to-the-coronavirus-job-retention-scheme>

## Useful links

**The best place to start:** <https://www.gov.uk/government/collections/coronavirus-job-retention-scheme>

<https://www.gov.uk/government/publications/changes-to-the-coronavirus-job-retention-scheme/changes-to-the-coronavirus-job-retention-scheme>

**Check if you can claim:** <https://www.gov.uk/guidance/claim-for-wage-costs-through-the-coronavirus-job-retention-scheme>

**Who can you put on furlough:** <https://www.gov.uk/guidance/check-which-employees-you-can-put-on-furlough-to-use-the-coronavirus-job-retention-scheme>

<https://www.gov.uk/guidance/check-if-you-could-be-covered-by-the-coronavirus-job-retention-scheme>

<https://www.gov.uk/guidance/steps-to-take-before-calculating-your-claim-using-the-coronavirus-job-retention-scheme>

**Work out what you can claim:** <https://www.gov.uk/guidance/work-out-80-of-your-employees-wages-to-claim-through-the-coronavirus-job-retention-scheme>

<https://www.gov.uk/guidance/calculate-how-much-you-can-claim-using-the-coronavirus-job-retention-scheme>

**Calculator:** <https://www.tax.service.gov.uk/job-retention-scheme-calculator>

<https://www.gov.uk/government/publications/find-examples-to-help-you-work-out-80-of-your-employees-wages/example-of-a-full-calculation-for-an-employee-who-is-flexibly-furloughed>

### Step by step guidance to claim:

[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/880376/Coronavirus Job Retention Scheme step by step guide for employers.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/880376/Coronavirus_Job_Retention_Scheme_step_by_step_guide_for_employers.pdf)

**Make the claim:** <https://www.gov.uk/guidance/claim-for-wages-through-the-coronavirus-job-retention-scheme>

<https://www.gov.uk/government/publications/treasury-direction-made-under-sections-71-and-76-of-the-coronavirus-act-2020>

## Flexible furlough and contribution from employers

Flexible furlough was announced on 12 May 2020 with further details following on 29 May 2020 and various iterations of guidance from 12 June 2020.

### Summary

#### who can claim?

- employers can use the scheme in respect of employees furloughed for at least 3 consecutive weeks between 1 March and 30 June 2020 ('**qualifying furlough**')
- employers must have:
  - a UK PAYE scheme that started on or before 19 March 2020
  - enrolled for PAYE online
  - submitted a report under the Real Time Information (RTI) reporting system for each employee they are claiming for on or before 19 March 2020
  - a UK bank account

#### how much?

- to **31 July 2020** employers can claim for 80% of the employee's salary (capped at £2,500 or proportional to hours worked for which see below) a month **plus the associated employer National Insurance Contributions (NICs) and pension contributions (up to the level of the minimum automatic enrolment employer pension contribution) on that subsidised furlough pay**
- from **1 August 2020**: employers must pay employer's NICs and pension contributions with the rest of the claim remaining at 80% of salary (capped at £2,500 or proportional to hours worked)
- in addition to employer's NICs and pension contributions:
  - from **1 September 2020** employers can claim 70% of salary (up to a maximum of £2,187.50 or proportional to hours worked) and will be required to top-up at least the remaining 10% to 80% (capped at £2,500 or proportional to hours worked)
  - from **1 October 2020** (and for the last month of CJRS) employers can claim 60% of salary (up to a maximum of £1,875 or proportional to hours worked) and will be required to top up at least the remaining 20% to 80% (capped at £2,500 or proportional to hours worked or more).
- employers can choose to pay more and may need to do so depending on the agreement with the employee
- salary is based on last pay period prior to 19 March 2020 or, if pay is variable, the higher of the amount earned in the same month 2018-2019 or an average of monthly earnings from 2019-2020
- subject to usual income tax and other deductions

#### key dates

- **10 June 2020**: last date an employer and employee could start 'qualifying furlough' so claims can also be made on or after 1 July 2020
- **10 to 30 June 2020**: An employer does not need to have employees on furlough nor does an employee need to be furloughed between 10 and 30 June 2020.

- **Note** if an employee had completed a period of qualifying period, carried out work between 10 and 30 June 2020 and returned to furlough before 30 June they must complete a further 3 week consecutive period of furlough before they can return to work
- **30 June 2020:** CJRS closes to new employer and employee entrants as outlined above
- from **1 July 2020:**
  - 'flexible furlough' allows employees to work part-time and be on furlough part-time
  - employers can decide the proportion and pattern of work
  - employers responsible for paying the wages in full for hours worked
  - the cap on the furlough grant **proportional** to the hours not worked (e.g. an employee will be entitled to 60% of the cap if they are on furlough for 60% of their usual hours)
  - no minimum time on furlough
  - agreements to work must cover at least one week **and** be confirmed to the employee in writing
  - claim for a minimum period of a week (unless they include start or end of the month)
  - claims can be made for longer periods (but not straggle calendar months)
  - data required on the usual hours an employee would be expected to work in a claim period and actual hours worked
  - if employees are unable to return to work, or employers do not have work for them to do, they can remain on furlough full-time (**full furlough**) and the employer can continue to claim the grant for their full hours
  - the maximum number of employees that can be claimed for in any period cannot be higher than the maximum number that have been claimed for in a previous period; if the highest single claim for periods up to and including 30 June was for 100 people, employers may only place on furlough and claim for this number in later periods and not more (although you can add individuals returning from statutory leave as referred to below)
  - any hours taken as holiday can be counted as furloughed hours rather than working hours, but employees should **not** be placed on furlough for a period simply because they are on holiday for that period
- **31 July 2020:** last date claims can be made for the period to 30 June 2020
- **31 October 2020:** CJRS closes

This information is up to date as of **7 July 2020** and guidance is updated regularly so make sure you are fully up to date by checking the most up to date government information.

## Lockdown and lifting of lockdown

### Lockdown and lifting of lockdown chronology

20 March 2020	Announcement of closure of, for example, pubs, cinemas, and theatres
23 March 2020	Closures extended to all non-essential retail stores, libraries, community centres and youth centres, indoor and outdoor leisure facilities, communal places within parks, places of worship, hotels, hostels, bed and breakfasts, campsites, caravan parks and boarding houses
	<p>Citizens told to only leave the house for one of four reasons:</p> <ul style="list-style-type: none"> <li>• shopping for basic necessities, for example food and medicine, which must be as infrequent as possible</li> <li>• one form of exercise a day, for example a run, walk, or cycle - alone or with members of your household</li> <li>• any medical need, or to provide care or to help a vulnerable person</li> <li>• travelling to and from work, but only where this absolutely cannot be done from home</li> </ul>
	Designation of 'key workers' for the purposes of continued school provision.
10 May 2020	Announcement of the recovery strategy and “work from home if you can, but ... go to work if you can’t”.
13 May 2020	<p><b>Step one</b></p> <ul style="list-style-type: none"> <li>• workers continue to work from home where possible for the foreseeable future</li> <li>• workers who cannot work from home should work at their workplace if it is open</li> <li>• hospitality and nonessential retail are to remain closed</li> <li>• workplaces should follow Covid-19 Secure guidelines</li> <li>• anyone who has Covid-19 symptoms should self-isolate, remain at home and not go to work</li> </ul> <p>Covid-secure guidance published</p>
1 June 2020	<p><b>Step two</b></p> <p>Reopening of non-essential retail in phases</p>
4 July 2020	<p><b>Step three</b></p> <p>all businesses and venues can reopen except: nightclubs, dance halls, discotheques, casinos, sexual entertainment venues and hostess bars, bowling alleys, indoor skating rinks, indoor play areas including soft-play areas, spas, nail bars and salons and beauty salons, tanning booths and salons, massage parlours, tattoo parlours, body and skin piercing services, indoor fitness and dance studios, indoor gyms and sports courts and facilities, indoor and outdoor swimming pools, including water parks, exhibition halls or conference centres must remain closed for events such as exhibitions or conferences, other than for those who work for the business or organisation who run the venue.</p>
	<b>Business should keep a temporary record of customers and visitors for 21 days to assist NHS Test and Trace with requests for that data if needed</b>

<https://www.gov.uk/government/publications/further-businesses-and-premises-to-close/further-businesses-and-premises-to-close-guidance>

<https://www.gov.uk/government/publications/coronavirus-covid-19-maintaining-educational-provision/guidance-for-schools-colleges-and-local-authorities-on-maintaining-educational-provision>

## Covid-secure

Organisations that are open must ensure the workplace is safe. Gov.co.uk have created a guide to assist with carrying out a risk assessment and making sensible adjustments to the site and workforce:

<https://www.gov.uk/coronavirus-business-reopening>

<https://www.gov.uk/government/publications/our-plan-to-rebuild-the-uk-governments-covid-19-recovery-strategy>

<https://www.gov.uk/government/news/new-guidance-launched-to-help-get-brits-safely-back-to-work>

<https://www.gov.uk/guidance/working-safely-during-coronavirus-covid-19>

<https://www.gov.uk/guidance/working-safely-during-coronavirus-covid-19/5-steps-to-working-safely>

## 5 steps to working safely

The government's five steps are:

1. carry out a Covid-19 risk assessment
2. develop cleaning, handwashing, and hygiene procedures
3. help people to work from home
4. maintain 2m social distancing, where possible
5. where people cannot be 2m apart, manage transmission risk

Sector specific guidance is available at <https://www.gov.uk/guidance/working-safely-during-coronavirus-covid-19>

There are a number of guides covering different types of work and workplace:

- close contact services - <https://www.gov.uk/guidance/working-safely-during-coronavirus-covid-19/close-contact-services>
- construction and other outdoor work - <https://www.gov.uk/guidance/working-safely-during-coronavirus-covid-19/construction-and-other-outdoor-work>
- factories, plants and warehouses - <https://www.gov.uk/guidance/working-safely-during-coronavirus-covid-19/factories-plants-and-warehouses>
- heritage locations - <https://www.gov.uk/guidance/working-safely-during-coronavirus-covid-19/heritage-locations>
- hotels and other guest accommodation - <https://www.gov.uk/guidance/working-safely-during-coronavirus-covid-19/hotels-and-other-guest-accommodation>
- labs and research facilities - <https://www.gov.uk/guidance/working-safely-during-coronavirus-covid-19/labs-and-research-facilities>
- other people's homes - <https://www.gov.uk/guidance/working-safely-during-coronavirus-covid-19/homes>
- offices and contact centres - <https://www.gov.uk/guidance/working-safely-during-coronavirus-covid-19/offices-and-contact-centres>
- restaurants, pubs, bars and takeaway services - <https://www.gov.uk/guidance/working-safely-during-coronavirus-covid-19/restaurants-offering-takeaway-or-delivery>
- shops and branches - <https://www.gov.uk/guidance/working-safely-during-coronavirus-covid-19/shops-and-branches>
- vehicles - <https://www.gov.uk/guidance/working-safely-during-coronavirus-covid-19/vehicles>
- the visitor economy - <https://www.gov.uk/guidance/working-safely-during-coronavirus-covid-19/the-visitor-economy>

The House of Commons Library has also published a report on Returning to Work:

<https://commonslibrary.parliament.uk/research-briefings/cbp-8916/>

It is a useful summary of the position regarding returning to work:

- it is an offence for a person to leave their house to go to work unless that work cannot reasonably be done from home
- Regulations remain in place to require businesses in a range of sectors to close their premises
- employers are under no obligation to instruct workers to return and can keep employees on furlough
- governments in Scotland, Wales and Northern Ireland have their own lockdown rules
- employers must:
  - undertake a risk assessment
  - set up safe systems of work based on the outcomes of the risk assessment
  - implement them
  - keep them under review
- workers have an obligation to obey lawful and reasonable instructions from their employer but employees refusing to attend the workplace because they reasonably believe that there is a serious and imminent danger have certain protections under employment rights legislation (see below). Disputes should be addressed through discussion, including with health and safety representatives
- workers who should not be required to attend the workplace if:
  - they can work from home
  - they are clinically extremely vulnerable to Covid-19
  - they are required by public health guidance to self-isolate
- employers must be careful not to discriminate and consider special protections for new and expectant mothers and difficulties for working parents

Business may want to engage with their own health and safety specialists to consider and implement this guidance. Key points which are consistent across all workplaces are:

- **Work from home if you can:** All reasonable steps should be taken by employers to help people work from home. But for those who cannot work from home and whose workplace has not been told to close: you should go to work. Staff should speak to their employer about when their workplace will open.
- **Carry out a COVID-19 risk assessment:** in consultation with workers or trade unions. It is recommended to publish the risk assessments on your website and businesses with **over 50 employees** are expected to do so.
- **Maintain 2 metres social distancing, wherever possible:** this might require (as examples only) re-design of workspaces, staggering start times, one-way systems, using more entrances and exits and changing layouts in break rooms.
- **Otherwise manage transmission risk:** for example, barriers could be used in shared spaces, shift patterns and fixed teams to minimise numbers of people in contact with each other and ensuring colleagues are facing away from each other.
- **Reinforcing cleaning processes:** cleaning should be more frequent with particular focus on high-contact objects like door handles and keyboards and provision of handwashing facilities/sanitiser at entry and exit points.

A downloadable notice, which employers should display in their workplaces to show they have followed the guidance can be downloaded at

<https://assets.publishing.service.gov.uk/media/5eb96c67e90e07083cd8a46b/staying-covid-19-secure.pdf>.

## Records for test and trace

Business should keep a record of customers and visitors for 21 days to assist NHS Test and Trace with requests for that data with the intention this will help to contain clusters or outbreaks. This requirement applies to staff, customers, and visitors to:

- hospitality, including pubs, bars, restaurants, and cafés
- tourism and leisure, including hotels, museums, cinemas, zoos, and theme parks
- close contact services, including hairdressers, barbershops, and tailors
- facilities provided by local authorities, including town halls and civic centres for events, community centres, libraries, and children's centres
- places of worship, including use for events and other community activities

Further details are available at <https://www.gov.uk/guidance/maintaining-records-of-staff-customers-and-visitors-to-support-nhs-test-and-trace>

## Returning to the new normal and coming back stronger

Lockdown has been easing for several weeks now, but it is reasonably clear business will continue to be disrupted for many weeks if not months to come. Both business and individuals alike have been considering what a return to the new normal will and **should** look like.

Since March 2020, business has had a more diverse workforce than ever. Staff will fall into one or more of the categories below:

- working at the workplace
- working at home
- unwell
- shielding (clinically extremely vulnerable or clinically vulnerable)
- on full-time furlough
- on flexible furlough
- 'refusing' to work

Some will be or have been on reduced or altered hours and/or pay.

As the world starts to return, business requirements are vitally important. Business wants to spring back and start the recovery as quickly as possible. With this in mind, some businesses will voluntarily seize the opportunity and never return to the way of working they may have vehemently defended for years. They may see and embrace some of the environmental, human and financial benefits the way of working forced on us by the pandemic brought.

Inevitably, there are tough decisions and challenges ahead, which may include:

- considering flexible working requests
- restructuring the workforce
- making redundancies as a result of forced use of technology, changed ways of working and/or reduced levels work
- recruitment due to increased work and/or making the most of opportunities that have presented themselves

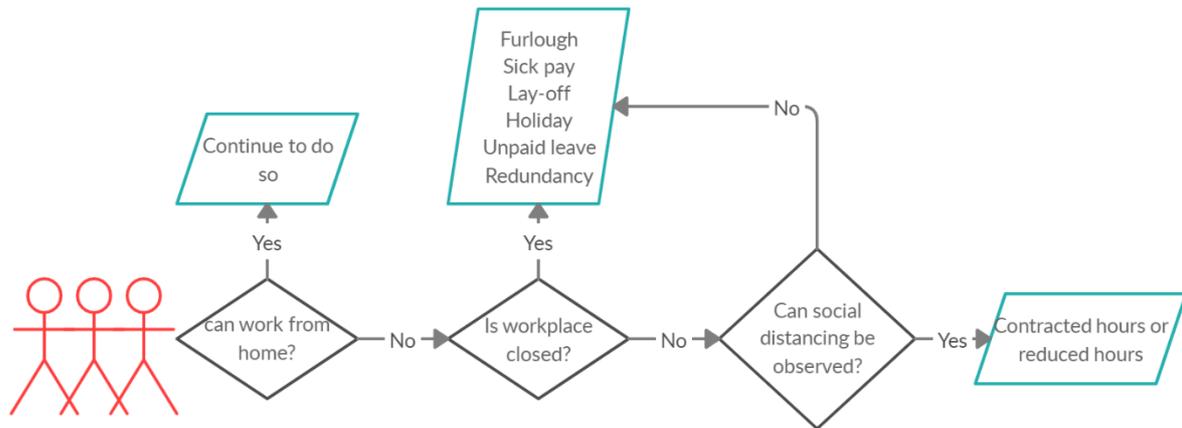
## Treat staff as individuals

Business requirements are, of course, important. As important is considering each employee's circumstances.

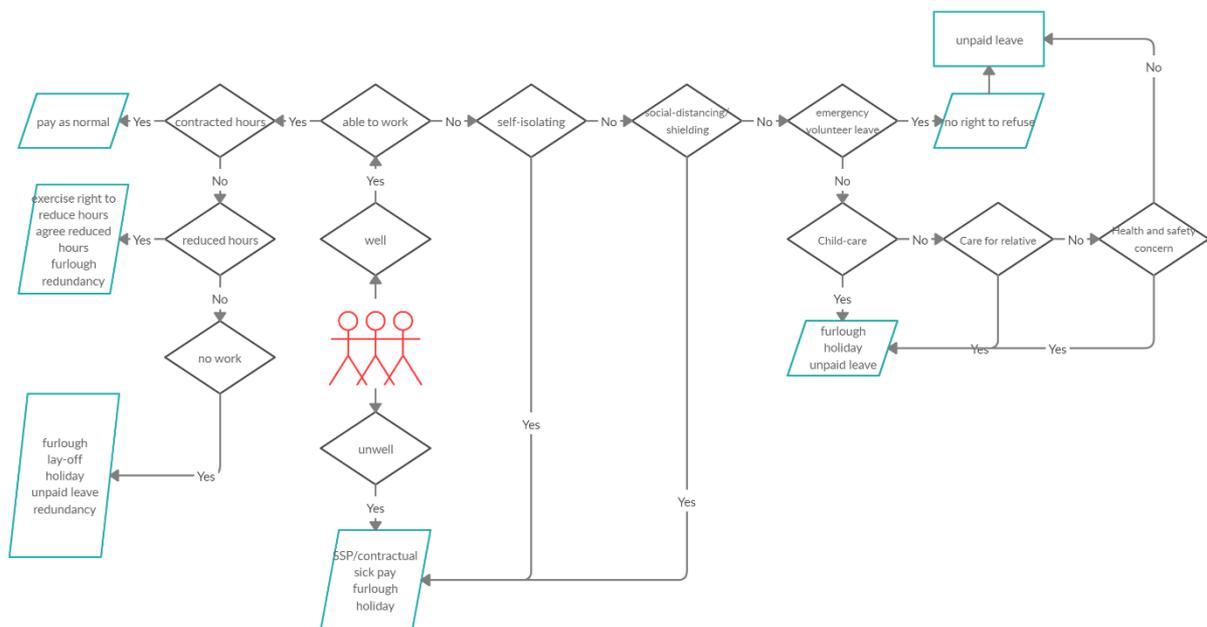
## Returning to work

Before the potentially bigger, tougher and longer term decisions have to be made the decision trees below should help with more immediate questions:

Can and should someone return to the workplace?



If not, what are the options?



Some workplaces have no alternative but to remain closed. In these cases, if there is no work which can be done from home, employers will be well advised to continue to designate employees as 'furlough', although other options are also dealt with below.

Workplaces remaining open or starting to reopen or reintroduce more staff have to decide if work can safely be done in the workplace and by who. If there is no work which can be done safely in the workplace by some or all employees are likely to remain on furlough.

Employees for whom work is available but who refuse, unreasonably, to carry it out could be subject to disciplinary action, may not be paid and, ultimately, could be dismissed. This is not a step to take lightly and there are a number of particular areas to be cautious about.

## **Childcare**

Schools in particular remain closed to many children and some workers are facing the difficulty of working from home with children also at home. Others may have chosen, for any number of reasons, not to take up a place at school for their children.

In ordinary circumstances, an employer is unlikely to agree to a worker working whilst also looking after a child. In the current circumstances, a blanket ban against working at home and looking after children would have meant large sections of the workforce were unable to work and ran the risk of allegations of indirect (if not direct) discrimination. This is most likely to be on grounds of sex but might also be on grounds of disability if there are concerns around ill-health. This remains the case and is even more so as workplaces start to re-open and workers are requested to return.

## **Clinically extremely vulnerable**

Those who are extremely vulnerable have been advised to shield until 31 July 2020, including work from home where possible, and can return to Covid-secure workplaces from 1 August 2020.

<https://www.gov.uk/government/publications/guidance-on-shielding-and-protecting-extremely-vulnerable-persons-from-covid-19/guidance-on-shielding-and-protecting-extremely-vulnerable-persons-from-covid-19>

This group have been entitled to statutory sick pay since 16 April 2020.

## **Clinically vulnerable**

Clinically vulnerable, being those aged 70 and over, aged under 70 with a specified underlying health condition and pregnant women, can attend work but should be helped to work from home, either in their current role or in an alternative role and if this is not possible they should be offered the option of the safest available on-site roles, enabling them to maintain social distancing guidelines.

<https://www.gov.uk/government/publications/staying-alert-and-safe-social-distancing/staying-alert-and-safe-social-distancing-after-4-july>

## **Living with vulnerable individuals**

There is no requirement for individuals living with those who are shielding to, themselves, shield. They can, therefore, attend work.

This said, this group of individuals will, understandably, be concerned. Strictly, associative discrimination does not protect an individual, based on the disability of another, against a failure to make reasonable adjustments, discrimination arising from disability or indirect discrimination. It does, however, protect against direct discrimination, harassment and victimisation.

## **General concerns about health and safety**

Employees who raise certain concerns about health and safety concerns are protected from dismissal and detriment regardless of their length of service. They may also have 'whistleblown' and be similarly protected against dismissal and detriment. In the circumstances of the pandemic and refusal to return to work, this might arise if an individual:

- raises concerns with their employer about circumstances they reasonably believe are harmful or potentially harmful to health and safety, and they are dismissed on that basis.
- believes that they are in serious and imminent danger and they leave, propose to leave, or refuse to return.

In addition, employers have an implied duty to:

- to take reasonable care of the health and safety of their employees
- to provide a suitable working environment
- of trust and confidence

A breach could lead to the employee taking the decision to resign and claim constructive dismissal.

### **Refusing to return**

Many of these issues are connected with protected characteristics (for example age, sex and/or disability) of the worker and/or others they are associated with and employers need to be cautious about their approach to minimise the risk of a breach of the Equality Act 2010. As highlighted above, there are also other potential claims including for automatic unfair dismissal or constructive unfair dismissal.

Whether such claims could or would be successful, to a large extent, is academic; the time, money and workforce disruption involved in managing a process which is likely to include a grievance may be deterrent enough.

Leaving the legal issues aside, if any other encouragement is needed, a harmonious workforce all pulling in the same direction is going to help the recovery process much better than a workforce who feels devalued.

For all of these reasons, employers should be as flexible as possible and continue to consider homeworking, redeployment, reduced hours, adjusted hours, using furlough leave (if available), allowing unpaid (or paid) time off to deal with emergencies involving dependants, unpaid parental leave, compassionate leave, career breaks and/or holiday.

### **Managing the process**

As part of the return to work process employers should:

- share risk assessments with their workforce
- discuss planned adjustments to the workplace generally
- communicate updates on guidance and approach regularly
- document everything
- talk as early as possible about returning to the workplace and take time to understand the particular circumstances.
- consult with staff and any trade union representatives, employee representatives and/or health and safety representatives and staff who might be concerned about degrees of risk for themselves or others.
- consider adjustments:
  - be flexible on return to work dates, hours and times of work
  - travel plans and facilitate cycling or parking
  - new and expectant mothers
  - religious commitments
  - additional protections
- discussing any phased return of the workforce, with some staff returning before others
- minimise contact and organise attendance at work in groups
- talk to employees anxious about safety and returning to work and to try to resolve concerns together. Concerns can be:
  - fear of catching COVID-19 themselves
  - that they are vulnerable or living with someone who is vulnerable and therefore shielding

- that they are caring for children
- be aware of perceptions of fairness and unfairness within the workforce and the potential for ill-feeling to develop

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