

HEALTH AND SAFETY

COVID-19: What to Expect from a Health and Safety Authority (HSA) Inspection

14 October 2020

The HSA reportedly carried out over 5,000 workplace inspections between May and September this year, the majority of which were Covid-19 related inspections. The volume of inspections seems likely to rise with news that the Oireachtas Covid-19 Special Committee, in its final report published 9 October 2020, has recommended an increase in the number of HSA inspectors to ensure enforcement and compliance with Covid-19 safety measures.

HSA INSPECTION POWERS

Despite the novelty of the COVID-19 pandemic, the powers available to HSA inspectors have not changed. HSA inspectors have a wide range of powers including to:

- Enter and search a workplace;
- Inspect any work activity, process or procedure and any article, substance or record;
- Require the production of records;
- Summon an employer, any employee, the owner or person in charge of the workplace to provide information, answer questions and/or produce records;
- Remove and retain any article or substance found to examine or to keep it as evidence for any proceedings;
- Carry out testing or analysis of any equipment or substance at the work place or elsewhere.
- Cause any article or substance at the workplace which appears to be a risk to be dismantled or subjected to any process or test;
- Take measurements or photographs, make recordings and install monitoring instruments, systems and seals;
- Direct amendment of a safety statement;

- Require an employer, any employee, the owner or person in charge of the workplace to give the inspector such assistance and facilities within the person's control or responsibilities as are reasonably necessary.

WHAT TO EXPECT FROM A COVID-19 INSPECTION?

Covid-19 is no different to any other hazard in the workplace. This means that risk assessments and safety statements should be expanded to address the risks arising from Covid-19 in view of the advice and guidance in the [Return to Work Safely Protocol](#) and other relevant guidance. In addition to considering a workplace's safety statement and risk assessments, a HSA Inspector is likely to raise questions in relation to the following areas:

(a) COVID-19 Response Plan

The requirement for a 'Covid-19 Response Plan' is set out in the Protocol. See our previous briefing on the Protocol [here](#). Employers should ensure that their Response Plan is in line with the most recent public health and industry guidance and should be prepared to produce the Protocol to the Inspector and answer questions on it, including in relation to the process to be followed if an employee demonstrates symptoms and mitigation measures in place

to address the risks arising in the workplace.

(b) COVID-19 Induction Training

Induction training for all returning workers is required under the Protocol. The HSA Inspector is likely to ask whether induction training has taken place and may ask for evidence of such training, including attendance records and certificates.

(c) COVID-19 Control Measures

The Protocol obliges employers to implement adequate control measures and maintain records of such measures. For example, employers are required to keep a contact log to facilitate contact tracing and implement a system for recording site visits by workers, contractors and visitors. Employers should be prepared to produce these records for inspection by the HSA Inspector.

The HSA Inspector will note any visible control measures, such as signs requiring physical distancing and hand washing / hand sanitising facilities and may ask questions in relation to the arrangements in place including, for example, the procedure for dealing with a suspected case and the arrangements in place to minimise contact with the suspected case, such as the availability of an isolation room.

(d) COVID-19 Worker Representative

An employer is required under the Protocol to appoint at least one worker representative whose role is to work collaboratively with the employer to assist in the implementation of measures and monitor adherence to the measures to prevent the spread of COVID-19. The HSA inspector may wish to speak to the COVID-19 worker representative and examine their understanding of the Response Plan and their role within the plan.

WHAT HAPPENS IF AN ISSUE OR BREACH IS IDENTIFIED?

There are a range of steps an Inspector can take to address such issues / breaches which vary in terms of seriousness.

Report of Inspection Letter

The Inspector may provide a report during the inspection which sets out breaches identified and / or areas where improvements can be made.

Improvement Direction

The Inspector may issue a written direction to the employer to submit a plan within 1 month to improve some part of their practice or procedure.

Improvement Notice

The inspector may issue a written notice stating the Inspector's opinion that the duty holder has contravened a statutory provision and requiring that the contravention be addressed within a certain time period of not less than 14 days.

Prohibition Notice

An Inspector may serve a Prohibition Notice where he is of the opinion that an activity is likely to involve a risk of serious personal injury to any person. This notice prohibits the activity in question until the risk is eliminated or mitigated to the Inspector's satisfaction. It takes effect immediately from when the person, on whom the notice is served, receives the notice.

WHAT NEXT?

It is essential that employers remain informed of the most recent Covid-19 public health advice and guidelines and ensure that workplace policies and Response Plans are in line with current government advice. Employers should be prepared to amend their Response Plan at short notice if required by government advice. A comprehensive Response Plan, incorporating all necessary mitigation measures, adequate training for employees and engagement with employees should put employers in a good position to deal with any Covid-19 inspection by the HSA. Bear in mind, however, that even if the purpose of the Inspector's visit is to assess compliance with Covid-19 safety measures, the inspection will not necessarily be limited to those measures and employers should be prepared to deal with other issues or breaches identified by the Inspector along the way.

This document contains a general summary of developments and is not a complete or definitive statement of the law. Specific legal advice should be obtained where appropriate.

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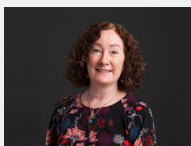
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