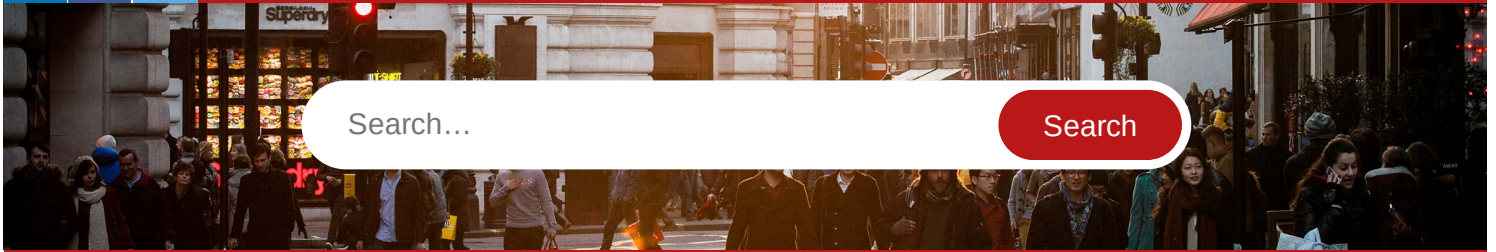




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What to do when your employee(s) don't return to Work after Covid-19? | Aparna Sharma | Senior HR Professional & Certified Corporate Director | Editor's Collection

As parts of the world & also India commences its return to normality, the internet is already abuzz with questions about the return of employees to their workplaces. When will it happen? How will it happen? And, increasingly, can I refuse to return when my boss tells me it's time?

In India, we are now witnessing Lockdown 4.0. As businesses reopen and move towards recommencing their normal operations in accordance with the framework as outlined by the Central & State Governments, employers will be asking their employees to return to the workplace. In some cases, a business cannot operate without its employees being physically present at the premises. A restaurant cannot serve meals without wait staff. A shop cannot sell goods without shop assistants. A nail salon cannot perform



pedicures without nail technicians. In these cases, most of the time, the point at which the employer will require its employees to return to the workplace will be clear.

Subject to the employer having developed a “COVID Safe plan” , when the business reopens, or ramps up its operations to a level that requires more staff, the employer will need its workers to return.

But in other workplaces, the timing of the return to the workplace may not be so clear cut. COVID-19 has forever changed the way that many people work. Businesses have had to quickly move to models that allow work to be performed remotely and with increased flexibility.

For some, these changes have created a realisation amongst staff that they can do their jobs from home and, with no commute (or commuting costs), no dress code, and the ability to pop a load of washing on while the kettle boils for morning tea, they quite like it.

For this reason, they may want to delay their return to the workplace for as long as possible, or not want to return to the workplace at all.

Some organisations have already flagged that certain members or their workforces will continue to work from home following the end of the pandemic.

In addition to positive feedback from employees, they have realised that reducing the number of employees at their premises may result in bottomline savings when the costs of commercial rent, cleaning, heating/cooling and other incidental office costs (eg. Biscuits, tea/coffee) are weighed against the costs associated with facilitating work from home, such as ongoing costs for more sophisticated IT systems.

But what if an employee refuses to return to the workplace once they have been told “it’s time”? Employers will need to carefully consider the circumstances of any such refusal. Is the employee one that needs to attend the workplace in order to perform their duties, like the wait staff, shop assistants and nail technicians mentioned earlier? Or will the employee still be able to perform the inherent duties of their role from a remote location?

In either case, the employer’s first step in directing employees to return will be to ensure a “COVID Safe plan” has been developed. This requires the employer to assess the state health orders/rules in place at the relevant time, so as not to breach the relevant restrictions. At present, that includes physical distancing, thermal screening, sanitization, use of masks etc.

This may require an employer to relocate workspaces, or introduce teams of workers who attend the workplace in shifts so fewer employees are present at any one time. Additionally, in order to comply with work health and safety laws, employers also need to ensure that they provide and maintain a safe working environment.

In the current circumstances, this will require employers to ensure that their COVID Safe plan includes proper systems for maintaining effective hygiene, health monitoring and cleaning. It will also require employers to plan for the possibility of COVID-19 cases in the workplace.

Special circumstances will apply to some employees. Those with disabilities or severe medical conditions will require additional consideration by the employer if they cannot legitimately return to the workplace due to matters relating to COVID-19. In relation to those employees, hasty decisions by an employer may give rise to allegations of discrimination or adverse action, so care must be taken and obtaining legal advice is often a good idea.

Employers will need to consider how their employees travel to work, and whether any community measures still in place will cause their employees difficulty in travelling to and from work, or expose them to unnecessary health risks.

But if the workplace has the appropriate measures in place and the employee can commute to the workplace safely, it largely becomes a matter of employer discretion as to whether the employee can continue to work from home.

Relevant matters to consider include the employee's level of productivity at home versus in the workplace, whether the employee needs to be in the office for supervision (either to provide supervision or be supervised themselves) and the need for the employee to interact with co-workers and others face-to-face. Ultimately, if the employer wants the employee back in the workplace, then they can direct the employee to return. Any refusal by the employee to follow a reasonable direction, could have disciplinary consequences.

At the end of the day, the health and safety of employees is paramount. But productivity is also of great importance, and the employer can determine what it requires of its employees after weighing up the pros and cons of allowing an employee to continue to work remotely, both as we emerge from lockdown and into the future.

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