

## Work Safely Protocol & Data Protection Considerations

The administration of the first vaccine took place this week and acts as a signal of the journey to recovery. With that comes an expectation of the new normal emerging and employers and organisations alike within the community and voluntary sector can start thinking of how this fits into their future and planned work activities.

The Work Safely Protocols adopted by government, align to the Resilience and Recovery Plan and have been created to take account of the changing needs of society as the virus impacts organisations in different ways. The revised Protocol sets out the minimum measures required in every place of work to prevent the spread of Covid-19 and to facilitate the re-opening of workplaces following temporary closures as well as the ongoing safe operation of those workplaces. The focus of the Protocol relates to the support required for employers and workers in putting infection prevention and control (IPC) and other measures in place to prevent the spread of the virus in the workplace. With this renewed focus the ever-present requirement to comply with Data Protection obligations remains to the fore.

### ***Individual Risk Factors***

In compliance with the Protocol all employers must ensure that their Covid-19 Response Plan is developed and/ or updated. Part of this is to take account of an employee's individual risk factor, which means that confidential medical information may have to be processed.

To ensure compliance with data protection regulations this action should only be undertaken by an employer when information relating to the risk factor is volunteered (e.g. a worker alerts a Manager that they are at higher risk due to an underlying health condition, or another risk factor). As this type of medical information falls under the sensitive category of Special Category Personal Data, then under GDPR and data protection laws there are additional protections afforded to the processing of this information.

### ***Employers must:***

- Ensure that workers are aware of how to raise these risk factors confidentially with Managers in the Workplace.
- Ensure that all medical information is treated in a strictly confidential manner.
- Ensure that only the minimum amount of medical information is collected.
- Existing Privacy Notices and data protection policies should be updated and provided to all workers setting out how this medical information will be used, securely stored and ultimately destroyed when the information is no longer required.

### ***Facilitate contact tracing***

Under the Work Safely Protocol employers are tasked with developing or amending policies and procedures for prompt identification and isolation of workers who may have symptoms of the virus and therefore the use of a contact tracing log is of paramount importance.

The purpose of the contact log is to maintain a log of workers who are in close contact (as defined by public health advice) for extended periods of the work shift (e.g. working together in spaces where social distancing guidelines may be difficult to maintain).

From a data protection perspective and in adherence with the principle of data minimalization, the use of the personal data contained in these logs should be restricted to the minimum amount of personal data required and should only be used for the HSE's official contact tracing procedures.

The use of contact tracing logs supports the HSE's official contact tracing procedures by assisting workers in providing relevant information of who they have been in contact with to the HSE. Information contained in the log should not be used by employers for any other purpose and all information retained and use of the information should only be in adherence with HSE guidelines.

### ***Pre-Return to Work Form***

Similar to the original Protocol there is an on-going requirement to ensure all workers have completed a pre-return to work form as a means of implementing prevention and control measures. While the requirement to submit these forms 3 days in advance of returning to the workplace has been removed, the obligation now is to ensure the completed form has been submitted in advance of returning to a workplace for the first time after a workplace closure.

The purpose of this form is to highlight to workers the symptoms of the virus, the duty of care they have towards other workers before they enter the workplace and to allow employers to make informed decisions about employee's returning to the workplace.

As confidential information may be disclosed on this form, or subsequent information on changes to symptoms may be provided having already completed and submitted the form to their employer, then from a data protection perspective this form should not be retained by the employer. It is therefore essential that the form be disposed of or destroyed securely as soon as the worker has returned to the workplace or alternatively it can be returned to the worker at the point of entry to the workplace.

### ***Temperature Testing***

The revised protocol references the implementation of temperature testing in line with Public Health advice and should only be introduced based on advices from the Public Health Authority. Where temperature testing has been recommended the recording of temperature checks with the names or images of workers is not required.

The Work Safely Protocol has placed a plethora of on-going obligations on the employer and workers and it is therefore essential that organisations continue to focus on all areas of compliance.