



Do you employ staff?

Supporting BAME Employees Throughout Coronavirus

Almost every employer in the country will have felt the effects of Coronavirus / Covid-19. Originally many workplaces closed or implemented large scale reductions in their active workforce via the use of the Coronavirus Job Retention Scheme (furlough), but now more and more of us are returning to the workplace. As an employer, you have always had a legal duty of care towards your employees, which includes the responsibility to prevent risks to mental or physical health. Taking the appropriate measures to protect your employees falls under this legal duty of care, which is why the Government has provided guidance both for employers and members of the public as a whole.

From early on in the Coronavirus / Covid-19 crisis, it became clear that some members of society require more protection than others. The Government provided additional advice for employees who were required to “shield” and employers were asked to work with the Government by allowing employees to shield and by placing additional measures in place for other employees who are vulnerable to the risks of the virus. However, race or ethnicity was not originally viewed as a factor that could change the level of risk an employee is exposed to. Despite this, it quickly became apparent that not all ethnicities have been impacted by the virus in the same way. As Spring turned into Summer, public concern grew and the Government recognised that further investigation was needed to understand why Black, Asian and Minority Ethnic (BAME) members of society have higher rates of infection and death as a result of Coronavirus / Covid-19.

Public Health England (PHE) Report

The commissioned report was published in June 2020. The results confirmed that BAME members of society are indeed 10 – 50% more likely to not survive if they contract Coronavirus / Covid-19. The report showed that people of Bangladeshi ethnicity experience the highest level of risk (approximately twice the risk of death when compared to people of White British / Caucasian ethnicity), but other BAME individuals are still exposed to a higher rate of infection when compared with White British / Caucasian members of society.

It should be noted that the report has not identified a genetic predisposition specifically relating to Coronavirus / Covid-19. The relationship between ethnicity and health is complex and relies on a combination of factors such as the likelihood to work in key roles / high risk jobs, living and housing conditions, barriers to adequate health care, an increased likelihood to have health conditions that increase the level of risk, and other socio-economic factors, all of which need to be considered when considering the link between ethnicity and the risks posed by Coronavirus / Covid-19. PHE has reported that long-standing systematic racism within society has contributed to many of these factors.

The report has been criticised for not exploring the connections between ethnicity and health in more detail. The Government have also been criticised for releasing the results to the public, but not providing employers with any guidance on how to respond to the report. The largest criticism is that the report confirms BAME individuals are placed at a significantly higher risk to the virus, but BAME individuals have not been added to the clinically vulnerable list in the same way medical conditions that raise the level of risk have been. However, a lack of guidance from the Government does not mean employers are without responsibility, the report is available to the public and employers should react accordingly.

Duty of Care

In response to Coronavirus / Covid-19, employers were advised to conduct risk assessments that consider the risks posed by the virus. However, we are now advising that personal risk assessments also be considered. You are likely to have done these for any employee whose age or health condition/s place them at a higher level of risk, but the same should now be done for BAME employees to recognise the higher level of risk and to see if any additional precautionary measures are necessary. An additional step would be to conduct personalised risk assessments for all employees, and not just those who are placed at a higher level of risk, rather than a “general” risk assessment for the wider team and then a small number of personalised risk assessments. This would protect you from any employee who would attempt to argue their safety has not been properly considered / has not been considered as much as their colleagues.

As well as advising additional risk assessments that consider BAME factors, we are also advising that consideration is given to effective and reassuring communication. It is likely that many employees are experiencing higher than average levels of anxiety at the moment, especially employees who are exposed to a higher level of risk. Any employee who raises concerns about the risks posed to them should be properly listened to. Concerns should be taken on board and investigated before they are “dismissed”. Managers should avoid dismissing concerns as “overly anxious” or an employee being “dramatic” on the basis that the manager cannot directly relate to the concern themselves, especially as this could be viewed as discriminatory for BAME employees. Managers should also avoid comparing the levels of employee anxiety. For example, you could have one BAME employee who is not remotely anxious and another BAME employee who is very concerned for their well-being. The employee who is very anxious is not “wrong” for feeling more anxious than their colleague, we all react to situations differently. Instead of dismissing or comparing anxieties or concerns, it would be better to thoroughly consider the concern and properly communicate why any action will / will not be taken, so the employee knows their fears have been properly responded to. Feeling listened to and receiving reassuring communication can often make employees feel cared for and supported, even if the risks can't be fully removed or controlled.

Possible Consequences

One likely outcome / consequence of this report is an increase in racial discrimination claims in Employment Tribunals. BAME employees have now had their fears confirmed and could therefore argue that the failure to take any additional or preventative measures to safeguard their health could be viewed as indirect race discrimination under the Equality Act 2010. As the report comes from PHE, it is likely Employment Tribunals would agree with this view, even though there is no official employer guidance from the Government.

How Can We Help?

If you have any queries relating to the content of this newsletter, or any other HR related topic, please don't hesitate to contact us via hradvice@hasslefreehr.co.uk