

Protecting BAME Staff Guidance

The coronavirus (COVID-19) pandemic has been a very concerning time and has created difficulties for everyone within our society. Unfortunately, however, evidence appears to suggest that members of the BAME community may be disproportionately affected by the virus.

At the time of writing (9 June 2020), the latest UK government report shows a number of correlations between case/death rates and people from areas of deprivation and/or BAME groups, with these being most at risk. However, it is worth noting that the report goes on to point out that this correlation does not demonstrate causation.

It is of paramount importance that nobody is discriminated against within the workplace, nor should employees feel that they have been discriminated against or treated differently because of the potential risk of contracting COVID-19.

Q. BAME individuals do not currently fall into the category of clinically vulnerable people as defined by Public Health England but we understand that there may be an increased risk to these individuals. From an employment law perspective, would it be acceptable to complete a vulnerable person risk assessment with BAME staff?

It is unlikely that a BAME employee will be able to claim discrimination as a result of the employer undertaking a risk assessment to determine if they face any increased risk at work. To claim direct discrimination, the employee would have to show that they have been treated less favourably on the grounds of a protected characteristic, and the risk assessment itself is unlikely to constitute less favourable treatment.

However, there is a risk that the steps taken by an employer after undertaking the risk assessment could be seen as less favourable treatment and this is where the risk primarily lies. If you were to decide after doing a risk assessment that it would be too risky to allow them to return, especially if it meant staying on reduced pay on furlough, this could amount to discrimination.

At the present time, the government has not officially stated that BAME groups are vulnerable, even though reports suggest as such, therefore there is no official guidance stating that they should be included in any vulnerable group risk assessment. Accordingly, until such time as further guidance is issued by the government, it is prudent to speak to any BAME employees about returning to work and consult with them to see if they have any specific concerns. If it is then felt necessary to do so, a vulnerable person risk assessment can be carried out. This way, you are recognising and acknowledging the fact that this group appears to be adversely affected, and being a conscientious employer by discussing this with them when making return to work arrangements.