



Rialtas na hÉireann
Government of Ireland

Data Protection – Return to Work Safely Protocol

Prepared by the Department of Business, Enterprise and Innovation

Data Protection – Return to Work Safely Protocol: Explanatory guidance for employers and workers

The *Return to Work Safely Protocol* is a guidance document on how to manage and reduce the spread of COVID-19 in the workplace. It is aimed at assisting all workplaces in making assessments and ensuring that their workplace procedures and practices comply with the COVID-19 related public health protection measures. This guidance document has been prepared to assist in providing the necessary clarification to Employers (and their representatives) where the measures set out in the protocol may result in the processing of personal data. This is to enable employers to assess their obligations under the [General Data Protection Regulation](#) (“the GDPR”) and [Data Protection Act 2018](#). It also sets out the role to be played by Workers in this process. This document should be read in conjunction with guidance issued by the [Data Protection Commission](#).

The following guidance addresses some of the key issues concerning data protection in the context of the *Return to Work Safely Protocol*. It is not exhaustive and should be reviewed by all Employers in the context of their own working environment.

Guidance about specific elements in the Return to Work Safely Protocol

1. Measure - Develop and/or Update the COVID-19 Response Plan

In advance of returning to work, **Employers will:**
take into account worker’s individual risk factors (e.g. older workers, presence of underlying medical conditions, etc.).

Guidance Note:

COVID-19 can make anyone seriously ill, but for some people, the risk is higher - see [HSE Guidance](#) for further information. This action should be undertaken by an Employer when a risk factor is volunteered by a Worker (e.g. a Worker alerts a Manager that they are at higher risk due to an underlying health condition, or another risk factor, or they have provided *Additional Information* in relation to Question 6 on the *COVID-19 – Return to Work Form*). Employers should also ensure that Workers are aware of how to raise these risk factors confidentially with Managers in the Workplace.

This action is aimed at providing additional supports to these Workers in the Workplace.

Employers should ensure that all medical information is treated in a strictly confidential manner. It is important to remember that Medical information falls under the sensitive category of *Special Category Personal Data* under the [GDPR](#) and data protection laws. This means that it attracts even more protections than standard Personal Data due to its sensitive nature. One simple way of achieving this is by having a designated person(s) in place to oversee this process in the Workplace (i.e. *Need-to-Know* basis).

Employers should also 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.

2. Measure - Develop or amend policies and procedures for prompt identification and isolation of workers who may have symptoms of COVID-19, as appropriate

Employers will:

keep a log of contact/group work to facilitate contact tracing.

Guidance Note:

A Log of Contact/Group Work should be maintained by Employers for Workers who are in close contact for extended periods of the work shift (e.g. working together in spaces where social distancing guidelines may be difficult to maintain). The meaning of close contact here should be based on guidance issued by the Public Health Authorities.

The use of the Personal Data contained in these Logs should be restricted to the minimum amount of Personal Data required (*data minimisation*) and should only be used for the HSE's official Contact Tracing procedures, primarily to facilitate the HSE's official Contact Tracing procedures and to assist Workers as a "*memory aid*" in providing relevant information of who they have been in contact with to the HSE. The information contained in the Log should not be used by Employers for any other purpose. The retention and use of Contact Tracing information should be conducted in strict adherence with HSE guidelines.

3. Measure - Implementing the COVID-19 Prevention and Control Measures to Minimise risk to Workers.

Employers must:

- *establish and issue a Pre-Return to Work Form for Workers to complete at least 3 days in advance of their return to work. This Form should seek confirmation that the Worker, to the best of their knowledge, does not have COVID-19 symptoms and should also be used to confirm that the Worker is not self-isolating or awaiting the results of a COVID-19 test.*

Guidance Note:

The purpose of this Form is to highlight to Workers the symptoms of COVID-19 before they enter the Workplace and potentially put themselves or others at risk of infection, and to allow Employers to make informed decisions about employee's return to the workplace. The Form should be used to highlight to Workers the duty of care they have towards other Workers and to remind them that if they are unwell, they should consult with a Medical Practitioner and not enter the Workplace. The Worker is being asked in the Form to provide specific information related to COVID-19 to ensure that they are fully aware and compliant with Public Health requirements.

Workers are also being asked to inform a Manager if their symptoms change having already completed and submitted the Form to their Employer.

This Form should not be retained by the Employer but disposed of or destructed securely as soon as the Worker has returned to the Workplace or it can be returned to the Worker at the point of entry to the Workplace.

- *implement temperature testing in line with Public Health advice.*

Guidance Note:

This measure should only be introduced by Employers in line with Public Health advice. The recording of temperature checks with the names or images of Workers is not required. The purpose of taking a Worker's temperature is to let the Worker know if they have a raised temperature which is one of the symptoms of possible COVID-19 infection. Temperature testing should only be conducted in line with current public health advice.

4. Measure - Implementing the COVID-19 Prevention and Control Measures to Minimise risk to Workers

Workers must:

complete and return the Pre-Return to Work Form at least 3 days before they return to work.

Guidance Note:

This Form should not be retained by the Employer but disposed of or destructed securely as soon as the Worker has returned to the Workplace or it can be returned to the Worker at the point of entry to the Workplace.