

REGULATORY INTELLIGENCE

Compliance must work closely with HR on COVID-19 bank office return, say lawyers

Published 09-Jun-2020 by
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Compliance and HR need to be working together as bank employees return to the office during COVID-19, lawyers said. Compliance, risk and operational resilience need to be considered alongside all other impacts, they said.

"The Financial Conduct Authority (FCA) has acknowledged this by making clear that it does not expect any one senior manager to be responsible for COVID-19 issues. Instead they expect a joined-up approach. Compliance functions should be working alongside HR teams now to ensure they clearly identify which roles may need to be prioritised for a return to work and why," said Sophie White, partner, Eversheds Sutherland.

"Compliance managers should also work with their HR and communications teams to ensure there is early engagement with any prioritised employees about any intended return to work," she said, expanding on comments made at a recent Centre for the Study of Financial Innovation webinar, 'Legal liability as we move out of lockdown'.

Alexandra Carn, partner, Edwin Coe, said banks might find it useful to run dual risk assessments. "HR and management should run the health and safety risk assessment and the head of compliance should run a regulatory risk assessment. The two will necessarily overlap," she said.

Carn told the [webinar](#) employees were protected against detriment including dismissal if they should leave work or refuse to attend work because they reasonably perceive a danger to their health and safety. "This is a key legal liability as we move out of lockdown", she said.

"That does not mean that there has to actually be a danger. It can be completely safe. But if the employee has a reasonable belief that it isn't safe, that person has protection," she said.

"In the COVID-19 scenario, this protection may be inescapable. That's because the regulations that put lockdown into place state that they are in response to the serious and imminent threat to the public health," Carn said.

This matters to the bank, she said. Usually an employee dismissed by the bank cannot claim unfair dismissal unless they have been employed there for at least two years, but if the claim is for a health and safety reason, they are protected from day one, she said. In ordinary unfair dismissal claims, the compensation is capped at around £90,000, but in H&S cases, there is potentially unlimited compensation.

It is worth firms thinking about whether employees' fear at coming into the office is about their specific work or is a general COVID-19 fear, Carn said. "If it's the latter, it's more likely the firm will be able to take action against them."

Senior managers

For COVID-19 related absences of senior managers, the FCA has extended its 12-week rule allowing a replacement senior manager who has not been approved by the regulator to cover for the absent manager to be extended to 36 weeks.

"This is helpful, but firms should ensure that employees who are allocated temporary senior manager responsibilities in this way are trained on the conduct rules, what might constitute a breach and what 'reasonable steps' are. An adequate handover should be also be effected," White said.

In dealing with senior manager absences due to illness, or if the compliance function does not believe the role can continue to be undertaken remotely without undue risk, firms should give consideration to the allocation of the senior manager's prescribed responsibilities, White said.

In this case, they should ensure these responsibilities are appropriate to ensure continued fulfilment of all regulatory and legal responsibilities when using the interim 36-week rule, she said.

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Produced by Thomson Reuters Accelus Regulatory Intelligence

09-Jun-2020



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