

COVID-19: Relevant Measures For The Retail Sector



To prevent the spread of coronavirus (COVID-19), the Government passed the Health Protection (Coronavirus, Restrictions) (England) Regulations 2020 ("COVID-19 Regulations"), under which certain businesses and venues are under an obligation to close unless an exception applies.

Retail businesses are caught under Regulation 5. As online selling is permissible, businesses may continue to employ necessary staff at warehouses and utilise delivery resources essential to their continuity, however every store or venue must close. As businesses look to move or increase their presence online during the pandemic, the current obligations are likely to affect mainly three areas: relationships with customers, workplace governance and relationships with third parties. We discuss these below.

Relationship with customers

Customers must be made aware of any changes to the terms and conditions of the business operating under the COVID-19 Regulations. Changes must be clear and upfront, which can be achieved by summarising the changes in a pop-up notice displayed on the website.

Changes that businesses should consider include lengthier delivery timescales and the method of delivery. For example, customers will not be able to sign for deliveries or accept delivery in person in accordance with social distancing rules. Breach of the COVID-19 Regulations is an offence, so the terms and conditions will need to set out the extent to which any responsibility lies on the customer once a package is left on the doorstep.

Workplace governance

Employers are obliged to ensure the safety of their staff working at warehouses

and in the delivery of its goods and/or services. There is a certain amount of discretion allowed, subject to strict observation of the following rules:

1. Adopting measures to ensure that social distancing is adhered to and employees can continue to fulfil their roles whilst keeping a two-metre distance from each other;
2. Ensuring staff that fall within a vulnerable group or display COVID-19 symptoms contact the relevant person (e.g. in HR) or are sent home;
3. Employees are reminded to wash their hands for 20 seconds at frequent intervals and catch any coughs or sneezes in a tissue;
4. Objects and surfaces that are touched regularly are frequently cleaned and disinfected;
5. If necessary, determine the current medical condition of any employees through regular testing subject to any measures being reasonable and supported by law. If there is a need to implement a measure like this, it is relevant to:
 - From a data protection perspective:
 - Inform employees of the purpose of the data collection, legal basis, retention period and any other relevant information to comply with Articles 13 and 14 GDPR. Employee consent is not necessary to process health data related to the prevention of the spread of COVID-19;
 - Ensure you only collect the data you need to meet this purpose;
 - Update policy document as mandatory.
 - From an employment angle:
 - Communicate with affected staff and any trade unions or employee representative bodies (if any);
 - Ensure all communication balances the importance to the business of carrying out the checks with any concerns of the employees as the pandemic continues to develop;
 - Detail where, when and by whom testing would take place and the methodology as well as the measures in place and subsequent rules should a result prove positive;
 - Explain the consequences of any adverse test results;
 - Comply with your duty to other employees and third parties on your premises. If you have been placed on notice, we recommend that you seek specific advice on your next steps, particularly as Government advice continues to change as the pandemic develops;
 - Have appropriate measures in place should employees refuse to be tested and/or leave the premises; and
 - Communicate that the Government has stated that those who follow advice to stay at home will be eligible for statutory sick pay (SSP) from their first day of absence from work.

Relationships with third parties

Businesses should review any leases or licenses if they do not own their premises or warehouses. Logistically, landlords may be under an obligation to provide services either on an exclusive or shared basis, for example, access to communal areas or roads. We recommend that the parties agree on the approach whilst the COVID-19 Regulations and lockdown period applies. Action may need to be taken if landlords are not prepared to assist.

Businesses should also review any existing agreements or subscriptions with

delivery companies, particularly the terms in place for the collection and delivery of goods to ensure compliance with the COVID-19 Regulations and any other rules as amended or updated by the Government. They should also clarify the roles and responsibilities of the parties when collecting and delivering goods.

Breach of COVID-19 Regulations

Breaching the COVID-19 Regulations is an offence. Directors/managers/secretaries or similar officers of a company will most likely be prosecuted if the company contravenes these rules. Acting contrary to the steps set out in this insight may also constitute a breach of consumer, employment and data protection law as well as, in certain cases, a breach of a contract. In light of this, we consider this a high-risk legal issue and recommend that businesses carefully consider the points above and involve relevant stakeholders to discuss how to manage their resources to implement suitable measures.

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