



Risks of Sanctioning Employees Who Refuse to Work

As businesses begin to plan for employees' eventual return to work, there are many questions which arise as to what risks exist and how to mitigate them. Employers should always try to resolve a refusal to attend the workplace informally first, but it's also worth being aware of the risks to navigate if you do have to take more formal action such as withholding pay, disciplining or dismissing the employee.

From a legal perspective, we have indicated the level of risk associated with claims that may arise by different categories of employees. For a more detailed explanation of the risk levels of different categories of employees, see [here](#).

Potential claims that can be brought against employers for sanctioning employees who refuse to return to work

KEY

	Higher risk
	Low/medium risk
	No/low risk

1) Employees generally (who don't also fit under one of 2-9)

	Health and safety detriment/dismissal
--	---------------------------------------



Whistleblowing

Breach of contract

Discrimination

2) “Clinically extremely vulnerable” (i.e shielding) employees

Health and safety detriment/dismissal

Whistleblowing

Breach of contract

Discrimination - Disability

3) Employees who have a shielding household member

Health and safety detriment/dismissal

Whistleblowing

Breach of contract

Discrimination - Associative disability

4) “Clinically vulnerable” employees (not shielding)

Health and safety detriment/dismissal

Whistleblowing

Breach of contract

Discrimination - Disability

5) Employees who have a clinically vulnerable household member

Health and safety detriment/dismissal

Whistleblowing



Breach of contract

Discrimination - Associative disability

6) Pregnant employees

Health and safety detriment/dismissal

Whistleblowing

Breach of contract

Discrimination - Pregnancy

7) Employees with childcaring responsibilities when schoolchildren/children at nursery are required to self-isolate

Health and safety detriment/dismissal

Whistleblowing

Breach of contract

Discrimination - Sex

8) Employees who don't have a health condition but are anxious or frightened about returning to work or making the journey to work

Health and safety detriment/dismissal

Whistleblowing

Breach of contract

Discrimination - Disability

9) Employees not yet vaccinated or fully vaccinated who want to wait to return

Health and safety detriment/dismissal - Case by case basis

Whistleblowing - Case by case basis



Breach of contract - Case by case basis

Discrimination - Case by case basis

10) Employees who fear being harassed in the workplace because they are from a country with a high incidence of COVID-19

Health and safety detriment/dismissal

Whistleblowing

Breach of contract

Discrimination - Race

If you or your organisation would like more information about employees returning to work, please get in touch with your usual GQ|Littler contact or email [\[email protected\]](#).