

Road risk strategy

The road safety charity Brake has asked the Government to urgently introduce a strategy, with challenging targets, for cutting road deaths and injuries after new figures revealed the economic cost of casualties to be £33 billion last year, almost twice as much as previous estimates. Stephen Thomas of Croner's Safety Technical Team looks at the overall picture of driving in Great Britain and discusses issues around occupational driving.

The overall picture

The Government's latest annual report on the number of road deaths and injuries in Britain in 2009 indicates that:

- 2222 people were killed
- an estimated 80,000 people were seriously injured
- an estimated 620,000 people were slightly injured.

For the first time, the Government has estimated the total cost of road deaths and injuries to the economy, taking into account under-reporting of injuries by police and using other data sources. This new estimate has put the total cost to the economy of all road crashes in Great Britain in 2009 at £33 billion, with each road death costing £1.6 million.

Driving for work

The Department for Transport accepts that occupational drivers account for 35% of the annual death toll on Britain's roads, equating to around 770 workers killed in 2009. This figure covers occupational drivers of all types, be they dedicated occupational drivers, eg van/lorry drivers/field-based employees or "at-work" drivers, eg those who use their own cars on company business — but not including the daily commute, where drivers are considered to be "on their own time".

Managing occupational road risk

The starting point for managing occupational road risk is to get the full picture about who is driving for work, what they are driving, whether they are properly insured, the status of their driving licence and also the practical side of motoring, including servicing details and MOT status, etc.

Before any improvements can be made to the safety of a company's at-work drivers, it is necessary to identify and understand the hazards the drivers face every day on the road. The employer should carry out a risk assessment for each driver, including employees who use their own vehicles for business purposes (not

including the daily commute) or only use a pool or hire vehicle occasionally.

A risk assessment requires a thorough understanding of the hazards faced on the road, and an understanding of the principles of risk management. Assessors should look at the likelihood of something happening and the consequences if it does.

The assessment should cover three fundamental areas of work-related road safety.

1. The driver — factors such as driving experience, age, road accident history, conviction history and fitness to drive (eyesight, ergonomics, medical conditions).
2. The journey — mileage, road type, weather and fatigue issues (estimated driving time, working time, antisocial hours, rest stop availability).
3. The vehicle(s) — type, class, engine capacity and safety features.

Is the journey necessary?

Eliminating the journey is the ideal situation and the first risk control measure that should be considered. If an employee is not making a journey, then the risk is completely eliminated.

Companies implementing an occupational road risk strategy should ensure that their business practices encourage the elimination of journeys wherever practicable. This area needs careful management to ensure employees are looking at the alternatives available and not always assuming that a face-to-face meeting is required. This may involve re-education of the employees and management to adopt different working practices, and to think before they drive.

Alternative forms of transport

If a journey cannot be eliminated, and face-to-face contact is still required, then the next best option is to ensure the safest method of transport is used. The two primary alternatives to road travel are rail and air. Despite events that make news, travelling by rail and air is much safer than road travel.

Substitution of journeys is important for any very high or high-risk activity that is identified as part of the employee risk assessment.

Controlling occupational road risk

Given that many journeys by road will still be necessary and cannot be eliminated or undertaken using alternative forms of transport, the next stage is to ensure the risks are reduced.

In many cases, managing occupational road risk will require a change in business practices and operating procedures to avoid conflict between what the company is asking its employees to do as part of its occupational road risk management strategy and other business strategies. Operating procedures and practices must not encourage or reward employees who take risks while driving.

The risk assessment will highlight all areas of risk, and strategies to reduce the risk should be targeted initially at the activities of highest risk that cannot be reduced by either eliminating the journey or using a safer method of transport.

Occupational road risk reduction strategies can focus on:

- the driver — training, raising awareness, eg matching driver experience with different driving tasks, assessing fitness to drive, eg eyesight screening, licence checking and implementation of a company driving policy
- the journey — limiting journeys in adverse weather conditions, limiting driver hours, driving at less risky times, scheduling in regular breaks, total working time and limiting antisocial driving times
- the vehicle — minimum safety specifications, own vehicle controls, ancillary safety equipment required, regular vehicle safety checks by the driver and tyre replacement schedules.
- the organisation — incentive schemes, reasonable management expectations and fleet management strategy.

Managing employee consultation

Changes in both legislation and the representative power of trade unions have led to a widening role for employee consultation, to the extent that not only is it seen as good practice but it is also a requirement in many change situations.

For most large organisations, the process of consultation is well understood and well managed on the basis of a long history of negotiations with established trades unions. Where trades unions are recognised, they will normally form the primary conduit for consultation about issues affecting the workforce.

There are many, especially small- and medium-sized businesses, however, which do not have relations with trades unions and must therefore undertake direct negotiations with their workforce. For all organisations, there is also a range of issues requiring direct consultation, when the involvement of the unions may be unnecessary.

There are some circumstances in which employers are required by law to consult with their employees. Examples of statutory requirements for employers to consult with employees include a requirement for organisations with 50 or more employees to consult on changes to contracts of employment, on plans for making 20 or more employees redundant, on proposed changes to pension schemes, and on the sale or transfer of all or part of the business.

Employee consultation on any topic also fulfils other key objectives for the organisation. One is the maintenance of good channels of communication between the management and employees, thus helping to defuse problems and manage potential conflict. Another is to enable a shared understanding of the opportunities and threats facing the organisation, so that there can be a mutual focus on performance and innovation. Perhaps the most important, however, is to sustain employee engagement, promoting good employee relations and supporting a positive psychological contract.

Face-to-face consultation may be achieved through appraisal processes, which can include the discussion of personal aspirations and employee development.

For many organisations, this can also be the main way of discussing pay and benefit changes that affect individual employees, leading to personal agreements about individual compensation packages. It can also be achieved through the day-to-day informal channels between managers and their teams. Other forms of consultation such as employee surveys, focus groups and team meetings, may be more manageable for large-scale consultations.

Employee surveys are useful for painting a picture of the climate and culture of the organisation, and identifying the aspirations and preferences of the wider workforce. These are important where major change is contemplated, and where the support of the workforce is crucial to the success of the change.

Focus groups are useful for the discussion of more localised issues, such as reviewing operational procedures, etc. The focus group can not only identify problems as they arise, but it can also defuse potential conflicts by removing the argument that the workforce has not been involved in the design and planning of change. A focus group can also be a good way of communicating with the workforce, so that important messages can be dispersed quickly. The fastest way of dispersing information, however, is through team meetings, especially if these are regular and well-structured.

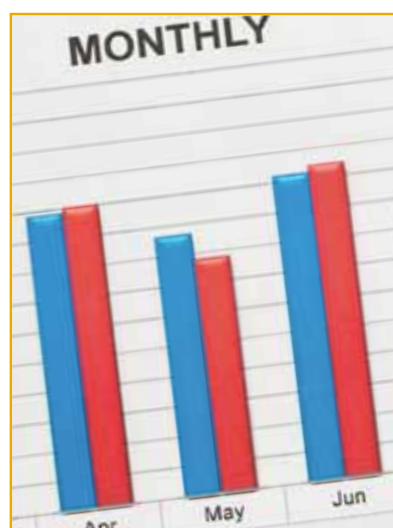
Face-to-face consultation — where managers are required to consult their team members individually, it is important that each manager is well-briefed about the form and content of the consultation process.

Employee surveys — conducting employee surveys is a specialised activity demanding knowledge of survey design techniques, although many of these can be readily accessed through training. In some circumstances, it may be beneficial to use an external

survey organisation that can maintain a neutral stance on the key issues. Well-designed surveys can produce a rich vein of data that, given suitable analysis and interpretation, can reveal detailed patterns. Differences between groups can identify local issues and problem areas, but might also show where benefits can be obtained by examining the local situation. Interviews can complement or be an alternative to questionnaire-based surveys, but again it is important to ensure that interviewers are sufficiently skilled to obtain good-quality information.

Focus groups — where changes are planned, issues are being addressed, or ideas are being sought, focus groups can be a useful way of tapping collective views and suggestions that also benefit from mutual discussion among the group members. Groups can be interdisciplinary, enabling an issue to be examined from a range of perspectives, and also cut across grades and job levels. The proposals made in the group can be more flexible and far-reaching than those made by individuals in one-to-one situations with their managers. There is also some evidence that decisions and agreements made in groups gain greater commitment than those made by people working alone. The key to running a successful focus group is to provide a clear purpose and aim, and also a mutual understanding of the objectives and the outcomes. Good background briefing of group members can help to focus debate. Not insisting on having a manager as leader of the group can help to generate a high level of commitment to group outcomes.

Team meetings — many of the points made about focus groups also relate to team meetings, except the team manager usually leads the discussion. Ideally, the organisation should provide templates for regular team meetings, with briefing material, an outline agenda to which the manager may add items, and a vision of the outcomes being sought.



Latest quarterly fatality figures

The Health and Safety Executive (HSE) has published its latest statistics on work-related deaths reported to the HSE and local authorities.

The figures cover notifications of deaths made to the HSE and local authorities for the period 1 April to 30 June 2010.

The figures show that a total of 54 people died at work during the period comprising:

- 11 people who were killed during the specified period working in agriculture, hunting, forestry and fishing
- one person in the extractive and utility supply industry
- seven people in manufacturing industries

- 13 workers in the construction sector
- 22 people in the service industry.

The statistics cover work-related fatalities that are reportable under the Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 1995 and are updated on a quarterly basis.

However, the HSE says a consequence of providing detail that is as up to date as possible is that many of the cases listed are still under investigation.

Therefore, it should be noted that the statistics are released on a provisional basis and may be subject to revision as more accurate information becomes available.

The Equality Act 2010: checklist for employers

Keeping up to date with policies, practices and procedures now in force.

Previous articles in this series have focused on describing the provisions of the **Equality Act 2010**, which came into force on 1 October 2010. This article suggests a checklist of actions that employers need to take in order to comply with the 2010 Act. The provisions that came into force in October are summarised below.

The most sensible action would be to carry out a review of all policies, practices and procedures from recruitment and selection right through to when employees leave the organisation. It is suggested that this review covers the following.

- Review recruitment and selection procedures, especially in the light of the new rules about pre-employment health questionnaires. There are limits on health checks and questions that an employer can make before making a job offer. No questions about an applicant's past health or sickness absence should be asked, unless it falls within the permitted exemptions (please refer to the October edition of Solutions). Once a job offer is made, whether conditional or unconditional, the employer may then ask questions about health.
- Update equal opportunities/diversity policies to ensure that they conform to the requirements and definitions in the 2010 Act, notably that the policies cover direct (including discrimination by association and perception) and indirect discrimination, harassment related to the seven "core" characteristics: age, disability, gender reassignment, race, religion or belief, sexual orientation and sex.
- Ensure that third parties (Contractors, clients and customers) are aware of the unacceptability of harassment of staff (eg, display public notices to this effect prominently at the place of work); and ensure that there are robust procedures for dealing with all complaints of harassment. This will involve a review of the grievance procedure.

- Update policies relating to the duty to make reasonable adjustments to reflect the new duty to provide auxiliary aids such as hearing loops.
- Consider whether to use pay secrecy clauses in documentation such as standard contracts and salary review letters. If the decision is to continue to use them, managers must be aware of the restrictions on enforcement and the prohibition on victimisation.
- Review victimisation policies to cover an employee or worker seeking a protected pay disclosure, as well as for involvement in claims for discrimination covering any of the protected characteristics.
- Review absence policies. Note that setting targets for absence which then trigger disciplinary procedures may amount to indirect disability discrimination (or discrimination arising from disability), unless the employer can objectively justify the scheme. Similar consideration would apply to decisions to warn or dismiss for long-term absence.
- Train managers and staff. It is essential to update managers and staff about the 2010 Act and its implications and to explain what behaviours are required to promote equality in the workplace. Training programmes should incorporate and reflect all aspects of the organisation's activity that may be affected by the new provisions. These schemes should focus on: recruitment and selection; grievance and discipline; and equality and diversity programmes.

This process may entail a significant amount of work but it is important that staff at all levels in the organisation are aware of what is now expected of them.

Summary of provisions which came into force on 1 October 2010

- Introducing one basic framework of protection

(including the nine "protected characteristics") against direct and indirect discrimination, harassment and victimisation in services and public functions; premises; work; education; associations, and transport.

- Changing the definition of gender reassignment, by removing the requirement for medical supervision.
- A levelling up of protection for people discriminated against because they are perceived to have, or are associated with someone who has, a protected characteristic — so providing new protection for people like carers.
- Clearer protection for breastfeeding mothers.
- Applying the European definition of indirect discrimination to all protected characteristics.
- Extending protection from indirect discrimination to disability and introducing a new concept of "discrimination arising from disability".
- Harmonising the thresholds for the duty to make reasonable adjustments for disabled people.
- Extending the protection from third-party harassment to all protected characteristics.
- Making it more difficult for disabled people to be unfairly screened out when applying for jobs, by restricting the circumstances in which employers can ask job applicants questions about disability or health.
- Allowing hypothetical comparators for direct gender pay discrimination where there are no actual comparators.
- Making pay secrecy clauses unenforceable.
- Introducing new powers for employment tribunals to make recommendations which benefit the wider workforce.

Adapted from material produced by the Government Equalities Office.

Top business issues

Every month we bring you the top issues from callers to our telephone advice lines. These were the top issues in October.

Tax & VAT	Employment	Legal	Health & Safety
1. Capital allowances — interaction of annual investment allowance and special rate expenditure.	1. Conduct.	1. Contract.	1. Accident recording and reporting.
2. HMRC enquiries — information powers and ability to enquire into previous years.	2. Absence/sickness.	2. Company and clubs.	2. Risk assessment.
3. VAT land and property — development of brown field sites.	3. Disciplinary procedures.	3. Other legal.	3. Policy implementation.

Event diary

Legislation timetable



For more information or to book please contact:

**Employment on
01455 897193**

**or Health & Safety on
01455 897192**

Fax: 01455 897026

All our courses can be designed to meet your specific requirements and are available on an in-house basis.

Event diary — Open Course Schedule 2010

Health & Safety			
Course title	Duration	Date	Location
Health & Safety in the Workplace Level 2	2 days	2–3 November	Holiday Inn, Swindon
Health & Safety in the Workplace Level 2	2 days	23–24 November	Botleigh Grange, Southampton
Health & Safety in the Workplace Level 2	2 days	29–30 November	Mercure London City Bankside
Health & Safety in the Workplace Level 2	2 days	1–2 December	Croner Consulting, Leicestershire

Employment			
Course title	Duration	Date	Location
Sensitive Workplace Issues	1 day	4 November	Bedford Lodge Hotel, Newmarket
Essential Employment Law	1 day	18 November	Croner Consulting, Leicestershire

IOSH Managing Safely Croner Consulting also offer 4-day IOSH Managing Safely courses. 6–9 December 2010 at Croner Consulting in Hinckley. The 4-day course costs £600.00 plus VAT, and fills up quickly, so please book soon to ensure your place! **For further details on this IOSH course, please contact Emma Newman on Tel: 01455 897192.**

Legislation timetable

Area	Legislation	Details	Date
Transfer of Undertakings	Transnational Information and Consultation of Employees (Amendment) Regulations 2010	These Regulations amend the Transnational Information and Consultation of Employees Regulations 1999 and implement the recast European Works Council Directive (2009/38/EC). They also implement the Agency Workers Directive in so far as it is relevant to the transnational information and consultation of employees. European Works Councils that are created after 5 June 2011 will be subject to all the revisions introduced by the 2010 Regulations.	5 June 2011 and 1 October 2011
Compliance	Bribery Act 2010	The aim of the Act is to consolidate existing legislation on bribery. For the purposes of the Act, bribery is defined as "the giving or taking of a reward in return for acting dishonestly and/or in breach of the law". The four possible offences under the Act will be: bribing another person; being bribed; bribing a foreign public official; and failure to prevent bribery. While the Act outlines bribery as a criminal offence, it has a particular implication for employers, as the Act proposes that if a corporate offence is committed then both an organisation and its directors can be liable for the act of bribery.	April 2011
Additional Paternity Leave	The Additional Paternity Leave Regulations 2010	Additional Paternity Leave will be available for fathers at 20 weeks after the birth of the child for a maximum of 26 weeks, if the mother returns to work. The remainder of the mother's Statutory Maternity Pay will be paid to the father. The Regulations will benefit parents of babies due on or after 3 April 2011 or children matched for adoption on or after 3 April 2011.	April 2011
Agency Workers	Agency Workers Regulations 2010	Temporary agency workers will be entitled to equal treatment after 12 calendar weeks in the same job, but this will not apply to occupational pension schemes or occupational sick pay.	1 October 2011
Pensions	Pensions Act 2008	The Government is proposing to provide access to a private pension to all employees aged between 22 and state retirement age, who are earning more than £5000 a year and are not currently enrolled in a workplace pension scheme.	2012
Pensions	Employers' Duties (Implementation) Regulations 2010	These Regulations set out the dates from which employers have a duty to arrange for jobholders to become active members of automatic enrolment pension schemes.	1 September 2012

HSE revamps safety alerts system

The Health and Safety Executive has revamped its safety bulletin warning system, with bulletins now available automatically via e-mail, text message or Internet news feeds, as well as on the HSE website.

The Health and Safety Executive (HSE) is also calling on sectors of industry to commit to play their role in sharing information to prevent accidents, when sending out their own alerts.

HSE safety bulletins are released to keep industry up to date with failures in equipment, process, procedures and substances used in the workplace, and are gathered from investigations, inspections, research, advice from industry and the EU Commission.

They are released when:

- the HSE needs to reach a wide range of duty holders
- there is a new threat to health and safety
- a serious risk is not properly controlled by a number of duty holders
- protection against a major hazard incident has been found to be ineffective.

The HSE recently held a workshop, entitled "Safety Alerts: Everyone has a role to play — what's yours?" to demonstrate the benefits of its new system and to encourage industry to do more to help improve the safety alert system as a whole.

Participants are committed to actions including:

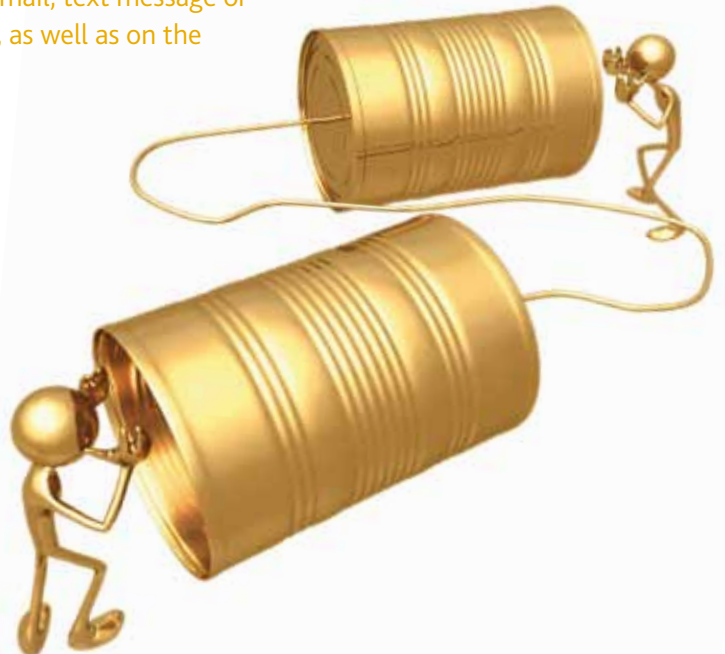
- reviewing the format and method of issuing alerts
- sharing alert information with other industries
- setting up forums to share best practice.

In return, the HSE pledged ongoing support to industry to help organisations progress with their commitments. Illustrating this, the HSE recently published new safety advice on the subject of electric gates following the deaths of two children.

On 28 June 2010, Semelia Campbell, 6, died when she was crushed by electric gates in Manchester. A few days later on 3 July, Karolina Golabek, 5, was also crushed to death by electric gates in Bridgend, South Wales.

While the police and HSE investigations continue into both deaths, the HSE wants to make it clear to installers that they must take action to prevent pedestrians from becoming trapped in electric gates.

Installers, designers, maintenance firms and manufacturers of electric gates are being urged to seriously consider the new safety advice, which points out that



limiting the closing forces of gates alone will not provide sufficient protection to meet the relevant standards; installers must fit additional safeguards to gates in public areas.

An HSE spokesman stated that when manufacturing, designing or installing electric gates, it is crucial to consider who will be in the area when it is operating. If the general public can access the gate, then additional protections should be in place.

These additional protections can be in the form of creating safe distances, installing fixed guards, limiting the forces or installing sensitive protective equipment, among others.

The new advice also reminds those in control of the maintenance of electric gates to regularly review their risk assessments, taking account of any changes to the operating conditions or environment.



Company prosecuted after hand injury

A manufacturing company has been fined £16,000 after a worker's finger and thumb were severed as he tried to unblock machinery.

On 28 November 2007, a 37-year-old production supervisor from Clapham, near Bedford, was in charge of the night-shift at the company premises in Flitwick, Bedfordshire, when he suffered the injuries. The Bedfordshire plant manufactures façade tiling and materials for the construction industry.

As he was working, a waste extraction system, which takes dust out of the workplace, became blocked. He attempted to clear the blockage with his left hand and it became entangled in the rotary valve. His finger and thumb were cut off by the machine and could not be saved, despite extensive surgery.

Investigations by the Health and Safety Executive (HSE) found the machine's safety guards could be removed by members of staff using tools the company had provided, which is against the legal requirement for guarding to be in place.

Inspectors were also concerned about the system for isolating the power from machinery, which was below expected standards.

His employer admitted breaching s2(1) of the **Health and Safety at Work, etc Act 1974**, which covers the duty of the employer to ensure, so far as is reasonably practicable, the health, safety and welfare at work of all the employees. The company was fined £16,000 and ordered to pay £3560 in court costs.



Establishing worker status

Dr Sultan-Darmon, the claimant, was a dentist who entered into a contract to provide dental services for Community Dental Centres, the respondent. The contract was described as a "licence agreement and contract for service" and it stated that the claimant's status was "a self-employed independent contractor dentist with full clinical freedom and accepting full clinical responsibility". The respondent had the responsibility for the provision of day-to-day dental services, supplying the premises, basic equipment and support staff, and the claimant provided his own workwear and some tools.

The respondent would introduce patients to the claimant but he could decline to treat any individual. Another term of the contract was that the claimant was able to provide a locum to do the work instead of himself, but this was a term which he never utilised.

The claimant brought a claim for unlawful deduction from wages. The employment tribunal, therefore, had to consider whether he had the ability to pursue the claim on the basis of his status within the contract. The tribunal found no "employee" status under the **Employment Rights Act 1996** (ERA 1996), as there was not the required degree of control or mutuality of obligation to constitute an employment contract. The tribunal also came to the conclusion that he was "more likely than not" to be found a "worker" under ERA 1996, because the contract required him to "perform personally work or services for the respondent". The tribunal focused on the obligation to provide a locum in relation to this and as he had to either personally do the work or personally ensure that the dental work was contracted out, this was found to be within the definition.

The EAT upheld an appeal from the respondent on the question of the worker status. The EAT found the tribunal judgment to be inconsistent on the question of mutuality of obligation, finding none when considering the "employee" question but finding there was mutuality when it came to the "worker" question.

Additionally, the EAT also considered the substitution clause which gave the claimant the right not to provide dental services. As this was not solely dependent on whether he was unable to do this but rather on his willingness to provide the services, the conclusion was that the contract did not entail an undertaking for the claimant to do work or perform personally any work or service and therefore he was not considered to be a worker. (Community Dental Centres Ltd v Sultan-Darmon UKEAT/0532/09/DA).

Ask an expert

Each month, one of our employment experts will be answering a question in this section. If you have an employment question that you would like our experts to answer, please e-mail it to cronerinfo@wolterskluwer.co.uk

Q: We have an employee who has just notified us that she is intending to start a family and is trying to get pregnant. We are aware that pregnant employees have additional protection and extra entitlements, but would like to know when this protection starts. Is she already protected? When would any protection end?

A: Currently, the **Equality Act 2010** makes it unlawful to treat a woman less favourably on the grounds of her pregnancy or for asserting her statutory entitlement to maternity leave.

The protected period starts at the point an employee becomes pregnant. This means that although this employee has indicated her intention to become pregnant, she would not (at present) be covered by the legislation. However, if the employee is successful in her attempt to get pregnant, then she will be protected until the end of her maternity leave, or if she is not entitled to maternity leave in respect of the pregnancy, the protected period would finish at the end of the

two weeks following the end of the pregnancy, whether it ends by childbirth, miscarriage or abortion. Therefore a pregnant employee could be protected for 21 months in total (9 months' pregnancy, followed by 12 months' maternity leave).

This period of protection against less favourable treatment extends to all rights connected with the pregnancy, such as the entitlement to paid reasonable time off in order to attend antenatal classes or other pregnancy-related appointments recommended by a registered medical practitioner, registered midwife or registered health visitor.

In addition, from a health and safety perspective, once the employee has notified you of her pregnancy, you will need to arrange a risk assessment for her and any risks identified must be eliminated. Should the employee be unable to carry out her duties, you may need to consider offering suitable alternative employment on no less favourable terms and conditions. If this cannot be offered then, as a last resort, you would need to consider a medical suspension on full pay until the risk is no longer present, which could be until the end of the pregnancy (and subsequent maternity leave).

Contact us

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Alternatively, call the number on your advice line card to speak to a consultant, or if you are not currently a client, call **0800 634 1700** for further information on how Croner can help your business.

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