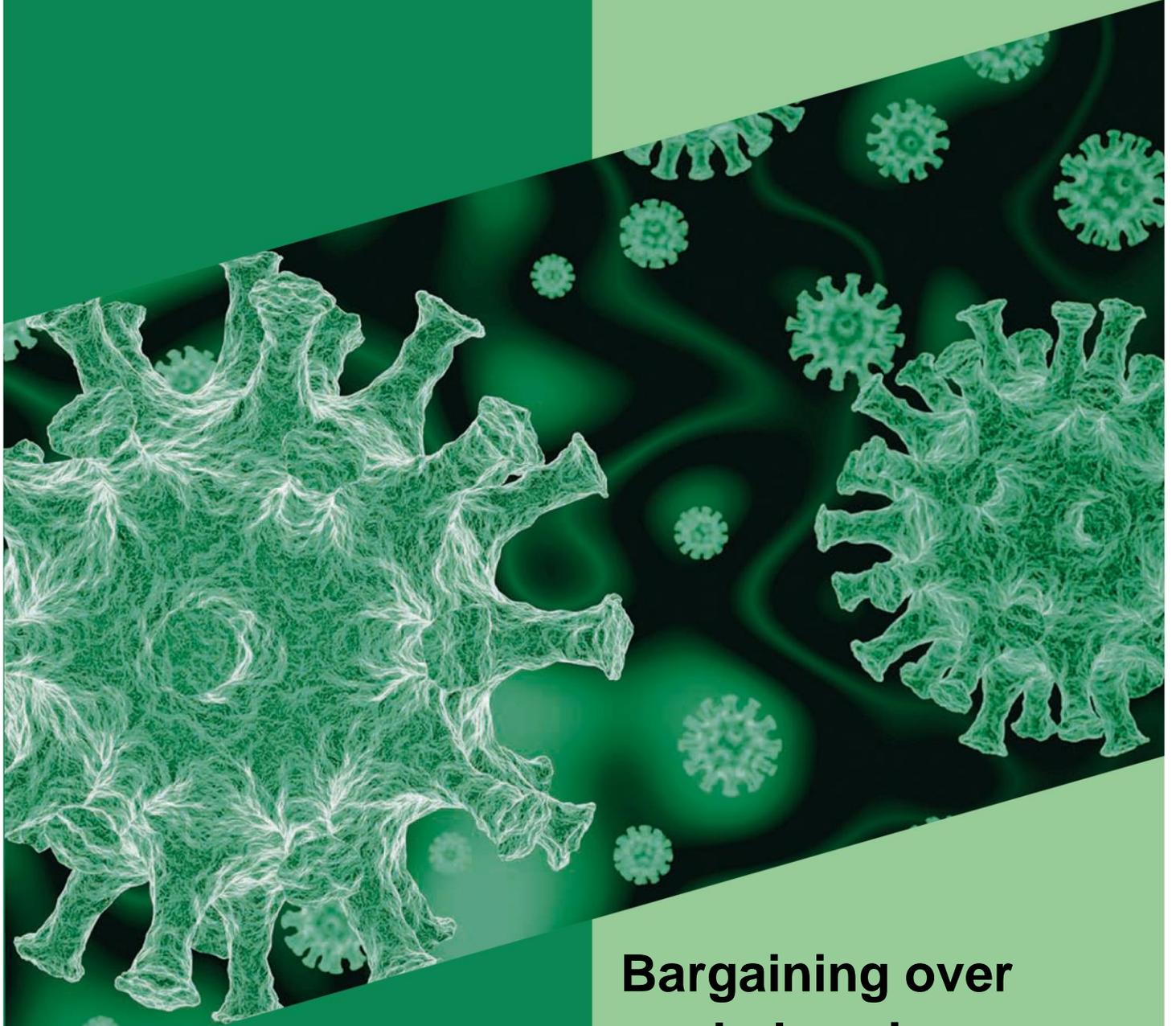


Bargaining Support Group



**Bargaining over
workplace issues
during the COVID-
19 pandemic**

UNISON
the public service union



Bargaining over workplace issues during the COVID-19 pandemic

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UNISON will seek to update this guidance as developments relating to the COVID-19 pandemic unfold across the UK. If negotiators have any comments on this guidance that could be usefully incorporated in its next update, please contact Bargaining Support at bsg@unison.co.uk

UNISON has produced a variety of guides for bargaining on behalf of members during the COVID-19 pandemic. The full range of guides are available online, including links to guidance specific to service groups, at www.unison.org.uk/coronavirus-rights-work

Working from home or in the workplace?

As of 5 January 2021, [England returned to a national lockdown](#) until at least February 22. Once again, the UK government's emphasis is on staying at home:

“You must stay at home. The single most important action we can all take is to stay at home to protect the NHS and save lives... You may only leave your home for work if you cannot reasonably work from home.”

The [Scottish government](#) too announced that mainland Scotland will move from Level 4 to a temporary Lockdown, with [new guidance to stay at home](#) except for essential purposes. Some islands will remain at [Level 3](#).

The [Welsh government's advice](#) is for everyone to “work from home if you can” and their guidance to employers is that “employees should not be required or placed under pressure to return to a workplace setting if there is not a clearly demonstrated business need for them to do so.”

The [Northern Ireland executive's current restrictions](#) state that “Individuals should work from home unless unable to do so.”

Working from home therefore continues to be regarded as one clear way of keeping staff safe from the virus and must be the starting point in discussions with employers.

However, if working from home is not feasible, such as for those “[public sector employees working in essential services, including education settings](#),” decisions about working in the normal workplace should be based on a thorough COVID secure risk assessment for all roles and all vulnerable groups.

For sector-specific advice see:

- [Education workers](#)
- [Healthcare workers](#)
- [Social care workers](#)
- [Local government workers](#)
- [Police staff](#)
- [Energy workers](#)
- [Water Environment and Transport workers](#)

Bearing in mind the requirements of any local or national restrictions, the CIPD (Chartered Institute of Personnel and Development) suggest employers should consider [three key tests](#). These lay out the issues clearly:

- Is it essential?
- Is it sufficiently safe?
- And is it mutually agreed?

Combating stigma and discrimination

Everybody's work experiences during lockdown, the periods of some easing and return to further restrictions have varied considerably. Many workers will have continued to deliver key services working in their normal workplaces throughout, whilst others will be working from home and a considerable further number will have been furloughed.

In addition, the impact of personal experiences during the pandemic will vary enormously, with many having to juggle caring responsibilities and work, or struggling to manage their own impairments or health conditions with limited support. Many people will be worrying about their job security and finances, or anxious about the health of loved ones. Sadly, inevitably, a number will be left grieving for colleagues, friends and family lost to the virus.

With all these additional stresses and concerns, it is also inevitable that some negative feelings may creep into the workplace. For example, there perhaps may be a growing resentment of those who need additional protections or kept away from the normal workplace that may lead to 'scape-goating', partly in response to genuine fears that are beyond our control.

Additionally, unfounded theories can arise suggesting that certain groups are in some way responsible for the devastating toll COVID-19 has had on them or that they brought it upon themselves somehow. This then means that employers avoid addressing the wider issues of inequality, insecure work, lack of investment in public services and health and safety shortcuts.

It is crucial that employers work with the union reps and branches to foster **an inclusive working environment**, and to be sensitive to any tensions and conflict. Reps and branches should be **vigilant about any potential harassment, bullying and other forms of discrimination**, and raise awareness amongst members of dignity at work or anti-harassment policies already in place.

Reps themselves have a vital role in promoting equality, respect and dignity. They can do this by challenging examples of discrimination, harassment and bullying in the workplace and dealing with all members' complaints effectively and promptly. Importantly they can also act as a role model in their treatment of others and in helping to create a workplace in which everyone can participate fully.

Staff on furlough (the Job Retention Scheme)

The UK government is continuing to provide a Job Retention Scheme giving employers in England, Cymru/Wales, Scotland and Northern Ireland grants for wages and costs of keeping qualifying employees on temporary leave (furloughing) due to reasons relating to the current coronavirus pandemic.

The [Job Retention Scheme](https://www.gov.uk/government/news/chancellor-extends-furlough-and-loan-schemes) is now extended until **the end of April 2021** (as announced on 17 December 2020 www.gov.uk/government/news/chancellor-extends-furlough-and-loan-schemes).

Who can be furloughed?

Employers can continue to furlough staff under the scheme who were on the employer's PAYE payroll on 30 October 2020. They can be either staff who have not been furloughed before or staff who are already or were on furlough before 1 November.

However, if staff costs are covered by public funding, employers should not furlough their staff, although organisations can use the scheme if they are not fully funded by public grants.

Furloughed employees can be on any type of employment contract, including full-time, part-time, agency, flexible or zero-hour contracts, and it includes apprentices. Foreign nationals are eligible to be furloughed. Grants under the scheme are not counted as 'access to public funds', and employers can furlough employees on all categories of visa.

Employees on fixed term contracts can be put on furlough as long as they were employed by the employer on or before 30 October 2020 and the contract has now been extended or renewed.

If the employee's fixed term contract expired on or after 23 September, they can be re-employed and claimed for under the Job Retention Scheme. Similarly, if an employee was made redundant on or after 23 September they can be re-employed and put on furlough.

For employees who have been TUPE'd over to a new employer on or after 1 September, their new employer can claim for them under the scheme, as long as they were employed by either their old employer or new employer on 30 October 2020. However, the rules are complex, and have changed with each extension of the Job Retention Scheme.

If there are concerns about whether TUPE'd staff can be claimed for under the Job Retention Scheme, the branch should contact their regional organiser (www.unison.org.uk/regions) and seek legal advice if appropriate.

For employees with more than one job, every job will be treated separately. For example, an employee with two jobs could be furloughed in one job but still be working the second job.

Currently, employees who are serving a statutory or contractual notice period before being made redundant, can also be furloughed up until 1 December. For claim periods starting on or after 1 December 2020, an employer cannot claim for any days on or after 1 December 2020 during which the employee was serving a contractual or statutory notice period for the employer (this includes people serving notice of retirement or resignation).

UK government guidance on which employees can be claimed for under the Job Retention Scheme www.gov.uk/guidance/check-which-employees-you-can-put-on-furlough-to-use-the-coronavirus-job-retention-scheme

UK government guidance on checking if your employer can use the Coronavirus Job Retention Scheme www.gov.uk/guidance/check-if-you-could-be-covered-by-the-coronavirus-job-retention-scheme

and

www.gov.uk/guidance/claim-for-wage-costs-through-the-coronavirus-job-retention-scheme

What can the worker do during furlough?

During hours that the employer records an employee as being on furlough, the employee cannot work for that employer.

However, they can do training. They can also do voluntary work or paid work (if allowed in their employment contract) for another organisation.

Union reps can undertake duties and activities for the purpose of individual or collective representation of employees or other workers whilst on furlough.

Employees on furlough can take holiday that should be paid at their full rate of pay. So the employer will have to top up the amount given by the government to make it 100%.

If an employee is flexibly furloughed then any hours taken as holiday during the claim period should be counted as furloughed hours rather than working hours. However, the [UK government has stated](#) that “employees should not be placed on furlough for a period simply because they are on holiday for that period.”

Furloughed staff also continue to accrue holiday whilst furloughed. Employers can continue to specify when holiday can be taken if the appropriate notice is given.

How much pay will furloughed staff get?

Employers will have flexibility to bring furloughed employees back to work on a part-time basis or furlough them full-time, and will only be asked to cover employer’s National Insurance and employer pension contribution. Employers will pay employees for any hours they work under flexible furlough, at their normal full rate. Employees will also receive 80% of their current salary for hours not worked, up to a maximum of £2,500 (if full-time furlough) until the end of April. (The percentage was to be reviewed in January 2021 for February and March but this was brought forward by the Government and they have confirmed it will remain the same until the end of April).

As before, this 80% will be based on normal wages, past overtime, fees and compulsory commission payments. As with the earlier periods of the Job Retention Scheme, under the rules the reference period for the normal salary is the last pay period ending on or before 19 March 2020, whether or not they were furloughed before. Therefore, employees who have previously been furloughed continue to have the existing furlough calculations (as under the old scheme).

However, if the employee was not on the payroll on 19 March 2020 nor previously furloughed before 31 October, the reference period for the normal salary is the last pay period ending on or before 30 October 2020.

As before, discretionary bonuses (including tips) and commission payments and non-cash payments are excluded.

Where an employee’s pay varies by week or month, an employer can claim and pay the employee the average monthly earnings in the period from the start date of their employment or 6 April 2020 (whichever is later) and the day before they are furloughed on or after 1 November 2020.

Employees still pay for Income Tax, National Insurance contributions, Student Loan repayments and any other agreed deductions (such as pension contributions).

As with the earlier implementation of the furlough scheme, employees on the National Minimum Wage (NMW) or National Living Wage (NLW) could be paid less than the legal minimum on the justification that the NMW/NLW does not apply to furloughed employees. However, if employees are required to engage in training activity such as completion of an online training courses whilst they are furloughed, they must be paid at least the NMW/NLW for the time spent training.

Who decides on furloughing staff?

The employer decides who is to be furloughed / flexible furloughed. In choosing staff to be furloughed / flexible furloughed, employers will have to consider discrimination laws and the implied duty of 'mutual trust and confidence'. The scheme is intended to support employers to continue paying staff who would otherwise be made redundant or put on an unpaid period of lay-off.

Flexible furlough can be for any period of time and the employee can agree to flexible furlough more than once.

With the extension of JRS until the end of April 2021, the UK government's Job Retention Bonus has now been cancelled although the government have stated that they will "redeploy a retention incentive at the appropriate time."

Considerations for negotiators concerning the Job Retention Scheme

Variation of an employee's contract

As furloughing will require a variation of an employee's contract, an employee's agreement is required before they go on furlough / flexible furlough. The employer should confirm the furloughing in writing.

If the furlough period is going to be backdated to start on 1 November (either a new furlough or an extension of an existing furlough), the agreement must have been in place by 13 November in order for the employer to be able to claim from 1 November.

Care should be taken to ensure that, in the course of reaching a furlough agreement, employers do not seek consent to permanently vary valuable terms of employment while seeking consent from employees to be furloughed. Any temporary variation should also confirm that the calculation of holiday pay, notice pay, redundancy pay, maternity and other parental pay will be calculated on the basis of full hours and pay.

Where the employer recognises UNISON and decides that there is not enough work for all employees, they may consider proposing a collective furlough agreement for negotiation and agreement with UNISON.

UNISON has drafted a Memorandum of Understanding that it can use with employers, to agree how matters should progress and this information may be obtained from your [regional office](#).

UNISON takes the view that it is unable to provide consent to furlough through a collective agreement on behalf of an individual employee. This is because the original Treasury Direction required a furlough agreement to be in writing between the employer and the individual employee, even though subsequent Treasury Directions state that a collective agreement may be used for consent.

Negotiators should also guard against any attempt by employers to exclude certain types of staff who are eligible to be furloughed:

- Employees who are shielding in line with public health guidance or who are identified as more at risk from coronavirus can be placed on furlough
- Employees with caring responsibilities can be furloughed
- Some employers may seek to reduce their expenditure on staff such as agency or zero hours employees simply by not renewing contracts or failing to offer employment. These staff are equally eligible for furloughed status (as long as they are paid via PAYE).

Self-isolating and sick workers

Employees who are **self-isolating** because they have coronavirus symptoms or a member of their family has symptoms should ideally be classified as medically excluded from the workplace (to prevent wider infection) on full pay.

These employees should at least receive statutory sick pay, but ideally enhanced, occupational sick pay.

The [UK government](#) has confirmed that employers can furlough employees for business reasons if they happen to be currently off sick. “In these cases, the employee should no longer receive sick pay and would be classified as a furloughed employee.” The government does state that “it is up to employers to decide whether to move these employees onto SSP or to keep them on furlough, at their furloughed rate.”

However, “short term illness/self-isolation should not be a consideration in deciding whether to furlough an employee.”

Bargaining over furloughed staff payment rate

The government has not placed any requirement on employers to top up the wages of employees who are paid through the extended Job Retention Scheme.

However, negotiators should make the case for full payment, given that the employer would only be providing national insurance and pension contributions for any employee on the scheme.

In the case of staff who are paid less than the NMW/NLW, that case can be strengthened by highlighting that employees are being left without funds to support that minimum standard of living. Furthermore, it should be highlighted to employers that the time and cost of wrangling over which employees are classified as furloughed staff is likely to be significantly diminished by an agreement to pay staff in full.

Care should be taken if staff take annual leave during furlough. Under holiday pay rulings, they must receive the full pay that they would earn whilst normally working and not the reduced furlough pay which is limited to £2,500 per month.

Pregnant workers

Care should also be taken with regard to pregnant staff. If they are furloughed before the start of their maternity leave and are therefore receiving only 80% of their normal income, it could impact on the maternity pay due to them if it also reduces their average weekly earnings. Rules were introduced by the government whereby any qualifying employee going on maternity leave on or after 25 April 2020 will get their statutory maternity pay or maternity allowance based on 100% of their salary rather than the reduced furlough rate. However, this does not cover those furloughed before that date.

Reps and branches should try to negotiate with employers a fairer approach and base entitlement to maternity pay on normal pay during the 8-week calculation period, rather than any lower rate of furlough pay (or sick pay should they be self-isolating).

Until staff return to the workplace, all arrangements put in place for the duration of the COVID-19 pandemic to protect staff health pay, terms and conditions while working from home, or during a period of enforced absence from the workplace should prevail.

[Government guidance](#) states that an employer “can claim for an employee who is on family related statutory leave... while flexibly furloughed” and this time “counts as furloughed hours and does not count as time actually worked.” So, if an employee is on maternity leave, the employer could claim for the enhanced contractual maternity pay element through the Job Retention Scheme. (This is also the case for enhanced contractual adoption, paternity, shared parental pay and parental bereavement pay.)

Employees who only receive statutory maternity pay, may be better off to be furloughed from work. (The employer cannot claim for statutory maternity pay under the Job Retention Scheme.) However, there are risks involved to the mother in pursuing this. The woman will need to give 8 weeks’ notice to end their maternity leave. And they will not be able to return to maternity leave at a later date, should the employer end the furlough. An employer can end a worker’s furlough at any time and the woman will be expected to return to work immediately.

However [Maternity Action](#) notes:

“you only have to give 8 weeks’ notice to return to work early if your employer informed you in writing of the date that your 52 week maternity leave period would end. They have to do this within 28 days of the date in which they received your notification to go on maternity leave or within 28 days of when your maternity leave started. Many employers do not give notice of the end of your maternity leave and may not know about this regulation. (Maternity and Parental Leave regulations 1999, regulation 11(5))

If your employer did not give you notification in writing of the date that your maternity leave would end, you can return to work earlier and you do NOT have to give your

employer at least 8 weeks' notice. This means that you can give your employer a notice period of less than 8 weeks if you want to return to work early.

You should bear in mind that if you have returned to work or given notice to end your maternity leave, you cannot go back onto maternity leave.”

Once an employee has ended their maternity leave, but if they continue to be furloughed, the amount they then receive via the Job Retention Scheme should be based on their normal salary and not on the contractual maternity pay.

Further COVID-19 legal guidance from UNISON's legal team at www.unison.org.uk/get-help/services-support/legal-services/

Job Support Schemes (JSS Open and JSS Closed)

Back on 24 September 2020 the government announced a new [Job Support Scheme](#) to replace the furlough system (the Job Retention Scheme).

However, these Job Support Schemes have now been postponed. They will not be introduced until after the Job Retention Scheme ends.

Giving clarity to staff over COVID-19 related absence

The procedure issued by employers for staff to follow in the event of experiencing Covid-19 symptoms should be in line with the [latest NHS advice](https://www.nhs.uk/conditions/coronavirus-covid-19/) www.nhs.uk/conditions/coronavirus-covid-19/

It should be highlighted to staff that the main symptoms of COVID-19 are:

- **a high temperature** – this means you feel hot to touch on your chest or back (you do not need to measure your temperature)
- **a new, continuous cough** – this means coughing a lot for more than an hour, or 3 or more coughing episodes in 24 hours (if you usually have a cough, it may be worse than usual)
- **a loss or change to your sense of smell or taste** – this means you've noticed you cannot smell or taste anything, or things smell or taste different to normal.

If a member of staff develops at least one of these symptoms whilst at work, they should be sent home immediately and told to get a test to find out whether they do have COVID-19. It is important to ensure that employers agree to pay workers for the time off at their usual rate of hourly pay to attend COVID testing during their usual working hours. The worker should then stay at home, as should members of their household, and not have any visitors until they get the results of the test.

Individuals can get tested by visiting a test site or ordering a home test kit through the online self-referral at www.gov.uk/get-coronavirus-test or by calling 119 (0300 303 2713 if you're in Scotland).

If there are any queries about the symptoms or testing, individuals can contact the NHS at <https://111.nhs.uk/covid-19/> or by calling 111.

Any advice needed should be obtained through NHS 111 and not through visiting a GP surgery, pharmacy or hospital.

Dependent on the test results (and the test results of others within the same household) the staff member may need to remain at home and self-isolate for 10 days. Others in the same household may need to self-isolate for 10 days. Further details on self-isolation from the NHS at www.nhs.uk/conditions/coronavirus-covid-19/self-isolation-and-treatment/

Staff members will also need to self-isolate for 10 days if they are contacted by [NHS Test and Trace](#) and told that they have been in contact with someone who has the virus. Employers should raise awareness of [NHS Test and Trace](#) and encourage staff to take these messages seriously and self-isolate in order to protect others:

England – [NHS Test and Trace](#)

Scotland – [Test and Protect](#)

Cymru/Wales – [Test Trace and Protect](#)

Northern Ireland – [Testing and Contact Tracing](#)

[NHS Test and Trace](#) will also contact people who have tested positive for COVID-19. They will be asked where they have been recently and who they have been in close contact with. This will help the NHS contact anyone who may have caught the virus from them, including colleagues they work with.

[Self-isolation](#) means that the staff member must:

- not go to work, school or public places – they should work from home if they can
- not go on public transport or use taxis
- not go out to get food and medicine – they should order it online or by phone, or ask someone to bring it to their home
- not have visitors in their home, including friends and family – except for people providing essential care
- not go out to exercise – they should exercise at home or in your garden, if they have one.

Individuals will also have to self-isolate when **returning to the UK from abroad** for 10 days, except when returning from a few specified countries (continually under review by the UK government, more details at www.gov.uk/guidance/travel-advice-novel-coronavirus).

Staff who are self-isolating

Self-isolation is when a person does not leave their home because they have or might have COVID-19, in order to help stop the virus spreading to other people.

For the latest information on symptoms, what you should do and how long you should self-isolate, see the 'staying at home information' from the NHS:

[England](#)

[Scotland](#)

Cymru/Wales

Northern Ireland

Staff who need to self-isolate, can get an [isolation note](#) to send to the employer as proof they need to be off work. They do not need to get a note from a GP.

Staff who are self-isolating but cannot do their work at home, should ideally be classified as **medically excluded from the workplace** on full pay.

An employer applies medical exclusion to prevent infection to the rest of their workforce where it is believed an employee may carry a particularly high threat of being contagious. In effect, the employer is instructing its workers not to attend the workplace, on the basis of a government demand, and therefore the employer must continue with full payment.

Medical exclusion clauses are sometimes established elements of collective agreements, most commonly in NHS trusts, given the extra dangers of transmitting an illness to patients. However, in light of the unprecedented threat of Covid-19 an argument can be made that such exclusions should apply more widely and the general duties under the Health and Safety Act to protect staff should be interpreted in this way.

Further pressure can be brought to bear on employers by highlighting that agreements have been reached for local government staff on NJC terms and conditions and NHS staff on Agenda for Change terms and conditions to receive full pay during any period of self-isolation that has been entered into on the basis of government advice.

This includes workers in GP practices. NHS England and Improvement have reiterated their position that GP practices should “pay full pay to any GP practice staff who are absent from work with COVID-19, suspected COVID-19 (self-isolating) or who are clinically extremely vulnerable and are therefore unable to come into the workplace and see patients face to face (shielding).”

Similar agreements have been established in Scotland for local government and NHS staff. The NHS agreement includes bank workers and sub-contractors who have to be physically present at an NHS facility to carry out their duties. Full pay is interpreted as “paying what the staff member would have otherwise earned if they were not in isolation, which would include any pay enhancements.”

The list below shows how some other private sector employers have provided the best terms for those self-isolating, and could provide examples for negotiations.

Allianz Engineering Inspection (private sector, providing Engineering activities and related technical consultancy) – full pay for staff who are self-isolating.

Aramark (private sector, covering catering staff working at the Department for Business, Energy & Industrial Strategy) – full pay for staff who are self-isolating; staff who are sick with COVID-19; staff at high risk and so advised to reduce or minimise contact with others, or limit travel; staff in any other group where the advice from government is to reduce or minimise contact with others, or limit travel; staff who live with someone who is in any of the groups above; staff who need to be home to care for children who are unable to go to school; staff who are unable to attend work for a reason related to COVID-19, for example due to closure of public transport, quarantine etc.

Atomic Weapons Establishment (private sector, covering the industrial workforce, firefighters, and craft & manual workers) – employees with medical conditions which put them at greater risk from Covid-19 and those who have vulnerable family members have been able to self-isolate on full pay, initially for 12 weeks.

BP McKeefry (private sector, providing freight transport by road) – for staff required to self-isolate due to coronavirus symptoms, or if someone in their household has symptoms, or someone who is shielding, for the first 14 continuous days of absence a £350 gross payment per week (inclusive of SSP).

Medical exclusion is a case that can be made to an employer, but the government has only gone as far as stating that self-isolating staff should be treated as being on sickness absence. Therefore alternatively, if the employer will not agree to medical exclusion, the self-isolating staff should, by law, at least receive [statutory sick pay](#) from the first day they are off sick or isolating, rather than having to wait three days to become eligible, as remains the case for any other form of sickness than that relating to COVID-19.

This includes staff who have to self-isolate they are to undergo a surgical or other hospital procedure and have been advised to stay at home for a period of up to 14 days prior to being admitted to hospital for that procedure. By law they should at least receive statutory sick pay, but ideally they should be medically excluded on full pay.

An agreement has been reached for local government staff on NJC terms and conditions concerning self-isolation prior to admission to hospital which is an example of good practice:

“The NHS has instructed that anyone who is due to go into hospital as an in-patient (including day surgery) for planned or elective surgery / medical care must self-isolate, along with all members of their household, for 14 days prior to admission.

Unless already on sick pay, and in line with previous NJC guidance, all employees should remain on normal full pay for the duration of the self-isolation period. Those who can work from home (either in their own role or on alternative duties), should do so. We very much hope that dates scheduled for hospital admission do not get deferred, resulting in a further period of self-isolation being required, but this may be something that employers will unfortunately have to accept as a consequence of the current situation.”

The statutory sick pay (SSP) rate is currently £95.85 per week (from 6 April 2020 usually increased each April). To qualify, workers have to receive income of £120 per week. To surpass that threshold, a worker’s wage is considered in total, i.e. if they have more than one job, the income from each job is aggregated.

However, this threshold can clearly create a problem for staff on forms of contract that are vulnerable to dips in income below the weekly figure, such as zero-hours workers. If such staff do not qualify, the only recourse is to seek support through [Universal Credit](#) or [New Style Employment and Support Allowance](#). In addition, individuals may be eligible for Self-isolation support payments (see below). UNISON members can also be directed to advice through UNISON’s [There For You welfare charity](#).

In the public sector, most staff will be part of an occupational sick pay scheme, which will entitle them to payment from the first day of sickness and follow a pre-set pattern of full pay and then half pay.

For further information including an outline of terms for the main schemes see the UNISON sickness absence guide

www.unison.org.uk/content/uploads/2020/03/25815_revised03_20.pdf

However, particularly among private contractors delivering public services and voluntary sector employers, entitlement may be nothing more than the statutory sick pay provision.

The inadequacy of SSP should be used as an argument for keeping staff on full pay under medical exclusion, since it should be apparent to employers that SSP encourages staff to attend work out of financial necessity. This could then lead to putting other staff at risk and endangering the organisation's entire operations.

If a worker lives with someone who has symptoms of coronavirus, they can also get an **isolation note** to send to their employer as proof they need to stay off work by completing the online questionnaire at <https://111.nhs.uk/isolation-note/>. They do not need to get a note from a GP. Whether experiencing coronavirus symptoms or not, the worker will need to self-isolate and similarly should at least receive statutory sick pay if they earn at least £120 per week.

Reps and branches should also try to get the employer's agreement that any absence for periods of self-isolation will not be counted towards any sickness absence policy trigger points.

For example, this has been agreed for NHS staff and the majority of local government staff (i.e. those covered by national joint council (NJC) terms and conditions.)

A similar agreement is in place for local authority workers in Scotland whose terms and conditions are agreed at the Scottish joint council (SJC):

“Employees who have been instructed to self-isolate and who are unable to work from home will be granted paid leave under the provision [below]... for the duration of the self-isolation or until they develop symptoms.

An employee who is prevented from attending work because of contact with infectious disease will advise the Head of Department immediately and will be entitled to receive normal pay. The period of absence on this account will not be reckoned against the employee's entitlements under this scheme.”

Individuals will also have to self-isolate when **returning to the UK from abroad** for 10 days, except when returning from a few specified countries (continually under review by the UK government, more details at www.gov.uk/guidance/travel-advice-novel-coronavirus).

However, in this circumstance, staff are not eligible for statutory sick pay if they do not need to self-isolate for any other reason.

Reps and branches should similarly try to get employers to agree to 'medically exclude' on full pay these self-isolating staff returning from abroad, as a way of encouraging workers to

do the right thing and follow government guidance on self-isolation and not potentially infect others.

Alternatively, employers may at least pay contractual sick pay, rather than workers having to use their annual leave or unpaid leave for this quarantine period.

Quick checklist

- Ensure the employer raises awareness of the symptoms and testing available for COVID-19 and clarifies the sickness absence and self-isolation procedures for staff based on NHS guidance.
- Negotiate continued full payment for self-isolating staff on the basis of medical exclusion from the workplace if possible or at least payment of enhanced or occupational sick pay. Statutory sick pay is the legal minimum to be paid.
- Ensure the employer reviews notification procedures for sickness and self-isolation absences, with the acceptance of isolation notes as proof for continued absence.
- Negotiate the omission of COVID-19 related absence from any triggers for management action in disciplinary, capability, attendance management or redundancy policies.

Self-isolation support payments for people on low incomes – England, Scotland and Cymru/Wales

[In **Northern Ireland**, [discretionary support grants from the Department for Communities](#) are available to assist with short term living expenses where a person, or any member of their immediate family, is diagnosed with COVID-19 or is advised to self-isolate in accordance with guidance.]

[The government has announced](#) that people in England who are employed or self-employed and on low incomes (and in receipt of Universal Credit or Working Tax Credit, income-based Employment and Support Allowance, income-based Jobseeker's Allowance, Income Support, Housing Benefit and/or Pension Credit), and who need to self-isolate but are unable to work from home will benefit from a new payment scheme.

The [Test and Trace self-isolation support payment scheme](#) will provide a one-off lump sum payment of £500 to eligible applicants who were told to self-isolate on or after 28 September 2020. The scheme will run until 31 January 2021.

The scheme is part of a bigger package announced, including substantial new fines for those breaching self-isolation. This includes potential fines for employers who knowingly allow a worker who should be self-isolating to come into the workplace (under the [Health Protection \(Coronavirus, Restrictions\) \(Self-Isolation\) \(England\) Regulations 2020](#)). The worker also now has a legal obligation to notify their employer of the requirement to self-isolate and the start and end dates of the isolation period.

Eligible individuals who have been told to self-isolate by NHS Test and Trace either because they have tested positive for the virus or they have come into contact with someone who has tested positive, will be entitled to the payment of £500. To be eligible the individual:

- is employed or self-employed

- is unable to work from home and will lose income as a result of self-isolating
- is currently receiving at least one of the following:
 - Universal Credit
 - Working Tax Credit
 - income-based Employment and Support Allowance
 - income-based Jobseeker's Allowance
 - Income Support
 - Housing Benefit
 - Pension Credit.

Other individuals may be eligible for a £500 discretionary payment if they are on a low income and will face financial hardship as a result of not being able to work while you are self-isolating.

The payment of £500 will be in addition to statutory sick pay and benefits.

Individuals who have been notified by NHS Test and Trace will need to phone or apply online at their [local council](#) and submit supporting evidence including their Test and Trace ID, a bank statement, proof of employment and confirmation from their employer that they are unable to work from home.

Councils are expected to deliver the payments and administer the system, receiving reimbursement from the government.

In Scotland, a similar scheme of [a self-isolation support grant](#) of £500 is available from local councils for people who receive certain benefits and have been notified by NHS Test and Protect that they must self-isolate. Individuals will need to apply through their [local council in Scotland](#).

In Cymru/Wales, the scheme is called the [self-isolation support scheme](#). A grant of £500 is available from local councils for people on low income and who have been told by NHS Wales Test, Trace, Protect service that they must self-isolate. Individuals will need to apply through their [local authority in Wales](#).

COVID-19, 'Long COVID' and sickness absence

UNISON believes that any employer that takes some form of disciplinary action against staff by classifying absence due to COVID-19 related illness or disability as sickness absence is acting unfairly.

Some legal advisors have already suggested, given the significant impact that COVID-19 has on an individual's health, that those who have been hospitalised with it or continue to experience 'long COVID', may potentially be disabled people within the meaning under the Equality Act. A disabled person is defined as someone who has a mental or physical impairment that has a substantial and long-term (usually interpreted as 12 months or more) adverse effect on the person's ability to carry out normal day-to-day activities.

“Around 10% of mild coronavirus (COVID-19) cases who were not admitted to hospital have reported symptoms lasting more than 4 weeks. A number of hospitalised cases reported continuing symptoms for 8 or more weeks following discharge.” [UK government website](#)

“However ‘long Covid’ evolves... if the 10% estimate is accurate, we could be talking about many thousands of people of working age being affected with some level of medium- to long-term fallout in terms of health or functional capacity from the virus...

...Public Health England has recommended that patients struggling to recover from Covid-19 infection should speak to their GP “about local care pathways for support and assessment of any long-term symptoms or health problems”.

It highlighted that healthcare providers can also refer patients to its online ‘[Your Covid Recovery](#)’ programme. [This was launched back in July](#) and is aiming to support people with long-term breathing or mental health issues that had developed as a result of contracting the virus.” [Personnel Today, 6 November 2020](#)

Further information

COVID-19: long-term health effects

www.gov.uk/government/publications/covid-19-long-term-health-effects

Long COVID support group

www.longcovid.org

Long COVID SOS campaign to put pressure on the government to recognise the needs of those with Long Covid, and to raise awareness among the general public and employers so that people with this condition are not discriminated against.

www.longcovidsos.org

UNISON recommends that employers conduct individual risk assessments with any staff member who is experiencing Long Covid and to make reasonable adjustments for these staff. Reps and branches should encourage employers to follow UNISON [guidance for disabled workers and workers with an underlying health condition](#).

Whether considered a disability or not, in these unprecedented times, it is important for reps and branches to get the agreement of employers to disregard COVID-19 related illness and self-isolation in sickness absence records that contribute to trigger points within the sickness absence policy. Absence policies often include ‘trigger points’ for some kind of employer intervention – most frequently, initiation or escalation of capability or disciplinary procedures.

Union reps should seek to ensure that meetings (including ‘virtual’ meetings) established in response to passing a trigger point, at least in the first instance, should be carried out in order to explore causes with a view to providing support that helps employees maintain their health more consistently. It should also be remembered that changes to trigger levels for disabled staff can constitute a reasonable adjustment.

Care should also be taken that absence due to attending testing or vaccination appointments once available, caring for family or in response to bereavement are not mixed up with sickness absence. All these issues should be dealt with under separate policies that set specific leave entitlement for these purposes.

A case can be made that all these entitlements are part of a healthy workplace approach which puts the avoidance of stresses that can cause further sickness absence ahead of a short-sighted, penny-pinching approach.

Further information

Negotiating sickness absence agreements

www.unison.org.uk/content/uploads/2020/03/25815_revised03_20.pdf

Caught COVID-19 at work? Or if you're the relative of a UNISON member who has tragically died from contracting the disease at work, call UNISON'S free legal helpline for advice: 0808 252 2783 www.unison.org.uk/get-help/services-support/legal-services

Adult Social Care Infection Control Fund

The main purpose of this UK government fund is to "support adult social care providers, including those with whom the local authority does not have a contract, to reduce the rate of COVID-19 transmission in and between care homes and support wider workforce resilience."

[The UK government's guidance](#) states that one of the measures that a local authority can fund a provider to do is to ensure "so far as possible, that members of staff work in only one care home. [Arrangements for the administration of the fund vary across devolved nations. Money has been distributed to Scotland, Cymru/Wales and Northern Ireland, but it is for devolved administrations to decide on how to allocate.]

This includes staff who work for one provider across several homes or staff that work on a part-time basis for multiple employers and includes agency staff (the principle being that the fewer locations that members of staff work in the better, for example, compensating staff whose normal hours are reduced due to restrictions on their movement)."

In addition, the UK government's recently published winter plan states: "The extension of the Infection Control Fund will:

- continue to support all providers to put in place measures to stop staff movement
- continue to support providers to pay staff who are self-isolating, in line with government guidance, their normal wages while doing so.

Limitations on staff movement between care homes will be enforced through regulations focused on care home providers."

These regulations are yet to be published but the emphasis here is on the care home providers' responsibility.

UNISON recognises that it is necessary for governments and care providers to put in place arrangements that reduce the movement of staff between care settings during the pandemic period. This is a sensible infection control measure. However, these measures should always be put in place on a consensual basis, ensuring care workers' overall income is not reduced and without resorting to punitive measures.

The infection control fund has provided funds to the sector to help with the costs of putting in place the kind of arrangements that UNISON supports.

It is very common for staff in social care to work for multiple employers, primarily because wages are low, and staff are often forced to work on a casualised basis (such as on zero hours contracts).

However, UNISON is aware that some social care providers have begun threatening their staff with disciplinary action and even dismissal if they continue to work for a different employer as well.

If workplace reps or branches are aware of such action they are advised to:

- Challenge the employer using the points raised above, seek to have consensual infection control measures put in place which also protect care worker income.
- Report the incident to both their regional office and UNISON Centre (g.edwards@unison.co.uk)
- Where appropriate, communicate with and work with commissioners (usually local authorities) to ensure care providers are aware that punitive measures towards care staff are not appropriate.

Social Care Staff Support Fund – Scotland only

The [Social Care Staff Support Fund](#) aims to ensure social care workers do not experience financial hardship if they are ill or self-isolating due to coronavirus. The Fund is for social care workers contracted to deliver care and support in the social care sector. The Fund will ensure that social care workers receive their normal pay when:

- the worker's ability to undertake health and care work is, or has been, restricted for a reason relating to coronavirus.
- the worker's income has been reduced as a result of not being able to work for a reason relating to coronavirus
- the worker is experiencing financial hardship during the time when the Fund is active
- the worker is unable to work because they have coronavirus, or are self-isolating in accordance with public health guidance.

Social care workforce special payment scheme – Cymru/Wales only

At the end of August 2020, the Welsh government announced a [social care workforce special payment scheme](#) to recognise and reward the hard work and commitment of social care staff who have provided essential care to our most vulnerable citizens during the most challenging period of the COVID-19 pandemic. It is aimed at employees and workers (including zero hours workers) within registered care homes and domiciliary care services and includes agency workers and Personal Assistants (PAs).

Payment is a one-off flat rate payment of £500 made by the local authority. Eligible staff must have been employed in eligible social care roles at some time between 15 March to 31 May 2020.

Staff who are working from home

Following some initial easing of lockdown, central government, devolved governments or local authorities have since announced varying restrictions to contain and manage outbreaks of the virus.

With the re-introduction of [a national lockdown](#) in England, once again, the UK government's emphasis is on staying at home:

“You must stay at home. The single most important action we can all take is to stay at home to protect the NHS and save lives... You may only leave your home for work if you cannot reasonably work from home.”

Research undertaken by the CIPD (Chartered Institute of Personnel and Development) called '[Embedding new ways of working](#)' found that two thirds of the employers they surveyed, reported that home workers were more or as productive as when in the workplace. In addition, it had improved the work-life balance of staff (cited by 61% of employers), enhanced employee collaboration (43%) and improved focus (38%).

However, the CIPD found that it could reduce staff mental wellbeing (reported by 47% of employers), and cause problems with staff interaction/co-operation (36%).

Working from home may have been first considered as a temporary measure. But, as the weeks and months have gone by, it is essential that employers properly consider the health and safety risks and take account of individual needs whilst homeworking.

What should be considered when working from home?

Employers continue to be responsible for the health and safety of their workers whilst they are working from home. A starting point would be to check that the [Health and Safety Executive \(HSE\) guidance](#) for employers on health and safety for home workers is being followed.

The employer should update the health and safety policy to cover working from home during the pandemic and as part of flexible working, including setting out:

- preventative steps taken to protect workers
- how working from home risks are to be assessed, such as by providing a checklist and guidance to help workers assess their own work environment and identify problems
- steps taken to protect groups who may be at particular risk — e.g. pregnant, older, Black or disabled workers
- how risks may impact family members and housemates.

This should then be made widely available to staff so that they are fully aware of the details.

Workplace reps and branches will want to make sure that employers have made sure staff have the correct equipment to do their job, that their workload is at a safe level and they are not put under unreasonable stress.

At the end of the first two weeks of lockdown, more than half of the 500 people who responded to an Institute of Employment Studies homeworking wellbeing survey reported experiencing new aches and pains: 58% complained of neck pain, 56% experienced shoulder pain and 55% had experienced back pain.

The main concern for an employer should be whether there is a suitable workspace at home for the employee to work. An employer has a duty of care for all their employees and it is the employer's responsibility to check where the employee proposes to work from – desk, chair, computer, etc, or if any other workstation is needed. A risk assessment should take place, although the process may need to be adapted under COVID-19 restrictions (such as by providing a checklist to workers).

The employer is also responsible for the equipment it supplies including where there will be extensive use of computers and visual display units (VDUs) as these will be covered by Display Screen Regulations. It will be the employees' responsibility to make sure they highlight any issues they know when the risk assessment takes place (for example, faulty electric plug points).

From data collected during the lockdown period in the UK as part of an ongoing, longitudinal study of home-based working under COVID19 measures funded by the UKRI/ESRC, the [Working at Home project](#) found that the homeworking environment clearly plays a significant role in work-life balance. Survey respondents who were afforded a dedicated room for work (53% of respondents), reporting statistically significant better work-life balance.

Similarly, those who share their homeworking space with family members or co-residents (33% of respondents) report statistically significant poorer work-life balance than those who do not share their space.

The survey findings, however, suggest that organisations can support the work life balance of their employees by:

- supporting *the homeworking environment* (e.g. providing essential devices, an ergonomically appropriate chair, proper desk, second monitor);
- providing *IT support* (file sharing, video conferencing, remote collaboration tools, professional software, etc.).

As the control that can be exercised over a member of staff working from home is limited, particularly during this period of social distancing, the main responsibility will be with the home worker under Section 3 (2) of the Act. This places the obligations on home workers themselves to ensure that they and other persons, including members of the household (as well as the public) are not endangered by work activities undertaken at home.

Workplace reps and branches should highlight the importance of staff to raise any health and safety concerns whilst working from home with their line managers promptly. They should make sure any risk assessment checklists are thorough and cover all potential areas for consideration including the workstation and equipment.

Reps and branches will also want to make sure that employers are providing sufficient advice and support on working from home and reasonable adjustments for disabled workers.

The [Access to Work programme](#) is administered through Jobcentre Plus and may provide grants towards the cost of various adjustments including adapting or purchasing equipment. Many employers are unaware of the existence of Access to Work. Workers are eligible if they have a disability or health condition. The employer or worker then purchases the equipment, etc and reclaims the grant from Access to Work. The employer may have to make contributions.

For latest details on levels and eligibility for grants, it is important for disabled workers to check directly with an Access to Work Adviser. Contact details are at www.gov.uk/access-to-work (www.nidirect.gov.uk/articles/access-work-practical-help-work for workers in Northern Ireland).

As well as considering adaptations for the worker's physical environment, it is important that employers take account of [HSE's statement](#) that "home working can cause work-related stress and affect people's mental health." Having to change to a very different way of working can, in itself be very stressful, particularly where the lines between personal and work can become so blurred, not least through the use of virtual meetings that intrude into home space.

The notion of core working hours can also seem to disappear whilst working from home. There may be an expectation of always being available for work and working much longer hours. Homeworkers are also covered by the Working Time Regulations which set a limit of 48 hours on the working week.

Enforced isolation can additionally lead to feelings of loneliness and lack of connection with work colleagues. A different way of working may even open up the potential for bullying and harassment, particularly as such behaviour need not be carried out face-to-face but can occur in writing, by telephone, text messaging, email or use of social media, and this needs to be recognised by employers.

Working in a very different way will also require a different level of trust between managers and workers, and it is important that employers remind managers of this. As the [Chartered Institute of Personnel and Development \(CIPD\)](#) suggest: "Ensure managers understand that visibility is not the key to performance and that they explore new ways of communicating, delegating and working with their teams to meet targets and deadlines."

Research from the Wales Institute of Social and Economic Research on '[Homeworking in the UK: before and during the 2020 lockdown](#)', discovered that "a common fear among employers is that without physical oversight, employees will shirk and productivity will fall". However, the research also found that two-thirds of homeworkers said they were able to get as much done in June 2020 as they were 6 months earlier and a quarter said they got more work done.

Clear and regular communication from managers is particularly important during these difficult times using different formats where appropriate. Relying solely on email for example can often lead to a misinterpretation of the message.

It is also important that managers have up-to-date contact details for staff and let workers know who they should contact if they have any concerns, such as health and safety issues, IT problems or data protection worries.

However, it has been reported that there has been an increase in monitoring and surveillance of staff whilst working from home, using the latest technology. Recent research highlighted by the TUC in their report '[Technology managing people](#)' found that the increase in homeworking during the Covid-19 pandemic has almost certainly already increased the use of artificial intelligence (AI) powered technologies to manage people. A recent survey conducted by the LSE's Centre for Economic Performance found that more than 60% of firms have adopted new technologies or management practices since the start of the pandemic and more than 90% said they expected to keep the changes in place.

The TUC's own research "suggests worker interests may often be marginalised or overlooked when new technology is introduced at work.

The use of AI in people management can also impact on the employment rights of workers. For example, the deployed technology might result in discriminatory and unfair outcomes for workers, their human right to privacy might be infringed, and their data might not be handled in accordance with data protection law.

In addition, there are significant implications in terms of workers' physical and mental wellbeing, for example when workers experience the extreme stress and pressure of constant, AI-driven 'real-time' performance assessment and monitoring."

[Acas](#) warns "if monitoring is too much or does not respect the employee's privacy, it can damage employees' trust in the employer, cause stress and reduce productivity.

Employers should also remember that employees are entitled to some privacy at work, including when they are working from home... Any monitoring arrangements must follow data protection law."

For any monitoring arrangements to be successful, employers should first consult with workers and give clear reasons for the monitoring. And these reasons should be legitimate and in proportion with the need. Employees need to be clear what information is likely to be obtained, why it is being obtained and how the employer wishes to use that information.

Further information on working from home for workplace reps from TUC Education

<https://learning.elucidat.com/course/5ea8201298996-5eac468ab5b70>

Further guidance on working from home from Acas

www.acas.org.uk/working-from-home

From the TUC 'Technology managing people' report

www.tuc.org.uk/sites/default/files/2020-11/Technology_Managing_People_Report_2020_AW_Optimised.pdf

Pay and expenses whilst working from home?

As long as staff are well and working, they should get their normal salary.

Workers should be able to claim any additional expenses incurred whilst working from home from their employer, including for stationery and additional utility costs.

Employers should make sure their insurance covers employees working from home. Staff also may need to check with their home insurers, mortgage providers or landlords if there

are any issues with them working from home. If there any additional costs involved (such as higher insurance premiums) reps and branches should negotiate with the employer to cover them.

[N.B. The [MoneySavingExpert website](#) confirmed in March 2020 that they had “checked with a raft of major home insurers including Axa, Aviva, Churchill, Direct Line, Esure, Hastings, LV and More Than. All have said during the coronavirus crisis period there's no need to change or update your cover if you're now working from home and, crucially, you don't need to call and tell them.

This applies if you're doing clerical work – generally defined as working on a laptop and making phone calls. It won't cover any claims arising from visitors to your home who are there as part of your work, but this shouldn't be a problem in the current lockdown as you shouldn't be having visitors in your home anyway.”]

However, workers will not be able to claim for things that are used for both private and work use, for example, rent or broadband access (unless the employee did not previously have broadband and it has been solely set up for work use).

Apportioning additional heating, electricity and water costs can be very difficult to work out fairly. However, Her Majesty's Revenue and Customs (HMRC) states that from 6 April 2020 employers can agree to a flat-rate payment made to an employee working regularly at home without the employer having to justify the amount, of £6 per week or £26 per month for monthly paid employees. If the £6 guideline rate is paid the employee does not have to keep any records to demonstrate the additional expenditure. HMRC expects that £6 per week would be sufficient for most cases, particularly where the additional costs are only for heating and lighting the work area.

For tax years 2012 to 2020 the guideline rate was £4 per week or £18 per month for monthly paid employees.

Further details from the government at www.gov.uk/expenses-and-benefits-homeworking

If the employer will not agree to pay this tax-free allowance for homeworking, individuals may be able to claim tax relief on this expense – in other words the amount will be deducted from the individual's taxable income. Employees can check if they can make a claim by completing details requested via www.gov.uk/tax-relief-for-employees/working-at-home.

However, if the worker does not earn more than the tax-free personal allowance (currently £240 per week, £1,042 per month or £12,500 per year in 2020-21) and therefore does not pay any tax, they cannot benefit from this tax relief. In this situation, it would be fairer to press the employer to reimburse the costs to employees directly (either actual costs with evidence provided or at the HMRC flat rate) so that those on low incomes are not disadvantaged with the additional costs to them of working from home.

Quick checklist

- How is the employer fulfilling their responsibility to carry out a risk assessment to check where the employee's workstation is whilst working from home? For example, are they guiding employees through the risk assessment process?

- Does the employer provide guidance and equipment for homeworkers to reduce or eliminate risks? Is the UNISON health and safety rep involved in providing this guidance?
- Does each employee have all the equipment they need to work from home and are they being compensated for any additional costs they have incurred for using their home for work purposes?
- Is the employer providing specific advice and support on working from home as well as reasonable adjustments for disabled workers?
- Do disabled workers know about Access to Work?
- Does the employer ensure regular contact and communication with the homeworker? Are there regular reviews of the homeworking arrangement conducted between the employee and their line manager?
- Does the employer ensure that the employee's workload is at a safe level and they are not put under unreasonable stress?
- Are branches also ensuring they keep in touch with members who work at home or are home-based?
- Does homeworking mean that an employee must work and be available during core business hours? Or can they be more flexible?
- How will performance management, development reviews or appraisals and training take place whilst the employee is working from home?
- Do employers make clear the arrangements for dealing with the storage, use and security of confidential data held at home including providing a lockable filing cabinet if necessary?
- Is the employer using technology to monitor workers' activity etc whilst working from home? If so, has the employer carried out a data impact assessment?
- Have all staff been notified that monitoring is taking place? Does the employer have a privacy policy that all employees know about?
- Does the employer have a data retention policy? Are staff told what information is recorded and how long it is kept and for what purpose?
- Are staff who handle the data appropriately trained to ensure they follow data protection procedures?

More information

UK government's working from home guidance

www.gov.uk/coronavirus/worker-support

Scottish government's guidance on working from home

www.gov.scot/publications/coronavirus-covid-19-guidance-for-homeworking/

Northern Ireland's executive guidance on working from home

www.finance-ni.gov.uk/publications/covid-19-working-home-guidance

Homeworking

www.unison.org.uk/content/uploads/2017/06/Homeworking-GuideJune2017.pdf

Lone working

www.unison.org.uk/content/uploads/2018/02/24830_Working_Alone_Web.pdf

Health and Safety Executive guidance on protecting home workers

www.hse.gov.uk/toolbox/workers/home.htm

Acas guidance on working from home

www.acas.org.uk/working-from-home

Working safely in the normal workplace

The first thing employers should do is make every reasonable effort to make it possible for staff to work from home. If this is not possible, then before workers can return to their normal workplace, employers should **undertake a risk assessment to make it 'COVID-secure'** including taking account of any new government and health guidance, and additional risks identified from new variants of the virus.

A risk assessment is the process of identifying the hazards that exist or may appear in the workplace. It defines the workplace hazards that are likely to cause harm to employees and visitors. Employers must identify all those for whom they have a duty of care, whether they are staff or service-users etc and should consider all groups at particular risk such as Black employees (referred to by government as BAME), clinically extremely vulnerable employees or clinically vulnerable employees.

In staging a return to working in the normal workplace, looking at the staff who perform roles that are most difficult to carry out from home may form a suitable first cohort.

The staff who should be scheduled to return last to the workplace are those who face the most risk to their health from contracting COVID-19. A key bargaining objective for the union is to ensure that those most vulnerable to the virus or those self-isolating receive extended salary protection.

In some instances, employees may not have been receiving full pay during their absence from the workplace whilst on furlough or during self-isolation or shielding. In those circumstances they may be keen to return out of financial necessity before it is safe for them to return. It should be highlighted to employers that the failure to maintain full pay for staff could put the health of all their staff at risk.

The government has clearly set out in its guidance on ["working safely during coronavirus"](#) that employers should conduct COVID-19 risk assessments in consultation with trade unions and issued an expectation that all businesses with over 50 employees will publish the results of their risk assessments on their website. That has also been accompanied by a call for "ongoing engagement with workers to monitor and understand any unforeseen impacts of changes to working environments."

In the context of COVID-19, risk assessments under the Management of Health and Safety at Work Regulations should identify hazards principally in terms of:

The ability to meet the two-metre social distancing rule among staff and in contact with service users (and in England where people cannot be two metres apart, the ability to be one metre apart and to additionally manage transmission risk), as part of minimising face-to-face contact;

The ability to maintain a hygienic environment through provision of cleaning facilities and an appropriate building cleaning regime;

The ability to provide protective equipment where there is heightened risk of exposure to the virus.

The risk assessment will then identify the practical steps that are to be taken to reduce the risks of infection spreading through the workforce via respiratory secretions or

contaminated surfaces. Employers should also consult with UNISON's Safety Reps on anything affecting their members' safety, which includes the outcomes of any risk assessments.

The timescale for implementing such necessary steps for creating a sufficiently safe environment should act as a guide for when it is safe for any given group of staff to return to work. Until that time working from home should remain the norm.

A significant influence on establishing a safe environment will be the volume of staff returning at any one time. This will influence safety both in the workplace and on public transport to reach the workplace. Therefore, staging is liable to be an important factor for controlling risks and ensuring that teething problems with systems to mitigate risks are addressed before any full return of the workforce.

The list below sets out the range of measures that should be considered in terms of both practical changes to the workplace and adjustments to working arrangements.

Hygiene regime

- Increasing availability of hand-washing facilities, utilising soap, water and alcohol-based hand sanitiser. The use of alcohol sanitiser needs to be accompanied by clear guidance to avoid contact with other surfaces for at least a minute to avoid any risk of burning.
- Adoption of a hand washing regime for all arrivals into a building, publicising among staff the need for hand washing throughout the day, with particular attention to hand washing on entering and leaving shared facilities, such as toilets and canteens.
- Reviewing the provision of tissues and sealed bins for disposal, along with the regularity of waste collection.
- Intensification of building cleaning methods and regularity, with particular focus on shared facilities and regularly touched objects such as door handles.
- Ensuring cleaning staff are provided with disposable gloves and aprons, utilise disposable cloths and mop heads, and deploy both detergent-based and steam cleaning as appropriate.
- In dealing with an area where someone has displayed symptoms, considering whether it is feasible to shut off the area for 72 hours before cleaning. Where there is a high viral load ensure that cleaning staff are provided with surgical masks, and in some cases some form of eye protection. Any resultant waste must be double bagged and held for 72 hours before disposal.
- Provision of personal protective equipment (PPE) to staff who may face a heightened danger of exposure to the virus in their work. UNISON's summary of all the issues surrounding PPE and links to service group specific guidance are available here www.unison.org.uk/coronavirus-rights-work/personal-protective-equipment-coronavirus. Employers must provide any PPE required for the job.

- Ensuring that the features of the PPE are appropriate to the staff for whom it is intended, particularly in terms of sensitivity to gender, cultural or religious requirements.
- Cleaning staff may need additional training, such as in the use of PPE, and avoiding splashing when using sprays.
- The government is now telling people to wear face coverings, covering the mouth and nose when using public transport (compulsory in England and Scotland and also for those who visit or work in hospitals in England) and in other confined spaces, and there may be occasions where employers make similar suggestions for the workplace. If they do so, it should be made clear that although wearing such coverings may possibly reduce the risk of the wearer spreading the disease, it is not considered as adequate protection against the danger of being infected and for that reason does not reach the required legal standards of PPE. If facial protection is considered as a requirement for the job, the employer should be pressed to provide the legally compliant PPE.
- Introducing alternatives to any touch-based security devices, such as fingerprint scanners, and limiting use of shared equipment, such as printers.
- Reviewing operation of air-conditioning systems and considering greater use of manual ventilation through windows and doors.

Social distancing and limiting face-to-face contact

- Permitting flexibility in working hours to allow for travel to and from work outside of peak hours.
- Putting in place a rota of staff that limits the numbers attending work on any given day by alternating with working-from-home arrangements and ensuring rotas are based on fixed teams.
- Maintaining a ban on all travel outside of the workplace other than for travel to and from the home, alongside a ban on receiving visitors from outside the workplace.
- Ensuring that the two-metre social distancing rule is maintained between workspaces, such as desk seating, (or in England, where people cannot be two metres apart, the ability to be one metre apart and to additionally manage transmission risk) and all 'hot-desking' arrangements are to be put on hold.
- Where seating cannot observe the two-metre rule, the direction of seating is changed so that staff are facing away from each other and / or screens are placed between workspaces.
- Establishing that staff should not move outside of their department (the term department is used here and subsequently in the sense of any group of workers in a clearly defined single workspace) other than for necessities, such as the use of toilets or canteens.
- Setting up a one-way system for all movement around the workplace.

- Designation of specified toilets for the exclusive use of suitably located departments.
- Maintaining closure of canteen facilities, with staff advised to bring food to the office.
- If canteen facilities are reopened, establishing a rota for use of the facilities and ensuring seating arrangements respect social distancing.
- Staggering staff breaks so that safe distances can be kept in any rest areas.
- Establishing that all meetings outside of a department are held through telephone or video conferencing.
- Limiting the numbers that can use lifts to the number consistent with maintenance of the two-metre rule (or in England, where people cannot be two metres apart, the ability to be one metre apart and to additionally manage transmission risk).
- Considering whether staff need to be deployed to supervise social distancing rules.
- Limiting contact where possible with service users, through such methods as replacing face-to-face meetings with telephone / email contact or putting in place physical barriers such as perspex screens.
- Postponing forms of non-urgent work that are problematic to discharge effectively without face-to-face meetings. A case can be made that meetings related to disciplinary, capability, attendance management and organisational restructuring matters can fall into this category.
- Suspension of any car sharing policies.
- Increasing the number of entry and exit points to buildings and departments to reduce congestion.
- Provision of free car parking and bike lock-up facilities to enable avoidance of public transport (for greater detail on this point in relation to our campaign on hospital car parking, see appendix 2)

Control of entry to the workplace

- **Testing for COVID-19** is now available to anyone with symptoms - a new continuous cough, a high temperature or the loss or change of sense of taste or smell – through a booking system at www.nhs.uk/coronavirus or by contacting NHS 119 via telephone. **Priority testing is still available for essential workers** either by self-referral or through the employer. It is important to ensure that employers agree to pay workers for the time off at their usual rate of hourly pay to attend COVID testing during their usual working hours.
- Temperature screening of workers entering a workplace can offer a more limited protection of staff. However, it should be noted that employees have to give consent for any such test and the risks posed by staff carrying out such tests are perhaps better avoided through provision of thermometers, advice to test at home and assurances that staff should stay at home if in any doubt.

- Staff with a persistent cough OR fever OR anosmia (loss of sense of smell/taste) must be advised to stay at home as should those notified under the NHS test and trace system.
- Procedures should be in place to ensure that any staff or visitors displaying or feeling the above symptoms are required to leave the workplace and consideration is given to how they can be helped to get home safely. Additional training of security staff in the safe removal of visitors or members of the public who display the symptoms should be considered, alongside the possibility of additional security staff to cope with demands.
- Where staff are absent with symptoms or have been diagnosed with COVID-19, establishment of an investigation procedure can enable their recent workplace contacts to be checked and suitable action to be identified. For instance, particularly where a pattern of symptoms can be identified, a suspect area may be designated for deep cleaning and staff who may have had regular contact may be requested to work from home as a precautionary measure for a two-week period.
- Throughout any screening or tracing steps, any data collected should be treated in accordance with the designation of health records as “special category” under the General Data Protection Regulations. This means that that the employer should have carried out a data protection impact assessment. Data collection should not exceed that needed to fulfil the requirement to protect staff health, any information should be treated with appropriate safeguards to ensure its confidentiality, and employees must be clearly informed about what the data will be used for and their consent given. Further information available below in the section headed ‘Testing, track and trace in the workplace’.
- Employers should seek to avoid naming individuals who have been diagnosed with COVID-19 and should not provide more information to other staff than is necessary, but where disclosure is unavoidable in seeking to protect the health of the wider workforce, the affected employee(s) should be informed in advance.

What should the employer do, if any staff test positive for COVID-19

Employers must ensure their staff self-isolate if they have:

- have tested positive for coronavirus
- have been in close recent contact with someone who has tested positive and received a notification to self-isolate from NHS Test and Trace (Test and Protect in Scotland, Test, Trace and Protect in Cymru/Wales, HSCtracing in Northern Ireland).

Employers are also advised by the government that they may need to keep staff informed about COVID-19 cases in their workplace but should not name the individual. Employers are also required to take all reasonable steps to prevent other staff being infected through regular, thorough cleaning and encouraging good hygiene practice.

If there is more than one case of COVID-19 in a workplace, employers in England should contact their [local health protection team](#) to report the suspected outbreak who will then undertake their own risk assessment, advise the employer on what further steps may be

required, and where necessary, establish a multi-agency incident management team to manage the outbreak.

Further advice on what employers should do, including the support they should provide for staff who are required to self-isolate is available on the government website www.gov.uk/guidance/nhs-test-and-trace-workplace-guidance. There may be additional steps your employer is required to take depending on the sector you work in.

More guidance for employers in **Scotland** www.gov.scot/publications/coronavirus-covid-19-test-and-protect/pages/advice-for-employers/

in **Cymru/Wales** <https://gov.wales/employers-coronavirus-test-trace-protect-guidance>

in **Northern Ireland** www.hseni.gov.uk/topic/covid-19-advice-and-guidance-places-work

The TUC have set up the website COVID Secure Check which collects the COVID-19 risk assessments published by employers and monitors good and bad practices.
<https://COVIDsecurecheck.uk/>

The TUC also has a 5-minute guide for workers on COVID-19 risk assessments
<https://learning.elucidat.com/course/5eb42594092f7-5ebc26efb60ce>

Where a risk assessment shows that a workplace is not sufficiently safe for a group of workers or an individual worker, redeployment of staff to a role conducted in a workplace that is deemed safe is an option, if working from home is not practical (further information in the section headed 'Redeployment of staff' below).

There is increasing evidence of significant variations across nations and regions of the UK in the rate of transmission (often referred to as the 'R number') regarding COVID-19. If a workplace is in an area with a high 'R number', additional safety measures may be required.

Testing, track and trace in the workplace

During the continuing spread of coronavirus, employers may propose that staff are tested for the virus or its antibodies under a workplace testing scheme. Most tests available for the virus involve swab tests into the nose or throat. (Further information on testing is available from the UK government www.gov.uk/getting-tested-for-coronavirus)

Under the General Data Protection Regulations (GDPR), "personal data related to the physical or mental health of a natural person... which reveal information about his or her health status" is 'special category personal data', which means additional protections for the individual.

Testing must therefore comply with the GDPR and the Data Protection Act 2018. This means that the employer should produce a data protection impact assessment (DPIA) should any health testing be proposed, and keep detailed records of how data is to be categorised, documented and stored.

The employer will need a very good reason for asking for and collecting such information. They must also have explicit consent from the employee.

The TUC warns that “the workplace is clearly not a suitable place for the testing of those with coronavirus symptoms given the need to protect the health of the affected worker and prevent contagion to their colleagues. They should be in social isolation at home, receiving either full pay or sick pay.

It is generally not lawful to require workers to have any particular medical treatment or procedure, such as taking a coronavirus test.

But, as with drug and alcohol testing, it may be something an employer might seek to require on the grounds that the specific nature of a worker’s role requires it.

We would urge that where employers seek to introduce a workplace testing scheme, whether they intend it to be obligatory or voluntary, that they consult with trade unions. This would cover issues like the purpose of testing, the processing of data, and guidelines for those who have been tested but are awaiting results...

Testing should be available to all workers in a workplace, not just employees. It makes little sense, if the aim of testing is to protect a workforce, to exclude for instance contractors who are operating in a workplace.

Workers should be paid for the time spent undertaking a test, and time off taken while waiting for test results, at the request of an employer.

Employers should also be acutely aware of the special responsibilities attached to the handling of healthcare data.”

The Information Commissioner’s Office (ICO) warns “When it comes to compliance for special category data, all roads lead to the **Data Privacy Impact Assessment (DPIA)** which will come under scrutiny if compliance is not as strong as it should be or indeed if simply the ICO would like to see it. In short, the DPIA will be crucial to demonstrating compliance and accountability.”

The key thing for workplace reps or branches to refer to is the Information Commissioner’s Office’s guidance and it may be helpful to quote from this in any negotiations with the employer.

Workplace testing guidance for employers from ICO

<https://ico.org.uk/global/data-protection-and-coronavirus-information-hub/data-protection-and-coronavirus/workplace-testing-guidance-for-employers/>

in particular see: <https://ico.org.uk/global/data-protection-and-coronavirus-information-hub/coronavirus-recovery-six-data-protection-steps-for-organisations/>

Some concern had also been expressed about the downloading of any test and trace or contact-tracing app onto smartphones, particularly as the UK government’s original contact-tracing app was believed to breach privacy and GDPR rights.

The UK government eventually released a revamped contact-tracing **NHS COVID-19 app** for England and Cymru/Wales in late September 2020. (Earlier, in Scotland, there was the launch of the **Protect Scotland** app. In Northern Ireland there is the **Stop CovidNI** contact tracing app.) This new app contained a number of improvements to protect individual users’

privacy and identity. The app collects very little information, most of which is recorded on the phone itself, and the app will be used exclusively for contact-tracing purposes with no centralised access to any data collected. The technology is similar to that already being used in countries that have released and used their app for some time, and there have been no major security issues yet.

However, there are some concerns about the effectiveness of the app, particularly as it is reliant on Bluetooth signals that may send false alerts. It also does not work on older types of mobile phones. There appears to have been a glitch in early usage of the app whereby warning notifications of possible COVID-19 exposure are received that soon disappear from the phone and provide no further information. These are actually 'default messages' linked to the app's operating system and do not need to be acted upon. The government has said that it will send a second separate message should a person be required to self-isolate.

The individual's consent to download and use such an app is essential. If it becomes a requirement of the employer, they would also need to make very clear all details in advance such as if the smartphone needs to be left on all the time, before consent can be willingly given.

The employer should not insist that an employee download the app onto their personal phone. They would have to fully justify the need, particularly as additional personal information could also be collected outside of the work environment and work need. For example, as the ICO state all mobiles have "a unique device identifier such as an IMEI number: even though this does not name the individual, if it is used to treat individuals differently it will fit the definition of personal data."

As the Information Commissioner's Office (ICO) guidance '[Privacy in mobile apps](https://ico.org.uk/media/for-organisations/documents/1596/privacy-in-mobile-apps-dp-guidance.pdf)' (<https://ico.org.uk/media/for-organisations/documents/1596/privacy-in-mobile-apps-dp-guidance.pdf>) warns: "You should only collect and process the minimum data necessary for the tasks that you want your app to perform... You should aim to use the least privacy-intrusive data possible." It would also be essential to ensure that any data collected is stored securely.

In addition, in order to comply with the Privacy and Electronic Communications Regulations (PECR) if relevant the ICO states that "app developers should ... provide clear information to users about what the app does, and exactly how it uses their information, before users click to install the app. It is also important to consider user privacy controls and avoid switching optional features on by default. This ties in closely with the requirements of the Data Protection Act and the GDPR."

Once again, if contact-tracing apps are to be introduced into the workplace, the key starting point for reps and branches with concerns is to demand to see the data protection impact assessment. The [TUC recommend](#) that "tracing apps or similar technology should only be used after agreement between employers and recognised trade unions on:

- the purpose of the app
- the type of data collected
- a limit on the use of technology to the period of the pandemic

- how long the data will be kept,
- methods for obtaining workers' consent.”

TUC's report on Testing and Tracing for COVID-19

www.tuc.org.uk/research-analysis/reports/testing-tracing-COVID-19

Workplace testing guidance for employers from ICO

<https://ico.org.uk/global/data-protection-and-coronavirus-information-hub/data-protection-and-coronavirus/workplace-testing-guidance-for-employers/>

A particular concern in employment is if such an app should ever become a condition for returning to work.

UNISON does support the test and trace approach as part of the wider aim to limit the spread of the virus, help get people back to work and get the economy back on track.

However, implementation must be transparent, fair and equal for all workers and any personal data collected by employers or the government as part of that process including through an app, must be responsible and proportionate and meet our data privacy rights.

Conversely, some organisations have been reported as banning use of the app in the workplace. The guidance from the NHS is clear:

“It's important you use the app at all times, including while at work, except if you:

- store your phone in a locker while you're working or are involved in a leisure activity, like swimming
- are already protected by a Perspex (or equivalent) screen
- are a [healthcare worker working in a healthcare building such as a hospital or GP surgery](#)
- a worker in social care and are wearing medical grade PPE such as a surgical mask

If your phone is not with you, use the 'pause' function on the app so that the contact tracing part doesn't work. If you forget, you might get an alert because an infected person was near your phone when your phone wasn't with you.”

Depending on the workplace, it may be worth drawing the attention of the employer to the NHS guidance.

UNISON Scotland has given specific advice that, where normal rules at work allow you to have your phone on your person, and you are not in a clinical setting, then **the app should remain on.**

UNISON has also provided the following advice to members working in school:

“A small number of schools have told staff to turn the NHS app off the whole time when they are in schools. This is wrong – [Department for Education guidance](#) is clear: pausing contact tracing in schools is only recommended in 3 situations:

- when an individual is not able to have their phone with them, for example because it is stored in a locker or communal area – this is to avoid the app picking up contacts when the individual is not with their phone
- when an individual is working behind a Perspex (or equivalent) screen, fully protected from other colleagues and members of the public, as the individual is considered to be adequately protected from contracting coronavirus (COVID-19)
- in a health or care setting where staff are wearing medical grade PPE (for example, a surgical mask) as these individuals are also considered to be adequately protected.”

Where mobile phones are allowed to be on and with the student at all times, it is recommended that contact tracing is left on by students, to be consistent with general guidance on the use of the app. There are still likely to be times when students and staff are not near their phones, such as during physical education or in some work placements in FE. In these situations, contact tracing should be switched off, and settings might want to issue reminders to pause contact tracing for these sessions and turn it back on afterwards.

Where mobile phones are required to be left in lockers or bags in communal areas at all times, it is recommended that settings advise or require students to pause contact tracing whilst on the premises under these circumstances, to avoid the app misidentifying close contacts. When someone switches it off, the app will give the user the option to set a reminder for 4, 8 or 12 hours, after which they will receive a notification to remind them to switch contact tracing back.

Quick checklist

Branches are advised to hold a meeting with employers on any proposals for monitoring, surveillance and testing of employers in relation to COVID-19, in particular to try to get agreement on the following:

- Employers who propose to use a workplace testing scheme should explain their reasons for collecting the information and produce a Data Protection Impact Assessment (DPIA)
- They should clarify how test data is to be categorised, documented and safely stored, for how long and for what purpose
- Employers should be prevented from having access to data gleaned from any voluntary state-run app
- Existing privacy rules, including those embedded in the General Data Protection Regulation (GDPR), must be respected
- If instigated by the employer and it is a requirement of the role, employers should clearly explain the purpose of the app, the type of data that will be collected, and how long the data will be kept
- Workers must give their consent and trade unions should be consulted before an employer starts to collect data from testing or contact-tracing apps and make data-driven decisions in the workplace

- Employers should allow employees to keep any voluntary state-run app on, where normal rules at work allow them to have their phone on their person, and they are not in a clinical setting.

Vaccination in the workplace

Now that two different COVID-19 vaccines have been approved in the UK, having met the Medicines and Healthcare Products Regulatory Agency strict standards of safety, quality and effectiveness, vaccination of the public has started in the UK.

Priority groups include care home residents, health and care staff, the elderly and the clinically extremely vulnerable. The management of the vaccination programme for staff will be handled separately by each administration in England, Scotland, Cymru/Wales and Northern Ireland.

The Prime Minister has indicated that the government does not plan to make the vaccine mandatory.

N.B: UNISON reps and branches should **not** advise any member to be vaccinated against their will. UNISON reps and branches should **not** advise members to refuse a vaccination. This is an individual decision for the staff member alone to make.

The TUC's view is that getting vaccinated must not be made a condition of employment or access to public services and that staff should be given paid time-off to get vaccinated.

Guidance from UNISON to health branches

“UNISON has strongly advocated for health and care staff to be given priority access to the vaccination. However, as with the flu vaccination, no health or care worker should be forced to receive the COVID-19 immunisation.

Our priority is to ensure that employers make the vaccine easily accessible to all staff who are eligible and provide them with the full information they need to make an informed decision.

We have secured a commitment that there will be no negative implications for staff who refuse the vaccine. We are also working to confirm that immunisation will not influence decisions made about terms and conditions such as re-deployment, shielding, or pay progression.”

Branch checklist to use to engage with employers on their plans for offering the COVID-19 vaccination to staff in the NHS.

Further information for NHS workers: www.unison.org.uk/at-work/health-care/big-issues/covid-19-advice-health-workers/#heading-1

Guidance from UNISON to social care branches

“UNISON has strongly advocated for care and health staff to be given priority access to the vaccination. However, as with the flu vaccination, care workers should not be forced to receive the COVID-19 immunisation.

We want to ensure that employers make the vaccine easily accessible to all staff who are eligible and provide them with the full information they need to make an informed decision.

Getting vaccinated must not be made a condition of employment or access to public services and that staff should be given paid time-off to get vaccinated. The government has also indicated that they do not wish to see individuals forced to take the vaccine.

Branches should seek a commitment from social care employers that there will be no negative implications for staff who refuse the vaccine.

Branches should seek confirmation from employers that immunisation will not influence decisions made about terms and conditions such as redeployment, shielding, or pay.”

Further information for social care workers: www.unison.org.uk/care-workers-your-rights/coronavirus-advice-social-care-workers

There may be circumstances where individual staff members, for medical or other reasons, do not wish to be vaccinated or that it would be unreasonable for an employer to insist that they be vaccinated.

In such circumstances, the branch and region should ensure that there will be no negative implications for staff who refuse the vaccine.

Branches should seek confirmation from employers that a member’s refusal to be vaccinated will not influence decisions made about terms and conditions such as continued provision of work, re-deployment, shielding, or pay.

Under both GDPR and the Data Protection Act, processing of personal data concerning health – and this would include making note of who or who hasn’t been vaccinated in the workforce – constitutes a special category. Collection of special category data is prohibited, unless “necessary for the purposes of carrying out the obligations and exercising specific rights of the controller or of the data subject in the field of employment” and “providing for appropriate safeguards for the fundamental rights and the interests of the data subject”.

Whilst the vaccine is shown to protect most recipients, there is no clear scientific evidence to date that shows it stops transmission to others. Legal experts suggest (as reported in [Personnel Today](#) on 18 December 2020) that as yet, no-one knows “if there’s a good reason to collect this data” to justify it under data protection legislation.

If branches have specific questions about the vaccination programme or the way employers are approaching this issue, the branch should contact their regional organiser (www.unison.org.uk/regions).

If individual members are subjected to disciplinary action, detriment or dismissal because they refuse to be vaccinated, the branch and region should represent them. Where necessary, legal advice should be sought from Thompsons for those members.

Another key issue for consideration in relation to vaccination is any **time spent travelling to and from a vaccination centre**, which should be paid. Concern has been particularly expressed about care workers and the UNISON advice to branches (as of December 2020) is as follows:

“Eligibility for and receiving the vaccine is a direct result of employment and therefore time spent travelling to the place where the vaccine is delivered and receiving the vaccine should be paid at the normal rate. These are the arrangements which will be applied for all NHS staff and social care staff should not be treated differently. Employers who fail to do this are creating a disincentive for workers to be vaccinated.

As the Pfizer/BioNTech vaccine is likely to be delivered at mass vaccination sites away from workplaces, it is particularly important that this time is paid at the normal hourly rate.

UNISON has repeatedly sought assurances from the Department of Health and Social Care that employers will be told to offer paid time off for travelling to vaccination sites and receiving the vaccine. We have also asked that travel expenses are covered. At the time of writing, we have yet to receive clarification on this point.”

Quick checklist

- How can reps and branches best work with employers to encourage workers to be vaccinated voluntarily? Employers do not have a right to force workers to be vaccinated. Employees will need to give consent for the vaccination to take place.
- Has the employers made getting vaccinated easily accessible to all staff who are eligible and provided them with the full information they need to make an informed decision?
- Is all information on vaccination open and honest and in formats accessible and understandable to all?
- Will the employer continue to pay staff at their normal rate during time spent travelling to the place where the vaccine is delivered and receiving the vaccine? Not agreeing to this will create a disincentive for workers to be vaccinated.
- Will the employer also reimburse to staff any associated travel expenses?
- Employers should not rely solely on the vaccination programme for preventing risk of exposure to COVID-19. It is important that safe working practices and COVID-secure workplaces should continue.
- If vaccination is a requirement of the role, employers should clearly explain why it is essential. There may be workplace-specific arguments to support vaccination as a precondition of work on health and safety grounds, but this should be clearly recorded in the risk assessment.
- Employers should clarify what type of vaccination data will be collected, and how long the data will be kept and produce a relevant Data Protection Impact Assessment (DPIA).
- Employers will need to clarify what will happen to workers who cannot be vaccinated for legitimate reasons such as not being in one of the groups currently eligible to be vaccinated or unable to be vaccinated as a result of illness, mental health problems, religion or philosophical belief, or other genuine reasons. They could be allowed to work from home, redeployed or medically excluded on full pay. Alternatively, regular testing of such individuals may reduce health and safety risks sufficiently in some workplace situations.

- It is important to get the employer's commitment (as UNISON negotiators have with the NHS) that there will be no negative implications for staff who refuse the vaccine.

Health and safety risk assessment checklist

The TUC warns that employers who do not update their risk assessments, in light of the new strains and the new knowledge about how the virus is transmitted, may be breaking the law.

[They are calling on the government to urgently update workplace safety guidance](#) to:

- Reduce the number of people permitted in a space at any one time, to aid ventilation and social distancing
- Require the wearing of face coverings in all indoor workplaces, except for those workers who are exempt
- Return to the “gold standard” of 2m social distancing wherever possible, removing the confusion about 1.5m social distancing
- Require any work activity that can be completed safely outside to be conducted outside
- Set a safety threshold for ventilation of indoor workplaces with outside air – CIBSE recommends at least 10 litres of outside air in offices per second per person
- Update guidance on workplace face coverings to the WHO standard of three protective layers
- Expand the number of jobs where workers should use FFP3 face masks, removing 99 per cent of particles, and ensure enough are available.

- Has the employer considered all the potential hazards for the way the work is actually done? Are they assessing how the work is ‘supposed’ to be done rather than how it is actually carried out?
- Have they identified all the possible ways COVID-19 could be spread in the workplace?
- Has the risk assessment included the risks of infection through contact with service users?
- Has the risk assessment taken account of any local or national restrictions imposed by central or local government?
- Has the risk assessment been reviewed and updated in relation to new government and medical advice, government restrictions and in response to the increased risks identified by the new variant of the virus?
- Has the employer considered other hazards (such as stress and anxiety) that have resulted from the current pandemic?
- Have they considered all those who might be harmed (including contractors, service users etc)?
- Has the employer considered all the ways in which their staff or others may be harmed/infected?
- Have they identified all those to whom they owe a duty of care, whether they be staff or service users, including those classed as being either at most or moderate risk from COVID-19 due to an underlying health condition?

- Has the employer identified all other groups at increased risk through COVID-19 (such as Black workers, pregnant workers, disabled workers, older workers)?
- Have they considered the risk to workers who live with an extremely clinically vulnerable person, for whom government guidance says they should pay “particular attention” to or who may be advised to shield?
- Have they considered the risk of infection in workers travelling to work and between work places?
- Has the employer made a suitable and sufficient assessment of the risks?
- Have the principles of prevention been applied? Are there any other measures that you or the other employees can think of that could further reduce the risks faced?
- Is health surveillance being provided (through testing and contact tracing). If so, is it adequate?
- Has the employer recorded the key findings of the risk assessment?
- Does the risk assessment state who has the responsibility of ensuring that it is implemented or at least followed up?
- Have workplace safety reps been consulted on the risk assessment?
- Have the employees been informed of what they need to know to remain safe?
- Has the employer implemented all the measures of prevention and control?
- Is there a date given for when the risk assessment should be reviewed?
- Have there been any changes which indicate that the risk assessments should be reviewed (such as increasing numbers working in the normal workplace or a local lockdown in place)?
- Is it time for the periodic review of risk assessments? Are safety reps consulted on the appointment of competent persons? Are risk assessments carried out by competent persons? Are safety reps and workers meaningfully consulted on the risk assessments?
- Have any specific regulations been considered and complied with, for example those covering hazardous substances, asbestos, or fire?

More information in the UNISON risk assessment checklist for safety reps

www.unison.org.uk/content/uploads/2020/06/26094-1.pdf

UNISON risk assessment presentation www.unison.org.uk/covid-19-risk-assessment-presentation/

UNISON guidance on risk assessments for Black, disabled and other vulnerable workers

www.unison.org.uk/content/uploads/2020/10/26104.pdf

Caught COVID-19 at work? Or if you're the relative of a UNISON member who has tragically died from contracting the disease at work, call UNISON's free legal helpline for advice: 0808 252 2783 www.unison.org.uk/get-help/services-support/legal-services/

Dealing with local and nationwide restrictions

Following a surge in coronavirus cases in specific areas, local or national action continues to be taken either by central government, devolved governments or by local authorities to contain and manage outbreaks. Trade union reps and branches need to keep informed as much as employers.

For information on the local or national restrictions that may be in place for specific cities or regions or countries:

In England www.gov.uk/guidance/national-lockdown-stay-at-home

In Scotland <https://www.gov.scot/coronavirus-covid-19/>

In Cymru/Wales <https://gov.wales/coronavirus-regulations-guidance>

In Northern Ireland www.nidirect.gov.uk/articles/coronavirus-covid-19-regulations-guidance-what-restrictions-mean-you

Local restrictions have varied. For example, much earlier in 2020 in Northampton an early outbreak was linked to specific factories and the workers within them. Elsewhere there have been the closure of some businesses and venues, limitations on social contact with people outside of an individual's household, including in pubs and restaurants and visits to care homes.

In some cases, these restrictions have led to the temporary closure of businesses, particularly in the hospitality sector and some restrictions on travel.

Working from home therefore continues to be regarded as one clear way of keeping staff safe from the virus and must be the starting point in discussions with employers.

However, if working from home is not feasible, such as for those “[public sector employees working in essential services, including education settings](#),” decisions about working in the normal workplace should be based on a thorough COVID secure risk assessment for all roles and all vulnerable groups.

For sector-specific advice see:

- [Education workers](#)
- [Healthcare workers](#)
- [Social care workers](#)
- [Local government workers](#)
- [Police staff](#)
- [Energy workers](#)
- [Water Environment and Transport workers](#)

It is clearly important for union reps and branches to keep updated and informed about changes to restrictions and the potential impact on the workers.

Quick checklist

- Is the employer fully aware of any local, regional or national restrictions put in place by central, devolved or local government? Do they raise awareness of these changes to staff?
- Are workplace COVID-19 risk assessments regularly reviewed to fully take account of any new restrictions or guidance?
- Do any risk assessments consider vulnerable workers (those classified as clinically vulnerable or clinically extremely vulnerable, disabled workers, Black workers, pregnant workers) to fully take account of their additional risks?
- If clinically extremely vulnerable workers are advised to shield by national or local government if there is an increase in the transmission of COVID-19 in the community, will the employer allow affected workers to immediately work from home, or if this is not possible, to take special paid leave?

What about 'vulnerable' workers?

The workers who have been identified by the government as most at risk from the virus are those classified as **'clinically extremely vulnerable'**.

People with the following conditions are automatically deemed clinically extremely vulnerable:

- solid organ transplant recipients
- people with specific cancers:
- people with cancer who are undergoing active chemotherapy
- people with lung cancer who are undergoing radical radiotherapy
- people with cancers of the blood or bone marrow such as leukaemia, lymphoma or myeloma who are at any stage of treatment
- people having immunotherapy or other continuing antibody treatments for cancer
- people having other targeted cancer treatments that can affect the immune system, such as protein kinase inhibitors or PARP inhibitors
- people who have had bone marrow or stem cell transplants in the last 6 months or who are still taking immunosuppression drugs
- people with severe respiratory conditions including all cystic fibrosis, severe asthma and severe chronic obstructive pulmonary disease (COPD)
- people with rare diseases that significantly increase the risk of infections (such as severe combined immunodeficiency (SCID), homozygous sickle cell disease)
- people on immunosuppression therapies sufficient to significantly increase risk of infection
- people with problems with their spleen, for example splenectomy (having your spleen removed)
- adults with Down's syndrome
- adults on dialysis or with chronic kidney disease (stage 5)
- women who are pregnant with significant heart disease, congenital or acquired
- other people who have also been classed as clinically extremely vulnerable, based on clinical judgement and an assessment of their needs. GPs and hospital clinicians have been provided with guidance to support these decisions.

People in this group will previously have received a letter from the NHS or from their GP telling them this. They may have been advised to shield in the past and may need to do so again, such as if they live in a Tier 4 area in England and under the recently announced [third lockdown in England](#).

The [UK government currently stresses](#) that "Those who are clinically extremely vulnerable should not attend work, school, college or university, and limit the time you spend outside the home. You should only go out for medical appointments, exercise or if it is essential."

Employers should allow clinically extremely vulnerable staff members to work from home or to take special paid leave if they need to shield.

Ideally, clinically extremely vulnerable workers who are unable to work from home and who live or work in areas of the UK where shielding advice has been paused, should also be allowed special leave on full pay, unless a fully COVID-19 secure workplace can be assured taking account of that individual's particular risks.

If the employer will not grant these workers special paid leave, they may be eligible for furlough (through the Job Retention Scheme, see above). If this is not possible, they may be eligible for occupational or Statutory Sick Pay or for benefits such as Employment and Support Allowance or Universal Credit.

However, while an employer may have decided to put a shielding employee on furlough, it must not subject anyone with a protected characteristic (eg disability or pregnancy) to unlawful discrimination.

Further details:

Shielding advice and support in Scotland www.gov.scot/publications/covid-shielding/

Shielding extremely vulnerable people in Cymru/Wales <https://gov.wales/shielding-extremely-vulnerable-people>

COVID-19 guidance for clinically extremely vulnerable and vulnerable people in Northern Ireland www.nidirect.gov.uk/articles/coronavirus-covid-19-guidance-clinically-extremely-vulnerable-and-vulnerable-people

After this group, the more widely defined classification of **'clinically vulnerable' people** at moderate risk of getting more seriously ill from the virus, include people who:

- are 70 or older
- have a lung condition that's not severe (such as asthma, COPD, emphysema or bronchitis)
- have heart disease (such as heart failure)
- have diabetes
- have chronic kidney disease
- have liver disease (such as hepatitis)
- have a condition affecting the brain or nerves (such as Parkinson's disease, motor neurone disease, multiple sclerosis or cerebral palsy)
- have a condition that means they have a high risk of getting infections
- are taking medicine that can affect the immune system (such as low doses of steroids)
- are very obese (a BMI of 40 or above)
- are pregnant – see advice about pregnancy and coronavirus

There are other things that can make people more likely to get seriously ill from coronavirus, including if they are:

- over 60 – your risk increases as you get older
- from a Black, Asian or minority ethnic background (as described by the NHS).

Therefore, as identified by the government, these vulnerable workers, many of whom may be disabled workers, as well as those who are pregnant or older warrant some special consideration with regard to the risks faced during the pandemic.

UNISON maintains that any worker who is either clinically vulnerable or clinically extremely vulnerable should be offered an individual risk assessment, and that this should be extended to Black workers as well.

If a worker lives with someone who is either clinically vulnerable or clinically extremely vulnerable then best practice is for the employer to allow the worker to work from home or to take special paid leave. It is important for workers to tell the employer their particular circumstances. If they were selected for furlough, and are being told that they must now return to work, it will be important that the employer avoids making a decision which is discriminatory due to their association with someone who is disabled, pregnant or on maternity leave.

If the worker cannot work from home then the employer should individually risk assess them and take steps to minimise their risk in the workplace, and also consider if they travel by public transport.

UNISON reps and branches should seek to secure additional protection and support for our vulnerable members and those who live with someone who is vulnerable.

For example, in 2020 UNISON sent out the following advice to branches supporting members working in schools:

“UNISON is calling on schools to continue to allow all Clinically Extremely Vulnerable (CEV) staff to work from home (or stay at home on full pay where they can’t work from home) and for branches to support members where their employer refuses to allow this.

We are also calling on employers to prioritise home working options for Clinically Vulnerable (CV) staff. This is particularly important where staff have greater vulnerability due to a combination of personal factors or if they work in roles involving greater risk.

UNISON believes that staff being asked to return to their workplace should be given an individual risk assessment. Where either the employer refuses to conduct an individual risk assessment, or the CV employee does not believe that the measures implemented by the employer are enough to keep them safe in the workplace, we are urging branches to fully support the employee being permitted to work at home, pending further medical advice and a full referral to occupational health.”

For the latest information www.unison.org.uk/at-work/education-services/key-issues/covid-19-closures/

Quick checklist

- Seek preference for working from home where an employee or those they live with have greater vulnerability to severe health consequences from contracting COVID-19.
- Aim for achieving continued full pay for any staff member who is unable to work due to the vulnerability of their health, intensified caring responsibilities, transport limitations, local restrictions.
- If this cannot be achieved, seek a significant extension of paid special leave for such staff.
- Where an employer is looking to continue to furlough staff under the [Job Retention Scheme](#), highlight that government guidance has specifically allowed furloughing of staff classified as clinically extremely vulnerable workers.
- Alternatively, these clinically extremely vulnerable workers who cannot work from home can claim Statutory Sick Pay although should ideally receive enhanced contractual sick pay.
- Review procedures to ensure that the related absence does not contribute to triggers for management action in disciplinary, capability, attendance management or redundancy policies.

Disabled workers

In the case of disabled workers, health and safety protections are supplemented by the demands of equality legislation. Under the Equality Act 2010¹, it is against the law to discriminate against someone because of disability. The legislation's definition is that "a person has a disability if she or he has a physical or mental impairment which has a substantial and long-term adverse effect on that person's ability to carry out normal day-to-day activities."

Therefore, it is clear that many of those whom the government and NHS has classified as 'clinically vulnerable' or 'clinically extremely vulnerable' will be considered disabled workers under the equality legislation.

As the UK government has stated "as a general principle, working from home reduces the chance of you being exposed to the virus."

Ideally the employer will look at whether they can continue to temporarily redeploy disabled and clinically vulnerable people to a job that can be done at home.

It is crucial that workplace risk assessments are thorough and take account of disabled workers' and clinically vulnerable workers' specific circumstances. [The UK government has stated](#) that clinically extremely vulnerable people may be eligible for Statutory Sick Pay (SSP) or Employment Support Allowance (ESA).

¹ In Northern Ireland, this requirement is enshrined in the Disability Discrimination Act 1995

It should also be noted that recent Office for National Statistics (ONS) data² has shown that disabled adults are more likely than non-disabled adults to be experiencing some form of depression during the pandemic. Around one in three disabled adults experienced moderate to severe depressive symptoms during the pandemic. Risk assessments should also take account of the additional stress placed on disabled staff aware of the potential increased COVID-19 risk they face and the victim-blaming approach of much of society.

Quick checklist

Risk assessments for disabled workers (and for those who live with a disabled person or clinically vulnerable person) should cover the following:

- Could the disabled worker work from home?
- If not, does the disabled worker come into contact with other people at work?
- Does their job allow them to maintain an appropriate social distance from colleagues and members of the public as recommended by the government? (distancing requirements are to keep 2 metres apart from another person, and in England, where people cannot be 2 metres apart, to have the ability to manage transmission risk)
- Does the disabled worker have any reasonable adjustments that need to be taken into account?
- Do they face any other additional risks that may make them more vulnerable to COVID-19?
- Does the risk assessment include consideration of how the disabled worker travels to work and any additional risks this might pose?
- Has the employer considered how to remove or reduce the risks that have been identified? This could include: allowing the disabled worker to work from home as much as possible; redeploying them to the safest available on-site role, enabling them to stay an appropriate distance away from others; reducing their shift lengths so they have less interaction with other people; providing them with additional personal protective equipment (PPE); staggering their start time so they travel when public transport is less busy.

More information: UNISON guidance for disabled members

www.unison.org.uk/content/uploads/2020/06/26119_COVID-19_guidance_for_disabled_members-2.pdf

A recent [UNISON survey](#) received responses from more than 4,000 disabled workers across the UK which showed that half worked from home during the Covid-19 crisis. It also

² ONS 18 August 2020

www.ons.gov.uk/peoplepopulationandcommunity/wellbeing/articles/coronavirusanddepressioninadultsgreatbritain/june2020

found that nearly three quarters (73%) of disabled staff felt they were more productive or as productive working from home compared to their pre-lockdown place of work.

Some employers may still agree to pay occupational sick pay or special leave for disabled staff who are clinically extremely vulnerable to enable them to continue shielding at home throughout the pandemic.

Other employers have furloughed shielded staff, (and now can continue to do so until the end of April 2021). However, it must not subject anyone with a protected characteristic (eg a disabled or pregnant worker) to unlawful discrimination.

In recognition of the unprecedented scale of the COVID-19 pandemic, employers should also discount any COVID-19 absence from triggers for action specified in any attendance management, disciplinary, redundancy or capability policy.

In addition, there are many more disabled workers who may need their employer to remove, reduce or prevent obstacles in the workplace in order to return to their normal workplace.

Any reasonable adjustments for a safe return must be assessed and provided, as failure to provide reasonable adjustments may constitute a breach of the equality legislation. The [Equality and Human Rights Commission](https://www.equalityhumanrights.com/en/advice-and-guidance/coronavirus-COVID-19-guidance-employers-reasonable-adjustments-employees) has further information on employer responsibilities providing reasonable adjustments for disabled workers during the COVID-19 pandemic www.equalityhumanrights.com/en/advice-and-guidance/coronavirus-COVID-19-guidance-employers-reasonable-adjustments-employees

The [Access to Work programme](#) is administered through Jobcentre Plus and may provide grants towards the cost of various adjustments including adapting or purchasing equipment. Many employers are unaware of the existence of Access to Work. Workers are eligible if they have a disability or health condition. The employer or worker then purchases the equipment, etc and reclaims the grant from Access to Work. The employer may have to make contributions.

For latest details on levels and eligibility for grants, it is important for disabled workers to check directly with an Access to Work Adviser. Contact details are at www.gov.uk/access-to-work (www.nidirect.gov.uk/articles/access-work-practical-help-work for workers in Northern Ireland).

Black workers

Employers also need to consider, in their risk assessments, the implications of research pointing to Black workers being disproportionately adversely affected by COVID-19 compared to other groups. There is clear evidence that Black workers are at increased risk of serious illness and death from COVID-19. [The Office for National Statistics](#) highlighted in December 2020 that analysis of the characteristics of people testing positive for the coronavirus (COVID-19) in England found that people from other ethnic backgrounds are more likely to test positive than people of White ethnicity in the majority of regions in England.

This continues to reflect the earlier [Public Health England report](#) and subsequent publication of the [‘Beyond the data’ part of Public Health England’s review of COVID-19 impact on Black communities](#). The review found “that the highest age standardised diagnosis rates of

COVID-19 per 100,000 population were in people of Black ethnic groups (486 in females and 649 in males) and the lowest were in people of White ethnic groups (220 in females and 224 in males)... Death rates from COVID-19 were higher for Black and Asian ethnic groups when compared to White ethnic groups.”

Although the review contains recommendations for the Westminster government the recommendations are clearly of interest to the devolved administrations in their work. One of the recommendations covers the use of occupational (or job-related) risk assessments to reduce exposure to the virus.

The complex reasons for the disparities are being further investigated but action is needed now to protect Black workers.

UNISON believes that workplaces require the best practice in equality-impacted risk assessments including a sensitive assessment of underlying health conditions that put staff at increased risk and immediate action on the findings.

But this does not necessarily mean treating everyone the same but instead responding to individual needs and circumstances. The risk assessment should be thorough and take account of a Black worker’s specific circumstances. There should be no detriment to their pay, benefits or employment rights as a result of any action taken.

Quick checklist

Risk assessments for Black workers (and for those who live with a Black person) should cover the following:

- Could the Black worker work from home?
- If not, does the Black worker come into contact with other people at work?
- Does their job allow them to maintain an appropriate social distance from colleagues and members of the public as recommended by the government? (distancing requirements are to keep 2 metres apart from another person, and in England, where people cannot be 2 metres apart, to have the ability to manage transmission risk)
- Do they face any other additional risks that may make them more vulnerable to COVID-19?
- Does the risk assessment include consideration of how the Black worker travels to work and any additional risks this might pose?
- Has the employer considered how to remove or reduce the risks that have been identified? This could include: allowing the Black worker to work from home as much as possible; redeploying them to the safest available on-site role, enabling them to stay an appropriate distance away from others; reducing their shift lengths so they have less interaction with other people; providing them with additional personal protective equipment (PPE); staggering their start time so they travel when public transport is less busy.

More information: UNISON guidance for Black members www.unison.org.uk/health-news/2020/06/covid-risk-black-staff-vulnerable-groups/attachment/26128_covid-19_guidance-for-black_members_leaflet/

There is clearly also an urgent training need for managers to properly consider the potential impact of their decisions on groups with protected characteristics, alongside checks for patterns of inequality across teams and departments.

Black staff are shown to be less likely to report safety concerns and more fearful of the consequences of raising issues. There is evidence of this across workplaces and employers, but it is particularly the case for workers on low-paid, insecure contracts and proportionately more Black workers are unfortunately still on these types of contracts.

There is also an issue in the risk assessment process itself and how risk is subsequently addressed. Communication with Black workers is key, including ensuring that they are properly represented in staff networks and that they are engaged in a collective approach to dealing with risks.

Along with all staff, Black workers should be positively encouraged to be open about long-term health conditions or impairments if they are disabled, without risk of any penalty or discrimination within the workplace.

Risk assessments must also take account of the additional stress placed on Black staff aware of the potential increased COVID-19 risk they face and the victim-blaming approach of much of society.

It is vital that risk assessments consider ethnic monitoring, as well as data collection on staff with other protected characteristics, to understand and act on emerging patterns. Employers must engage with Black staff groups, including union networks, to understand issues and solutions.

Employers must also ensure that decisions on deployment, redeployment, furloughing and redundancy as well as the treatment of vulnerable and shielding workers do not have a disproportionate impact on any groups.

Pregnant workers

Under the UK government coronavirus advice, pregnant women are classified as clinically vulnerable or in some cases clinically extremely vulnerable, meaning they could be at higher risk of severe illness from coronavirus. This additional risk to pregnant workers must be considered by employers when undertaking COVID-secure risk assessments of workplaces and [the advice remains](#) that pregnant women who can work from home should continue to do so.

Employers already have a legal obligation under the Management of Health and Safety at Work Regulations to assess the workplace risks for pregnant employees and their unborn children, and breastfeeding mothers who have returned to work. This continues but now must also address the potential risk of contracting COVID-19.

The [UK government advice](#) is clear:

“Pregnant women of any gestation should not be required to continue working if this is not supported by the risk assessment.”

As [Maternity Action highlight in their guidance](#), “all employers have a duty to assess workplace risks and this must specifically include risks to pregnant women and new mothers

at whatever stage of pregnancy.” If it is not possible for a pregnant worker to work from home, it is essential that the employer undertakes a risk assessment of each individual pregnant worker’s working environment and specifically looking at their role within it.

If the employer undertook a risk assessment prior to the COVID-19 pandemic, they should carry out a new assessment to consider these particular circumstances.

The risk assessment should also take account of any additional risks to the individual such as if the woman is Black or has any pre-existing medical condition. A UK Obstetric Surveillance System study in May 2020 found that pregnant women “from black, Asian and minority ethnic (BAME) backgrounds are more likely than other women to be admitted to hospital for coronavirus. Pregnant women over the age of 35, those who are overweight or obese, and those women who have pre-existing medical problems, such as high blood pressure and diabetes, also appear to be at higher risk of developing severe illness.”

It could be unlawful discrimination on the grounds of pregnancy if an employer unreasonably pressurises a pregnant worker to go to work or disciplines them for not going to work when they have a reasonable belief that they are at risk of infection.

Where the risks in the workplace cannot be mitigated, the employer should look at whether they can continue to temporarily redeploy pregnant workers to a job that can be done at home.

However, it is important that pregnant workers are not forced to take on different roles in order to keep their job. Agreement should be on a voluntary basis and with proper support provided by the employer such as additional training. Any redeployment is likely to mean a variation in the employment contract unless there is a ‘flexibility clause’ in the worker’s contract that allows a change to the job and duties.

Furloughing or paying sick pay might breach legal protections for pregnant workers and, if home working is not possible even with temporary redeployment, **medical suspension on full pay** is what should be called for, where no safe alternatives can be arranged.

But, as [Andy McDonald, Shadow Secretary of State for Employment Rights and Protections has reported](#), many pregnant women have been unlawfully put on Statutory Sick Pay (SSP) during the pandemic, affecting their maternity pay and other entitlements. In order to qualify for Statutory Maternity Pay, pregnant women need to have been paid at least £120 a week on average in the eight weeks leading up to their maternity leave. However, SSP is only £95.85 a week.

Sadly, pregnancy discrimination has continued through the pandemic. A recent online TUC survey via the website www.pregnantthenscrewed.com of over 3,400 women who have been pregnant or on maternity leave during the coronavirus crisis showed that one in four (25%) had experienced unfair treatment at work, including being singled out for redundancy or furlough or short-time working.

Pregnant women also reported that they were required to take sick leave when they were not sick, to take unpaid leave, to start their maternity leave early or to leave the workplace, because their employer did not act to make their workplace safe for them.

Employers should be careful to avoid the unlawful discrimination of individuals who have protected characteristics such as pregnancy under the Equality Act 2010³. Workplace reps and branches should also remind them of their responsibilities under Health and Safety legislation.

Where there is no suitable alternative work available that could be done from home, the employer should consider suspending the pregnant worker on full pay in line with requirements for the risk assessment of pregnant workers under The Management of Health and Safety at Work Regulations 1999, rather than furloughing.

The [Health and Safety Executive](#) is clear in their advice to employers:

“If you cannot put the necessary control measures in place, such as adjustments to the job or working from home, you should suspend the pregnant worker on paid leave. This is in line with normal requirements under regulation 16(3) of the Management of Health and Safety at Work Regulations 1999.”

Paid leave should be on full pay, based on the pregnant worker’s usual earnings, not just the pay based on their contractual hours. [As the government states](#), suspension “will last as long as the employee, or their baby, is in danger... The employee has the right to normal pay (including bonuses) for up to 26 weeks, as long as they’ve been in their job for a month or more.”

The [Health and Safety Executive \(HSE\)](#) confirms this requirement in their general guidance:

“If a significant health and safety risk is identified for a new or expectant mother, which goes beyond the normal level of risk found outside the workplace, you must take the following actions:

- **Action 1:** Temporarily adjust her working conditions and / or working hours; or if that is not possible
- **Action 2:** Offer her suitable alternative work (at the same rate of pay) if available; or if that is not possible
- **Action 3:** Suspend her from work on paid leave for as long as necessary to protect her health and safety, and that of her child.”

Branches and reps should try to negotiate to extend this period of suspension on full pay if necessary, dependent on the duration of the COVID-19 pandemic and accompanying risks.

Pregnant workers should not be put on sick pay (which ultimately could also affect the amount of maternity pay they will receive) nor forced to use annual leave or unpaid leave. Pregnant workers should only be paid sick pay if they are actually sick.

Employees who are pregnant during the COVID-19 pandemic can start maternity leave as

³ In Northern Ireland, under the Sex Discrimination (Northern Ireland) Order 1976

usual. Statutory maternity leave and pay entitlements do not change and the normal rules apply.

Quick checklist

- Can the pregnant worker work from home?
- If working from home is not possible can the pregnant worker be reasonably redeployed to other duties that can be carried out from home? It will need the pregnant worker's agreement and appropriate support from the employer such as training and IT equipment.
- If the pregnant worker is continuing to work at their normal workplace, has the employer made special provision for pregnant workers and undertaken individual COVID-19 risk assessments?
- Has the employer put in place sufficient measures to eliminate or minimise risks for pregnant workers including strict social distancing and isolation measures as required, handwashing and alcohol-based hand sanitisers, and use of personal protective equipment (PPE) where appropriate?
- If the pregnant worker is continuing to work at their normal workplace, can they follow government guidance on social distancing not only whilst at work but during their travel to and from work?
- Has the employer considered the suspension of pregnant workers on full pay if they are not able to work from home and action cannot be taken to address all the risks identified in the risk assessment at their normal workplace, and if suitable alternative employment is not available to allow the pregnant worker to work from home?

More information

UNISON guidance for pregnant members www.unison.org.uk/about/what-we-do/fairness-equality/women/key-issues/pregnant-workers-covid-19/

UNISON leaflet: COVID 19 – know your rights, guidance for pregnant women
www.unison.org.uk/content/uploads/2020/09/26189_COVID-19_Guide_for_pregnant_workers.pdf

Maternity Action briefing on the protection of pregnant women at work during the COVID-19 pandemic
<https://maternityaction.org.uk/wpcontent/uploads/Briefing-H-S-during-Covid-19-FINAL-PDF.pdf>

Maternity Action have also produced a model letter that the pregnant worker can use, with the support of their union, to write to their employer requesting health and safety protection during pregnancy
<https://maternityaction.org.uk/covidmaternityfaqs/write-to-your-employer-forhealth-and-safety-protection-during-pregnancy/>

The Equality and Human Rights Commission has further information on employer responsibilities towards pregnant workers during the COVID-19 pandemic
www.equalityhumanrights.com/en/advice-and-guidance/coronavirus-COVID-19-guidance-employers-your-duties-pregnancy-and-maternity

NHS COVID-19 advice during pregnancy
www.nhs.uk/start4life/pregnancy/coronavirus-covid19-advice-during-pregnancy/#faqwhere-can-i-get-information-on-coronavirus-and-pregnancy

Workers who live in the same household as a vulnerable person

If a worker lives with someone who is either clinically vulnerable or clinically extremely vulnerable then

If the worker cannot work from home then the employer should individually risk assess them and take steps to minimise their risk in the workplace, and also consider if they travel by public transport.

Workers who live in the same household as a clinically vulnerable person, a clinically extremely vulnerable person who has been shielding, a disabled person, a Black person, or a pregnant woman may be particularly concerned about returning to their normal workplace because of potential risks of bringing COVID-19 exposure to their family member or housemate.

It is important for workers to tell the employer their particular circumstances. Best practice is for the employer to allow the employee to continue to work from home throughout the pandemic or to take special paid leave.

An employer may have decided to furlough such an employee. That said, if the employer targets someone because of their close association with someone who has a protected characteristic under the Equality Act 2010 (e.g. someone who is vulnerable because they are disabled or pregnant) then the individual may have a claim of direct associative discrimination.

Similarly if they had previously been selected for furlough, and are being told that they must now return to work, it will be important that the employer avoids making a decision which is discriminatory due to their association with someone who is disabled, pregnant or on maternity leave.

If the worker cannot work from home then the employer should individually risk assess them. They should take steps to minimise their risk in the workplace taking account of the particular circumstances of the clinically vulnerable they live with. Employers should also consider if the worker has to travel by public transport and additional risks this creates.

Supporting workers who are reluctant to return to work because of health and safety concerns

UNISON believes that our members should never be in a situation where they might endanger themselves and others in the course of doing jobs. Putting members in that situation is potentially a breach of health and safety law and may spread coronavirus to people in high-risk groups. In some circumstances it may also amount to unlawful discrimination.

As a last resort, when faced with a dangerous working environment that cannot reasonably be averted, every employee has the right not to suffer detriment if they leave, or refuse to attend their place of work (or take other appropriate steps) in circumstances where they reasonably believe there is a risk of being exposed to serious and imminent danger (section 44 of the Employment Rights Act 1996).

Although this is very much a right of last resort, the context of a situation will be key on whether refusing to return to work or any other steps are appropriate. This means that an employee cannot automatically refuse a reasonable instruction to return to work without a good reason.

The right applies only so far as necessary to remove an employee and their colleagues from the immediate and serious danger. Therefore, this may not necessarily mean returning home, but instead to a place where the risk posed by that danger no longer exists. This may involve either remaining in the workplace, but in a safe place, or continuing to be available for other duties.

Essentially an employee must not be subjected to a detriment (e.g. disciplinary action) or dismissal where they reasonably consider:

- the danger to the employee, or their colleagues, to be serious and imminent; and
- the steps being taken (or proposed) by the employee are appropriate.

A good employer will provide all relevant information to show how it has complied with its obligations to enable a safe return to work before expecting its employees to return.

It must also consider further points if the employee has a protected characteristic under the Equality Act 2010, such as those who are Black, disabled or pregnant, or live in the same household as someone who is vulnerable.

It is key for employees, workplace safety reps and branches to be able to scrutinise the COVID-19 risk assessments undertaken by employers.

If there is any concern about the safety of a workplace, the branch should contact their regional organiser (www.unison.org.uk/regions) and seek legal advice if appropriate.

The [UK government continues to stress](#) that “Everyone is currently advised to work from home where possible. As a general principle, working from home reduces the chance of you being exposed to the virus.”

It could be argued that refusal to allow working from home for disabled workers may be a breach of the Equality Act 2010 duty to provide reasonable adjustments. This may also cover other workers with an underlying health condition (including some of those who were not on the shielding list).

Refusal of home working for a disabled person might amount to unlawful discrimination under the Equality Act, if they cannot ensure a COVID-secure workplace or not properly address the specific concerns of the worker through their risk assessment. Any pausing of a re-introduced shielding system should not automatically mean that vulnerable workers should go into the workplace.

If the worker's role is not suitable for homeworking, the employer should consider whether the worker can be temporarily re-deployed to a role that would allow home working for the duration of this crisis.

Alternatively, the employer should ideally consider offering special paid leave if the worker cannot work from home.

If homeworking or special paid leave is not an option, the employer must undertake a risk assessment to identify any additional steps they need to take to keep the vulnerable worker safe.

For example, vulnerable workers should be offered the option of the safest available on-site roles, enabling them to stay two metres away from others. If they have to spend time within two metres of others, the employer should carefully assess whether this involves an acceptable level of risk.

Workers facing other issues that may impact on their work

With the continuation of the pandemic across the world, the UK government has recognised that the impact on individuals is not only on their physical health. There may be other issues and concerns that people are experiencing at this time, which directly or indirectly impact on their work.

It is important for union reps and branches to encourage employers to be flexible and sympathetic, and highlight any support that may be available to staff whether from their organisation or external sources.

In England, for some people they may be able to create a 'support bubble' or support network which links 2 households and this may be worth highlighting to workers where applicable. However, people have to meet certain eligibility rules to form a support bubble.

They can form a support bubble with another household of any size if:

- they live by themselves – even if carers visit them to provide support
- they are the only adult in their household who does not need continuous care as a result of a disability
- their household includes a child who is under the age of one or was under that age on 2 December 2020
- their household includes a child with a disability who requires continuous care and is under the age of 5, or was under that age on 2 December 2020
- they are aged 16 or 17 living with others of the same age and without any adults
- they are a single adult living with one or more children who are under the age of 18 or were under that age on 12 June 2020.

Unplanned caring responsibilities

Workers may be struggling during the COVID crisis because of unplanned caring responsibilities perhaps for vulnerable or elderly adults, or for children who are unable to go to their normal childcare provider.

Staff with school-age children may have seen their caring responsibilities return to near normal arrangements as more children return to education settings. However, this can be constantly disrupted with the re-introduction of national lockdowns or regional restrictions, or staged returns that may vary significantly from area to area or even within areas by individual education setting.

Even if schools and nurseries are open as normal, self-isolating demands if someone within their school 'bubble' or close contacts tests positive for the virus, may impact suddenly on caring responsibilities.

Additionally, normal options for out-of-school childcare such as at grandparents or friends may not be possible due to continuing social distancing requirements and concerns about protecting the vulnerable.

Playscheme places may also be limited due to increased demand and fewer opportunities. Therefore, staff return to the normal workplace should be coordinated with these arrangements.

Although [childcare bubbles](#) are allowed in England, where one household links with one other household to provide informal, unpaid childcare to anyone under 14, additional flexibility in working hours may be required in order to co-ordinate this informal arrangement. (Similar informal childcare arrangements are allowed in Northern Ireland, Scotland and Cymru/Wales).

The [TUC has recently published research](#) showing that around 2 in 5 working mothers with children under 10 can't get – or are unsure whether they will get – enough childcare when returning. Their survey found that of those who were sure they wouldn't be able to access childcare:

- 45% said they don't have their usual help from friends and family;
- 35% said they can't get places at afterschool clubs;
- 28% have lost childcare provided by school breakfast clubs
- 28% don't have their usual nursery or childminder available.

During the initial lockdown, employers may have made arrangements for workers with caring responsibilities to work from home if they can. Hopefully the employer will continue to take account of the needs of workers with caring responsibilities as and when additional restrictions are put in place by central, devolved or local governments.

Most carers are still women. If an employer insists on all staff returning to their normal workplace without considering their caring responsibilities during the continuing pandemic, it may particularly disadvantage women. It could be a form of indirect sex discrimination if a requirement cannot be objectively justified. Therefore, employers should seriously consider the support that can be offered to workers with caring responsibilities.

It is important that in such situations the employer is sympathetic. Employers should be encouraged to explore the possibility of continuing homeworking for these employees or redeploying them to a suitable alternative job they can undertake from home if the worker agrees.

If this is not feasible, it will be important to try to negotiate the option of furloughing the worker if they are not able to work from home and fulfil their caring responsibilities safely, rather than forcing staff to use their annual leave or take unpaid leave. Employers can now continue to furlough staff under the government's [Job Retention Scheme](#) until the end of April 2021, either on a part-time or full-time basis. The employer will have to pay their wages for any hours that they are in work. The [UK government](#) has specifically said that employees who are "unable to work because they have caring responsibilities resulting from coronavirus (COVID-19), including employees that need to look after children" can be furloughed.

Whilst qualifying employees are also entitled to unpaid dependants' or emergency leave as well as parental leave, it may not be appropriate to expect workers to use this to deal with caring responsibilities during the ongoing COVID-19 pandemic where difficulties have arisen

due to the government restrictions. Even if such leave is paid by the employer, it should be reserved for its proper purpose.

The government describes parental leave as time for parents to look after their child's welfare, e.g. to:

- spend more time with their children
- look at new schools
- settle children into new childcare arrangements
- spend more time with family, such as visiting grandparents.

This certainly suggests very different circumstances than the unexpected caring responsibilities under the pandemic.

Dependants' leave is for time off to deal with an emergency involving a dependant, whereas the pandemic situation is now ongoing and long-term.

Good practice would be for employers to provide special leave, ideally at full pay in order to deal with unplanned caring responsibilities. For example, the NHS, have paid COVID-19 special leave available for staff whose child has a suspected case or confirmed case of COVID-19 and there is a government requirement for the employee to self-isolate.

Quick checklist

- Does the workplace culture take into consideration the needs of all workers with family commitments?
- Do parents and carers know about any support available to them from the workplace including offering online or telephone counselling, through services like Employee Assistance Programmes, and from external organisations?
- Is the employer continuing to furlough staff who have these unexpected caring responsibilities as a result of government action, if they are not able to work from home?
- Are shifts agreed and rotas confirmed well in advance for workers who are working in their normal workplace so that they can plan ahead for childcare and other caring responsibilities?
- Will the employer agree to flexi-hours allowing carers the ability to make up time off that they have taken to meet their caring responsibilities at another time?
- Will the employer agree to offer a temporary change in workplace if it would support an employee with caring responsibilities?

More information

From bargaining support www.unison.org.uk/bargaining-guides

Working parents leave and rights

www.unison.org.uk/negotiating-for-working-parents/

Carers' leave and rights

www.unison.org.uk/content/uploads/2019/10/Carers-policies-guide-1.pdf

Support for individuals

Working Families helps working parents and carers and their employers find a better balance between responsibilities at home and work.

www.workingfamilies.org.uk

Family Friendly Working Scotland, works with employers, government, families and others to promote a flexible and family friendly working culture.

www.familyfriendlyworkingscotland.org.uk

Gingerbread supports single parent families to live secure, happy and fulfilling lives.

www.gingerbread.org.uk

Carers UK give expert information and advice, champion carers' rights and support carers in finding new ways to manage at home, at work, or wherever they are.

www.carersuk.org

Carers Trust is a major charity for, with and about carers and work to improve support, services and recognition for carers.

<https://carers.org/>

There for You, UNISON's welfare charity, providing a confidential advice and support service for members and their dependants

www.unison.org.uk/get-help/services-support/there-for-you/

Mental health problems

Managing stress and anxiety

As well as the specific physical health worries about the COVID-19 pandemic, the crisis will inevitably impact on the mental health of workers whether they are working from home or at their normal workplace, often delivering crucial services in difficult circumstances. For many, job insecurity and financial concerns will additionally impact on mental health.

The [Office for National Statistics](#) recently reported that around one in five adults in November were experiencing moderate or severe depressive symptoms. This is the same rate of depression as in June 2020 and significantly higher than before the coronavirus (COVID-19) pandemic.

17% of adults were experiencing some form of anxiety. Overall, around half of adults said their well-being had been affected by the pandemic.

Groups that were more likely to report feelings of depression and anxiety were those aged 16 to 29 years, women, people with disabilities, and those who were less able to cover an unexpected expense.

Although stress is not a mental health condition, it is a known factor in exacerbating mental health problems in the workplace. Therefore, the control of stress is an essential component in creating a working environment that minimises the incidence of mental health problems.

Employers have a duty of care to their employees and risk assessments should consider the risks of too much stress and anxiety in the workplace and how these can be minimised.

Existing mental health problems

Disabled workers and others may find that the change in routine and working environments, in addition to the stress and anxiety caused by the COVID-19 pandemic, make existing mental health problems much worse. Mental health problems may be further exacerbated during this time of lockdown by restricted availability of support from medical professionals.

Mental health problems can vary markedly from clinically diagnosed conditions such as schizophrenia or borderline personality disorder through to depression and general anxiety disorder (for a full range of mental health problems, search: 'types of mental health problems' on the Mind website www.mind.org.uk).

Post-traumatic stress disorder (PTSD)

Any of us could unfortunately have an experience that is overwhelming, frightening, and beyond our control. But key workers, such as those that work in the NHS, social care and police service may be more likely to have such experiences, particularly during the global crisis of the COVID-19 pandemic.

Most people, in time, get over experiences like this without needing help. But in some people, traumatic experiences can set off a reaction that can last for many months or years. This is called post-traumatic stress disorder, or PTSD.

[The Royal College of Psychiatrists describes the symptoms](#): "If you have experienced a traumatic event, do you:

- have vivid memories, flashbacks or nightmares?
- avoid things that remind you of the event?
- feel emotionally numb at times?
- feel irritable and constantly on edge, but can't see why?
- eat more than usual, or use more drink or drugs than usual?
- feel out of control of your mood?
- find it more difficult to get on with other people?
- have to keep very busy to cope?
- feel depressed or exhausted?"

Symptoms may not appear to improve even after more than 6 weeks since the event. Work colleagues and employers are advised to:

- "watch out for any changes in behaviour – poor performance at work, lateness, taking sick leave, minor accidents
- watch for anger, irritability, depression, lack of interest, lack of concentration
- take time to allow a trauma survivor to tell their story
- ask general questions
- let them talk, don't interrupt the flow or come back with your own experiences."

Quick checklist

- Does the employer take mental health problems at work seriously? Are they made aware that agreeing good workplace policies and practice to improve mental health can help cut sickness absence, reduce staff turnover, raise productivity and improve morale across the organisation?
- Has the employer agreed to an awareness-raising campaign so that everyone, managers and workers, appreciate the importance of talking about mental health problems and being supportive of each other during the COVID-19 pandemic?
- Are workers encouraged to talk about their mental health problems with line managers? Is there also an alternative path for staff to raise concerns in case of difficulties in the relationship with line managers? Are staff assured of confidentiality in the handling of issues raised?
- Do workers know about any support available to them from the workplace including offering online or telephone counselling, through services like Employee Assistance Programmes, and from external organisations?
- Have special arrangements been made for staff working in isolation (possibly because of homeworking) that specify clear and regular lines of communication?
- Will the employer make sure support services for workers are widely publicised should staff experience mental health problems?
- Will the employer agree to tackle problems caused by stress due to excessive workload such as by ensuring that people comply with Working Time Regulations, using the [HSE indicator tool](#) to identify parts of the organisation where workload pressures are excessive and taking action to reduce or reallocate workload?
- Will the employer agree to be mindful and sympathetic towards workers due to additional personal concerns linked to the COVID-19 pandemic, and raise awareness of how workers will be supported?
- Will the employer agree to a range of flexible working options for staff to help provide greater control over work-life balance?
- Is the employer committed to dealing with the uncertainty of this period through fair and consistent procedures that put communication with staff, listening to staff concerns and addressing staff concerns through negotiation with trade union representatives at the heart of the process?
- It is important to press for workplace adjustments to be made available regardless of whether the worker fulfils the legal definition of being disabled.

More information

UNISON's 'Bargaining on mental health policies'

www.unison.org.uk/content/uploads/2018/05/25005.pdf

UNISON's general advice on tackling stress in the workplace

www.unison.org.uk/unison-health-and-safety/health-safety-key-issues/stress-in-the-workplace/

Health and Safety Executive (HSE) Stress at work

www.hse.gov.uk/stress/index.htm

Acas information on Coronavirus and mental health at work

www.acas.org.uk/coronavirus-mental-health

Mind's 'Taking care of your staff'

www.mind.org.uk/workplace/mental-health-at-work/taking-care-of-your-staff

Mind's wellness action plans for line managers and employees

www.mind.org.uk/workplace/mental-health-at-work/taking-care-of-your-staff/employer-resources/wellness-action-plan-download

Support for individuals

Wellbeing helpline and support for NHS staff

A confidential helpline is available from 7am to 11pm seven days a week, as well as free access to a range of wellbeing apps <https://people.nhs.uk/help/>

All NHS staff can call 0300 131 7000 or text FRONTLINE to 85258 to get help, support and advice.

UNISON's There for You charity can also provide signposting to emotional support

www.unison.org.uk/get-help/services-support/there-for-you

Government information on mental health and wellbeing

www.gov.uk/government/publications/COVID-19-guidance-for-the-public-on-mental-health-and-wellbeing

NHS Every Mind Matters

www.nhs.uk/oneyou/every-mind-matters/

NHS information on mental health and wellbeing

www.nhs.uk/conditions/stress-anxiety-depression

NHS information on post-traumatic stress disorder

www.nhs.uk/conditions/post-traumatic-stress-disorder-ptsd/

Healthier Scotland/Scottish Government's 'Things you can do to help clear your head'

<https://clearyourhead.scot/>

Public Health Wales 'How are you feeling?' information on staying well at home

<https://phw.nhs.wales/topics/latest-information-on-novel-coronavirus-COVID-19/staying-well-at-home/how-are-you-feeling/>

NI Direct 'Taking care of your mental health and wellbeing'

www.nidirect.gov.uk/articles/coronavirus-COVID-19-taking-care-your-mental-health-and-wellbeing

Mental Health Foundation's information on looking after your mental health during the coronavirus outbreak

www.mentalhealth.org.uk/publications/looking-after-your-mental-health-during-coronavirus-outbreak

Mind's information on coronavirus and your wellbeing

www.mind.org.uk/information-support/coronavirus/coronavirus-and-your-wellbeing

Help for Heroes charity's '**A Field Guide for Self-care**' to support health workers around the UK in preparing for and dealing with traumatic experiences.

www.helpforheroes.org.uk/get-support/mental-health-and-wellbeing/a-field-guide-to-self-care/

The British Psychology Society coronavirus resources for the public

www.bps.org.uk/coronavirus-resources/public

including for key workers and their children on navigating the emotional effects of the COVID-19 pandemic www.bps.org.uk/news-and-policy/psychologists-produce-advice-key-workers-and-their-children

Managing other health problems and impairments

The knock-on effect of the COVID-19 pandemic on disabled people and others managing impairments and physical and mental health problems is yet to be fully realised. But reports already suggest that people may have been avoiding hospitals because of coronavirus fears, leading to greatly reduced numbers visiting Accident and Emergency units, and an increased number of deaths at home.

Meanwhile much of the usual NHS care has had to be suspended. Many hospitals have had to delay or cancel treatment and operations. Despite increases in staff who have come out of retirement or joined the workforce early, there are fewer staff available to treat patients as more are needed to focus on treating coronavirus patients. This is also exacerbated by the effects of the virus itself on staff numbers.

All of this is likely to lead to a spike in workers experiencing other health problems that have not been diagnosed or treated during lockdown, or those who are left managing impairments without the usual medical or care support. For example, the [May 2020 LGBT Foundation online survey](#), found that 16% of LGBT+ respondents had been unable to access healthcare for non-COVID related issues, 34% of people have had a medical appointment cancelled and 23% were unable to access medication or were worried that they might not be able to access medication.

As well as having a duty of care to their workers, employers should positively encourage staff to take an active role in their own health and wellbeing. Taking that role seriously means raising awareness among staff of medical conditions and ways to improve their health, and providing paid time off to attend medical appointments, treatment and health screenings.

For example, staff managing long-term health conditions such as diabetes, high blood pressure or depression that require regular medical checks or counselling support should be particularly encouraged to take advantage of these as they become available to them again.

Employees wishing to be screened for cancers (such as cervical and breast screening), access physiotherapy for back pain or obtain medically-recommended follow-up and rehabilitation appointments can improve their health and prevent more serious conditions.

Time off should ideally be recorded separately from sickness absence and not used for absence management or monitoring purposes by the employer.

It is important that employers respond fairly and promptly to requests for reasonable adjustments needed to reduce barriers for disabled workers. Disabled staff members should ideally have access to paid disability leave for time off for disability-related sickness absence and for when a disabled employee needs to be away from work to attend medical appointments or become familiar with reasonable adjustments, or when adjusting to a new or worsened disability or medical condition.

Quick checklist

- Is the employer raising awareness among staff of medical conditions and ways to improve their health, and encourage them to attend medical appointments and seek appropriate medical support?
- Does the employer provide paid time off to attend medical appointments, treatment and health screenings?
- Is the time off recorded separately from sickness absence and not used for absence management or monitoring purposes by the employer?
- Has the employer made special provision for disabled staff and others managing long-term health conditions? Is paid disability leave available? And are reasonable adjustments fully considered and provided?
- Has the employer fully considered whether some staff, such as some disabled workers or those with health conditions, may continue to be more vulnerable during the COVID-19 pandemic? Have health and safety risk assessments taken appropriate consideration of these workers?
- If staff are considered to be more vulnerable is the employer willing to agree to the medical exclusion of such staff on full pay if they are not able to work from home, and appropriate health and safety requirements cannot be accommodated in their normal workplace?

More information

From bargaining support www.unison.org.uk/bargaining-guides

Time off for medical appointment and health screening
www.unison.org.uk/content/uploads/2017/05/Medicalscreeningleave.pdf

Disability leave – bargaining guide and model policy
www.unison.org.uk/content/uploads/2019/10/25870.pdf

Proving disability and reasonable adjustments

www.unison.org.uk/content/uploads/2018/10/Proving-Disability-and-Reasonable-Adjustments-Oct2018.pdf

Workers experiencing domestic abuse

Other workers may be struggling with personal problems during the period of lockdown that will inevitably have a direct impact on themselves, their work and their colleagues. It is important that these issues are not ignored in the workplace but understood as serious and recognisable issues.

The government has acknowledged the particular anxiety caused by lockdown for those who are experiencing or feel at risk of domestic abuse. They stress the need for people who are at risk of abuse to remember that there is help and support available to them, and these should be highlighted by employers, union reps and branches.

The CIPD (Chartered Institute of Personnel and Development) have recently highlighted that, with more people working from home, “escape routes or time apart from an abuser may be dramatically curtailed.” They add that “employers need to think about how support can be maintained as we all work in different ways. An empathetic, non-judgmental approach and flexibility (for example in working hours or concerning work tasks) are two key areas employers should focus on.”

The CIPD have produced guidance with the Equality and Human Rights Commission on Managing and supporting employees experiencing domestic abuse
www.cipd.co.uk/knowledge/culture/well-being/supporting-employees-experiencing-domestic-abuse

UNISON recognises that controlling and abusive behaviour can occur in mixed and same sex relationships, within extended families, and can affect men as well as women. However, the vast majority of the victims/survivors of domestic abuse are women and children, and women are also considerably more likely to experience repeated and severe forms of violence, and sexual abuse.

[Recent research](#) from the LGBT Foundation also shows that LGBT+ people are at greater risk of domestic abuse. This disproportionate impact may be further exacerbated by the fact some LGBT+ people have been isolating with LGBT+ phobic family members or roommates. The LGBT Foundation’s May 2020 online survey found that, of the LGBT people who responded, 8% did not feel safe where they were currently staying.

It is important that reps and branches raise awareness of the issues and highlight any [domestic abuse policy](#) that may be agreed at work, as well as external support services available, such as the [National Domestic Abuse Helpline](#) or [Galop](#) for LGBT+ people.

Best practice would also be for employers to provide job flexibility at this time, and ideally special paid leave in order for a victim/survivor of domestic abuse to find a new home, get a place at a refuge, receive legal advice, open a new bank account, seek medical help etc.

[Acas](#) outlines the sort of support employers should make clearly available if an employee is experiencing domestic abuse, such as:

- finding a way to communicate safely, for example by text message if calls are not possible, or a different email address if their email is being monitored by the perpetrator
- agreeing on a code word or hand signal for someone to use to alert others that they're experiencing domestic abuse
- arranging another place they can do their work instead of at home
- being flexible around working hours
- time off, for example to attend support appointments
- helping the person get other appropriate support.

Further information from Acas on domestic violence and abuse and the employer's duty of care whilst staff are working from home: www.acas.org.uk/working-from-home/health-safety-and-wellbeing

Quick checklist

- Make sure support services for workers experiencing domestic abuse are widely publicised amongst staff.
- Encourage employers to treat victims/survivors of domestic abuse within their workforce sympathetically and allow flexible working and paid special leave.
- Remind employers that they have a legal duty of care to their staff and that this includes looking out for signs of domestic abuse and responding appropriately.
- Encourage employers to develop a domestic abuse policy in consultation with union reps and staff.

More information:

From bargaining support www.unison.org.uk/bargaining-guides

Domestic violence and abuse: a trade union issue

<https://www.unison.org.uk/content/uploads/2017/02/24192.pdf>

The TUC has a 5-minute guide for reps on domestic abuse and coronavirus

<https://learning.elucidat.com/course/5e875ae4d0715-5e8c6417dfc28>

Support for individuals:

National Domestic Violence helpline

Run in partnership between Women's Aid and Refuge, open 24 hours

Call freephone 0808 2000 247

Men's Advice Line

For men experiencing domestic abuse Call freephone 0808 801 0327

www.mensadviceline.org.uk

Women's Aid

Women's Aid is the national charity working to end domestic abuse against women and children.

www.womensaid.org.uk

Welsh Women's Aid/Cymorth i Ferched Cymru

Call freephone 0808 80 10800

www.welshwomensaid.org.uk

Scottish Women's Aid

Call freephone 0800 027 1234

www.scottishwomensaid.org.uk

Women's Aid Federation Northern Ireland

Call freephone 0808 802 1414 (for women and men)

www.womensaidni.org

Galop

Galop provide a national lesbian, gay, bisexual and transgender domestic abuse helpline giving emotional and practical support for LGBT+ people experiencing domestic abuse.

Call 0800 999 5428 Monday to Wednesday 10am to 5pm, Thursday 10am to 8pm, Friday 1pm to 5pm and Sunday 12pm to 4pm.

Tuesday 1pm to 5pm is a trans specific service.

Email: help@galop.org.uk

Online chat: 3pm to 7pm Saturday, 3pm to 7pm Sunday

www.galop.org.uk

Bereavement

During the COVID-19 pandemic and lockdown restrictions, the likelihood that someone within the workplace will be affected directly by the death of a loved one is sadly inevitable. It may also be the case that work colleagues have died during this period.

The unexpected loss of someone due to the virus can be particularly distressing, especially if opportunities to spend time with the person during their illness has not been possible, nor the opportunity to mourn their passing with family and friends at a funeral gathering in the usual way because of social distancing.

It is important for employers to appreciate that dealing with the shock and inability to fully grieve for the loss of a loved one may impact on the health and wellbeing of their employees. Many families may also plan a deferred celebration or memorial service for their loved one for when social restrictions are lifted and shared mourning can safely take place.

Bereavement or compassionate leave is a statutory right from day one of employment if a dependant dies, but employers do not have to pay for the leave, except in the case of parents of children who die. However, many employers offer the contractual right to pay under an employee's terms and conditions of employment.

From 6 April 2020, eligible employees have a new right to 2 weeks of parental bereavement leave and pay if their child dies under the age of 18 or are stillborn after 24 weeks of pregnancy.

Quick checklist

- Make sure support services for the recently bereaved are widely publicised amongst workers, as well as guidance and support on what to do when someone dies.

- ❑ Ensure that workers are aware of their entitlements for bereavement leave. Five to ten days' paid leave is a common entitlement within the public sector, and the statutory parental bereavement leave is paid for 2 weeks.
- ❑ Negotiate additional paid bereavement or compassionate leave during the ongoing COVID-19 pandemic, which would also allow paid leave to attend a celebration or memorial service.
- ❑ Negotiate a wider interpretation of when employees are eligible for bereavement leave, including when close friends die. The statutory right is for when a dependant dies i.e. a partner, parent, child (if under 18), someone else who relied on them. But the death of an adult child or close friend or work colleague can also be very distressing and paid bereavement leave in these circumstances would be welcome from a sympathetic employer.
- ❑ Ensure that the employer has a policy in place for when a member of staff dies, including sensitively informing colleagues and providing support if appropriate, as well as sending condolences to the family, and finalising the deceased affairs promptly and sympathetically with the family. It may also be appropriate for the deceased to be honoured in the workplace such as with a book of condolences or event.

More information:

From bargaining support www.unison.org.uk/bargaining-guides

Compassionate leave (or time off for dependants) guide

www.unison.org.uk/content/uploads/2016/05/Compassionate-Leave-Guide.pdf

Acas information on time off for bereavement www.acas.org.uk/time-off-for-bereavement

Support for individuals:

Government information on what to do when someone dies

www.gov.uk/when-someone-dies

Cruse Bereavement Care charity give advice on coping with a death.

www.cruse.org.uk

Dying Matters charity aims to help people talk more openly about dying, death and bereavement, and to make plans for the end of life.

www.dyingmatters.org

The Good Grief Trust aims to help all those suffering grief in the UK

www.thegoodgrieftrust.org

At a Loss.Org charity provides the UK's signposting website for the bereaved.

www.ataloss.org

Establishing measures to deal with staff shortages

The COVID-19 pandemic continues to raise the likelihood of severe staff shortages across organisations and particularly within specific departments. In some cases, this will be due to staff self-isolating because of their own symptoms or those of a family member. In other cases, absence will be down to staff unable to return to the workplace or work from home due to the vulnerability of their health or intensified caring responsibilities.

In dealing with the impact of these shortages on remaining staff, negotiators may want to consider seeking the following:

- A workload review to prioritise activities and identify the least essential work that can be set aside over the course of the pandemic restrictions. For fuller advice, see UNISON's [Negotiating a Workload Agreement](http://www.unison.org.uk/content/uploads/2016/02/NEGOTIATING-A-WORKLOAD-AGREEMENT-WITH-THE-EMPLOYER.pdf) guidance www.unison.org.uk/content/uploads/2016/02/NEGOTIATING-A-WORKLOAD-AGREEMENT-WITH-THE-EMPLOYER.pdf
- Supporting recruitment of staff on temporary full or part-time contracts.
- Co-operation in redeployment of staff across departments if the policy is in accordance with the principles laid out in the section headed 'Redeployment of staff' below.
- A commitment from the employer to respect annual leave that has already been agreed as far as possible, particularly for those who have already made holiday payments.
- A commitment from the employer that in addition to the carry-over of four weeks annual leave to the following two leave years under the government's temporary amendment of the Working Time Regulations, (see section on 'Annual leave issues' below) full annual leave entitlement beyond the four weeks will be treated in the same way where it has not been possible to take leave because of staffing pressures caused by the pandemic.
- In addition to activities that are considered non-essential, a case can be made that postponement until after pandemic restrictions have been fully lifted should be the default position wherever restrictions on normal working preclude the proper representation of staff interests. This could apply to major collective issues such as organisational restructuring or outsourcing, as well as individual disciplinary, capability and grievance procedures.

Redeployment of staff

Many employers will have existing redeployment policies in place. Policies can be used as part of organisational change agreements where staff put 'at-risk' of redundancy are offered permanent redeployment to avoid the possible loss of their job. In the context of the COVID-19 pandemic, redeployment is more likely to be driven by temporary surges in demand for particular services, a temporary decline in demand for others or the setting aside of non-essential work.

Where staff are carrying out roles that are very difficult to fulfil by working from home, an option can also be to consider temporary re-deployment that allows home working for the duration of the pandemic.

Ensuring fair staff selection for redeployment

Once the roles to be filled through redeployment have been established, the job specification for those roles should enable identification of the following important criteria:

- Job grade / banding
- Level of qualification, knowledge, skills and experience required
- Working hours
- Type of work
- Location.

In the first instance, any member of staff whose skills can reasonably meet the qualification, knowledge, skills and experience required should be eligible to volunteer, subject to Disclosure and Barring Service checks if relevant for the post.

However, if the number of volunteers exceeds or falls short of the scale of redeployment required, it is reasonable for any redeployment process to assess staff against the full range of criteria to determine the most suitable staff. The employer is under a duty to act reasonably in the process of allocating staff under redeployment and ensure the process is non-discriminatory.

Where different line managers are making choices about redeployment, care should be taken that consistent decisions are made across the organisation and therefore reps should press for clear and fair rules to be communicated across management, with a review process that checks that the rules are applied as intended.

In some cases, redeployment may actually take staff into a working environment that is more exposed to COVID-19 risks. As with all roles during the COVID-19 pandemic, the redeployed role should be subject to a risk assessment that establishes what mitigating steps can be taken, including measures for social distancing, stricter hygiene and provision of Personal Protective Equipment (PPE) if appropriate.

However, temporary redeployment for especially vulnerable workers may offer a way for them to reduce the risks they face, particularly if they are redeployed to a role that is more suitable for home working. In these circumstances, redeployment is also a way for the employer to fulfil their duties under the Health and Safety at Work etc Act 1974 (Health and

Safety Order 1978 in Northern Ireland) to protect the health of their staff. In the case of pregnant women or breastfeeding mothers, consideration of temporary redeployment is also a step demanded by the Management of Health and Safety at Work Regulations 1999 if any identified risk cannot be removed.

For disabled staff, it will be important to ensure that any reasonable adjustments required are assessed and provided, as failure to provide reasonable adjustments may constitute a breach of the Equality Act 2010.

Other options for ensuring a fair redeployment process could be to rotate staff in and out of the redeployed workforce so that each member of staff serves an approximately equal period on redeployment.

Ensuring that staff have a right to appeal against their allocation for redeployment can also act as a safeguard for allowing the particular circumstances of individual workers to be considered. As would be usual for appeals, the hearing should bypass the line manager and go to more senior figures within the organisation.

Protecting staff pay, terms and conditions

The basic principle during redeployment should be that staff suffer no financial detriment and continue to receive payment at their usual contracted rate as a minimum. This would normally be in line with existing redeployment policies which tend to offer a period of pay protection under redeployment.

However, the following further points should supplement that general policy:

- Where employees are temporarily undertaking roles that are at a higher grade than their usual role, they should receive the higher rate of pay for the duration of the redeployment.
- Where redeployment leads to increased working during unsocial hours, overtime, shift work, standby or on-call arrangements, care should of course be taken that staff receive the appropriate compensation.
- Where redeployment leads to a change of working location, compensation should be provided for all reasonable additional costs incurred, such as additional travel, meal allowances and accommodation.
- All other terms and conditions of employment that applied in the usual role should continue to apply while performing the redeployed role.

Assisting staff through the redeployment

In order to enable staff to fulfil their temporary role and effectively defend their conditions during the redeployment, the following steps should be considered:

- An induction programme that includes any required process of training (including health and safety training and correct use of personal protective equipment if required), supervision or shadowing existing staff before a member of staff can be expected to conduct the role unassisted

- Putting in place clarity about line management arrangements. This may mean providing a clear steer about the manager who is the point of contact for their new day-to-day activity, while also retaining the former line manager as the point of contact for any wider issues
- Highlighting actions staff must take as a result of a risk assessment that identifies practices to be observed for social distancing, hygiene and wearing of personal protective equipment
- Providing UNISON members with contact details for reps in their new area of work through whom issues can be raised
- An agreement with the employer to hold regular meetings with appropriate union reps to consider issues raised by staff about the operation of redeployment, particularly in relation to measures to address health risks
- An assurance from the employer that staff will return to their former roles when the effects of the COVID-19 pandemic end, with all their former pay, terms and conditions
- A commitment from the employer that they will indicate the date on which redeployment will end at the earliest opportunity
- Recognition that working outside of normal locations and activities can raise levels of stress among the workforce. This factor should be addressed through systematic risk assessment that puts in place any mitigating steps required. As stated earlier, clear line management and union contacts to raise concerns are also an important dimension, but it may be useful to press the employer on raising awareness of any support available such as through the organisation's Employee Assistance Programme and external mental health advice lines (further details in section headed 'Mental health problems' above).

Variation in the employment contract

Any redeployment is likely to mean a variation in the employment contract unless there is a 'flexibility clause' that allows a change to the job and duties or work location. This would need to be specified and is different to 'any other duties commensurate with the grade / role.'

It would be essential for the employer to get the individual agreement of the affected worker to any redeployment following a full discussion on the implications. The employer should confirm any changes made to the contract in writing, including the temporary nature of the redeployment during the COVID-19 pandemic. It is important to note that an employee can 'agree' to the change in contract just by performing the changed duties even for a short time.

There is always an expectation for the employer to act 'reasonably' including the consideration of appropriate alternative work within the particular circumstances of the worker.

If there is any concern about the use of redeployments, the branch should contact their regional organiser (www.unison.org.uk/regions) and seek legal advice if appropriate.

Secondment rather than redeployment

Some employers may offer a secondment arrangement within their operations or to an external organisation, most probably to an employer operating within the same broad field, such as healthcare.

Much of the same approach taken above for redeployed staff can be applied to secondment. However, the following important differences should be noted:

- Assent for secondment is often conducted through a specific secondment agreement that sets out variations in working arrangements
- A key feature of any such agreement is to maintain the principle that seconded workers retain the same employer. The original employer is effectively 'lending' workers to the host organisation
- Therefore, agreements should specify that the secondee remains employed by the original employer and the terms and conditions set out in the written statement of employment particulars/contract of employment remain in force, except to the extent varied by an agreement
- Pay, terms and conditions should accordingly suffer no detriment. Any reimbursement of the organisation putting staff out to secondment by the organisation receiving the seconded staff should be an agreement between the organisations that leaves the status of the seconded workers unchanged.

Secondments can inadvertently result in a secondee becoming the employee of the host organisation unless agreements are constructed in a way that makes explicit that the secondee does not owe any duties to the host directly. Appraisals, disciplinary or grievance measures should be explicitly stated as the continued responsibility of the original employer to ensure staff status is protected.

Secondment can present added challenges to the maintenance of effective union representation. Consideration may be needed to the necessity for more active steps by reps to retaining regular contact with seconded UNISON members to enable their issues to be raised with the employer and / or effective co-operation with the existing union structure in the organisation receiving the secondees.

Secondment throws up added dangers regarding disclosure of confidential information used by the host organisation. Therefore, consider whether any reassurances are needed on the handling of workforce data in accordance with the data protection legislation, as set out in UNISON [monitoring and surveillance guidance](#).

Quick checklist

- Seek selection for redeployment based on volunteers in the first instance and an objective assessment against clear, fair and non-discriminatory criteria where further staff are required.
- Make a case for prioritising staff who are particularly vulnerable to the health dangers of COVID-19 or staff who live in a household with a vulnerable person, if redeployment offers the opportunity to work from home or significantly reduces risks.

- Consider rotation of staff and an appeal option to improve the fairness of the redeployment process.
- Seek guarantees that redeployed staff will suffer no financial detriment and appropriate compensation will be provided for any extra costs imposed on staff.
- Ensure staff have clarity about social distancing, hygiene and personal protective equipment procedures to be observed in any new working environment.
- Press for training and clarity over line management procedures during the redeployment.
- Ensure UNISON members are aware of their union rep contacts in any new workplace and seek regular meetings with the employer for highlighting issues raised by redeployed staff.
- Where secondment is used, ensure any secondment agreements prevent any cuts to pay rates or change in employer, and extra attention is paid to maintaining union contact with secondees.

Dealing with disciplinary, capability and grievance procedures during the pandemic

Acas recently published guidance which notes that “going through a disciplinary or grievance procedure can be stressful in normal times, and employees might be facing other stressful circumstances at this time. Employers should give careful consideration to the health and wellbeing of employees when deciding whether and how to proceed at this time.”

In April 2020, LRD (Labour Research Department) launched a survey of trade union reps with 70% of respondents from the public sector, 27% from the private sector, 3% from the voluntary sector.

The survey’s first set of findings showed that, in many workplaces, disciplinaries and grievances are continuing as normal albeit under altered conditions. The consensus is that online grievance and disciplinary meetings do not work well.

Many reps said formal procedures have been suspended, with several taking a stand to ensure that they will not take place, even though this has left cases and appeals hanging. For others, meetings have been moved online, sometimes despite protests from the union.

Many reps point out that the stress of members involved in cases has been exacerbated by not being able to meet face-to-face. The reduction in facility time for many reps during the COVID crisis has also been an issue in ensuring that disciplinary, capability and grievance procedures continue to be handled fairly.

It is important to remember, as Acas points out “Employment law and the Acas Code of Practice on disciplinary and grievance procedures still apply during the coronavirus (COVID-19) pandemic. This includes while social distancing and lockdown measures are in place.”

UNISON’s normal model policies for disciplinary, capability and grievance procedures, which form the basis on which amendments can be made during the pandemic, can be found at www.unison.org.uk/bargaining-guides.

Further details about handling online hearings during the pandemic can be found in appendix 3.

Where possible, the default position should be postponement of disciplinary and grievance procedures unless an employee feels that delay would cause them undue anxiety or the issue is sufficiently serious to need urgent resolution.

An example where the postponement has been agreed is in the NHS, where it is stated that disciplinary matters will be paused “except where the employee requests proceeding as it would otherwise cause additional anxiety, or where they are very serious or urgent.”

Annual leave issues

There are a number of issues that have arisen for members about the taking of annual leave during the COVID-19 pandemic, with employers particularly being much more prescriptive about the taking and cancelling of holidays.

Compelling staff to take annual leave

With travel severely restricted and holidays cancelled, staff may be wanting to cancel their annual leave. Reps and branches should encourage employers to be flexible and allow annual leave to be postponed to a time when proper rest and relaxation can be taken.

However, many employers are concerned that staff will be building up large amounts of leave to be taken later in the year, perhaps at a time when more workplaces will be allowed to reopen and employers will be relying on increased productivity to make up for inactivity during the pandemic.

According to the [government's guidance](https://www.gov.uk/guidance/holiday-entitlement-and-pay-during-coronavirus-COVID-19) (www.gov.uk/guidance/holiday-entitlement-and-pay-during-coronavirus-COVID-19), an employer can force an employee to take or cancel annual leave. However, this is a controversial point in the present circumstances, as it could undermine the fundamental purpose of holiday when the employer requests that annual leave be taken. For example, this could breach the same legal rights that already exist to protect workers on long-term sick leave from being forced to take annual leave.

It is therefore important for an employer not to impose annual leave on an employee, rather to get their agreement. Some element of flexibility is key to negotiations in allowing when annual leave is to be taken to ensure staff can properly benefit from rest and relaxation from work at a time when needed. As [Acas guidance](https://www.acas.org.uk/coronavirus/using-holiday) (www.acas.org.uk/coronavirus/using-holiday) stresses: "Employers, employees and workers should be as flexible as they can about holiday during the coronavirus pandemic."

The Working Time Regulations 1998 do allow for an employer to require employees to take leave at specified times as long as they give the proper notice. The minimum notice period is double the length of the annual leave if the employer wishes to require a worker to take holiday on particular days. This notice period is in advance of the first day of the holiday, and the notice must be given before the notice period starts. There may also be a longer period specified under a collective agreement or within the contract of employment. At the very least appropriate notice and clear reasoning should be given by employers.

Cancelling annual leave

Again, according to the [government's guidance](https://www.gov.uk/guidance/holiday-entitlement-and-pay-during-coronavirus-COVID-19), an employer can compel an employee to cancel annual leave. However, it is important for trade union negotiators to ask employers to respect the leave booked by their staff if they wish to keep it during the pandemic, wherever possible.

Cancelling leave, perhaps because of staff shortage at work, should only be considered as a last resort. The good will of workers should not be tested unduly during these difficult times by insisting they work when they had expected to be on annual leave. Although travel may be restricted, relaxation at home with family members such as during school holidays and

participating in exercise and allowed day trips and ‘staycations’ may provide an important break from work and worries, and boost to the health and wellbeing of workers.

With some easing of restrictions over time and in different parts of the UK, holidays away may become increasingly possible. It will be important that employees do not lose out on bookings made a long time ago that may be allowed to go ahead.

At the very least, employers should respect the legally required notification period for cancelling leave under regulation 15 of the Working Time Regulations. The minimum notice period is the length of the planned holiday. This notice period is in advance of the first day of the holiday, and the notice must be given before the notice period starts.

The [Acas guidance](#) recognises that employers cancelling pre-booked paid holiday will “cause upset. So employers should:

- explain clearly why they need to do this
- try and resolve anyone's worries about how it will affect their holiday entitlement or plans.”

What about workers on furlough?

The government has produced some [guidance on holiday entitlement and payments \(www.gov.uk/guidance/holiday-entitlement-and-pay-during-coronavirus-COVID-19\)](http://www.gov.uk/guidance/holiday-entitlement-and-pay-during-coronavirus-COVID-19) but there are some points which remain open for interpretation about how existing legal rights are affected.

Workers who are furloughed under the Job Retention Scheme (JRS) will continue to accrue leave as outlined in their employment contract – so not just statutory entitlement but their usual contractual annual leave amount as well.

Although it is not a statutory requirement to treat bank holiday days as confirmed annual leave days, if this is stated in the contract of employment as an entitlement, then such days will need to be treated differently during furlough. Either the employee will be on annual leave during furlough and paid at their full normal wage for that bank holiday day and not at the furlough rate, or the day's leave can be deferred to when holiday from work can be taken.

It would be risky for an employer to insist that an employee take annual leave during a furlough period. There remains a number of contentious legal issues about how annual leave rights will work for those on furlough. In particular, whether any restrictions (eg the need to self-isolate, social distance and limitations on travel) prevent an employee from fully resting, relaxing and enjoying leisure time. Therefore, the employer should first get the agreement of the employee rather than to impose it.

However, the right to request annual leave whilst on furlough does remain. [Acas guidance](#) also confirms that employees can ask for and take holiday leave as usual while on furlough, although the employer may decide to refuse requests. The government states that employers have the flexibility to restrict when leave can be taken if there is “a business need”.

One reason an employer may have for refusing a request, is that the staff member on annual leave during furlough must be paid at 100% of normal wages and the employer would only be able to obtain a grant towards 80% of wages for holiday pay paid under the Job Retention Scheme. This means that the employer would have to make up the difference when an employee is due 100% of normal wages whilst on leave.

However, if the employee is flexibly furloughed and takes annual leave, the government guidance says that the hours of annual leave should be counted as furloughed hours and not working hours. In that way, the employer benefits from having most of the employee's pay covered by the government.

But the employer should not place an employee on furlough for a period simply because they are on holiday for that period – they should genuinely be on flexible furlough or full-time furlough already.

Note also that as from 6 April 2020, where the employee's normal weekly wage is variable, the statutory holiday pay (i.e. 5.6 weeks minimum entitlement) is calculable by reference to an average from the previous 12 months' earnings.

Right to carry-over annual leave to the following two years

Recognising that with possible staff shortage, it may be difficult for employees to take all their annual leave during the COVID-19 pandemic before the end of the leave year, the government has made a temporary amendment to the Working Time Regulations.

Generally, four weeks of the full statutory entitlement of 5.6 weeks holiday, cannot be carried into future leave years, so employers must facilitate these weeks being taken within the relevant leave year. Under this amendment, where it has not been reasonably practicable for the worker to take some or all of the four weeks' holiday due to the effects of coronavirus, the untaken amount may be carried forward into the following two leave years.

One issue will be the interpretation of 'reasonably practicable' and union reps and branches will need to negotiate over when it is unreasonable or not, bearing in mind the need for a proper break from work for mental and physical wellbeing. However, many workers – for example those who are now unable to take a proper holiday because of social distancing, or because they are furloughed or self-isolating – will welcome the chance to benefit from their full entitlement at a later date.

In the [Acas guidance](#), the examples they give for when it has not been reasonably practicable for workers are when:

- “they're self-isolating or too sick to take holiday before the end of their leave year
- they've had to continue working and could not take paid holiday.

They may also be able to carry over holiday if they've been 'furloughed' and cannot reasonably use it in their holiday year.”

Negotiators may also want to gain a commitment from the employer that in addition to the carry-over of four weeks' statutory annual leave to the following two leave years, full contractual annual leave entitlement beyond the four weeks will be treated in the same way where it has not been possible to take leave.

The amendment to the Working Time Regulations will not affect any annual leave carry-over agreements that may already be in place at the workplace.

Travelling abroad and ‘quarantine’ or self-isolation on return

The government has evolving guidance about travelling into the UK from countries abroad. Currently they advise against any non-essential international travel, except to certain specified countries and territories, although all UK countries continue to stress that travel should only be when necessary.

On return to the UK there are rules in place to protect others from possible infection. These include providing journey and contact details. People returning from specified countries (and the list changes at short notice) are required to self-isolate (sometimes referred to as being ‘in quarantine’) for 10 days, except in very limited situations for certain people with specific roles.

However those people travelling from Ireland, the Channel Islands and the Isle of Man, and from 10 July those who are arriving and staying in England from a country or territory on the ‘travel corridors’ list will not need to self-isolate on arrival.

Further details from the government on travel advice during the pandemic at www.gov.uk/guidance/travel-advice-novel-coronavirus and on entering the UK from abroad at www.gov.uk/uk-border-control. Details of the coronavirus travel corridors or list of countries and territories from where you can travel to England and may not have to self-isolate can be found at www.gov.uk/guidance/coronavirus-COVID-19-travel-corridors.

For Cymru/Wales, the guidance for travellers is at <https://gov.wales/coronavirus-travel>

For Scotland, the guidance is at www.gov.scot/publications/coronavirus-covid-19-public-health-checks-at-borders/

For Northern Ireland, the guidance is at www.nidirect.gov.uk/articles/coronavirus-covid-19-countries-and-territories-exemptions

However, it should be noted that people who are self-isolating on return from abroad are not eligible for statutory sick pay, unless there is some other reason for them to self-isolate. This means that the employer would not be able to claim statutory sick pay back from HMRC. Some employers may insist that workers include this period of self-isolating on return from abroad within their annual leave request.

However, for many workers the travel may have been booked long ago, before the COVID-19 pandemic had reached the UK, and cancellation may be extremely costly. There may also be unavoidable reasons for travelling back into the UK from abroad such as having been unable to travel at an earlier date because of lockdown and limited flights etc.

Additionally, there may be other important reasons for travelling such as attending funerals or visiting elderly and vulnerable family members who live abroad.

Ideally, the employer will agree to medically exclude on full pay all those workers who are self-isolating, including those who are doing so because they have returned from abroad. This will be a useful way of encouraging workers to do the right thing and not potentially

infect others. Alternatively, the employer may agree to pay contractual sick pay for this period.

For example, the National Joint Council (NJC) for local government has agreed the following:

“In practice, an employer could require employees who are quarantining and unable to work at home to:

- take additional paid annual leave (from their usual leave allowance)
- take unpaid annual leave
- take special leave (paid / unpaid)
- make up the 14 days’ leave over a period of time, so they do not incur a drop in pay.

These arrangements should be clear, understood and agreed by both parties before the employee embarks on leave that will require quarantine.

There is no one-size-fits-all answer to this issue so for those employees who cannot work from home during quarantine, employers should consider using a combination of some or all of the different types of leave options shown above and give sympathetic consideration to certain circumstances which could include:

- an employee who has extenuating circumstances such as a family funeral abroad
- pre-booked holidays that cannot be cancelled without incurring financial cost (ie. insurers will not reimburse cost) that were arranged before quarantine could have been envisaged
- pre-booked holidays that the tour operator has not cancelled but has instead rescheduled on fixed dates which, if cancelled by the customer, would be at financial cost to them.

Please note, anyone who has had to travel for the purpose of their job and has to quarantine on their return, must continue to receive normal full pay.”

Responding to threats of redundancy

A survey from ACAS earlier in the year, found that over a third of the employers they asked were likely to make staff redundant in the next three months. More recently, the [Office for National Statistics](#) reported that redundancies reached a record high of 370,000 in the three months to October 2020.

However public sector employers and contractors, wholly reliant on payments from the public sector, should not have received cuts to their income over the course of the pandemic. [Government procurement guidance](#) has been explicit that public sector bodies should continue to make payments to contractors as usual. Therefore, there should be little impetus for staffing cuts among such employers.

Contractors who have some public funding but also rely on funding streams from customers that has dried up over the pandemic, such as catering companies, are likely to be facing greater pressures. However, even in these cases enormous support has been made available through the state to cushion the impact:

- The [Job Retention Scheme](#) has made available funding for furloughed staff amounting to 80% of wages up to a £2,500 monthly limit for each worker (extended until the end of [April 2021](#)).
- The government has allowed the deferral of many forms of taxes and creditors have also frequently deferred loan repayments.
- Employers have been able to claim under the [Statutory Sick Pay Rebate Scheme](#) for up to two weeks of Statutory Sick Pay payments for each member of staff if they have been self-isolating (including prior to a hospital appointment) or had been 'shielding' in line with Public Health guidance. [Previously shielding staff](#) are also eligible to be placed on furlough.
- The [Coronavirus Business Interruption Loan Scheme](#) has provided organisations with a turnover of up to £45 million with the right to access loans and other kinds of finance up to £5 million. The government guarantees 80% of the finance to the lender and pays all interest and any fees for the first 12 months.
- The [Coronavirus Large Business Interruption Loan Scheme](#) provides businesses with an annual turnover of over £45 million with finance of up to £25 million and firms with a turnover of more than £250 million with finance of up to £50 million. The government provides the accredited lenders with an 80% guarantee on the value of the loans.
- Under the [COVID-19 Corporate Financing Facility](#), the Bank of England can buy short-term debt from large companies.
- Under the [Local Restrictions Support Grant](#), business premises forced to close in England are to receive grants worth up to £3,000 per month. (Money has also been distributed to Scotland, Cymru/Wales and Northern Ireland, but it is for devolved administrations to decide on how to allocate.)

For Scotland, further information on the support available for businesses can be found at <https://findbusinesssupport.gov.scot/coronavirus-advice>

For Cymru/Wales, further information on the support available for businesses is at <https://businesswales.gov.wales/coronavirus-advice/>

For Northern Ireland, further information on the support available for businesses is at www.nibusinessinfo.co.uk/campaign/coronavirus-updates-support-your-business

The government has announced that it intends to extend the period for which applications can be made to the loan schemes [until the end of March 2021](#), while also extending the maximum repayment terms for the Coronavirus Business Interruption Loan Scheme to 10 years.

In addition, on 5 January 2021, the [Chancellor announced](#) one-off top up grants for retail, hospitality and leisure businesses as well as a £594 million discretionary fund for Local Authorities and the Devolved Administrations to support other impacted businesses.

Nonetheless, there still may be cases of employers putting forward redundancy proposals as the fallout of the pandemic on the economy bites, and the various schemes are wound up.

UNISON's full guidance, entitled '[COVID-19 Pandemic: Responding to Redundancy or Dismissal and Re-engagement Proposals](#)' is available on the UNISON bargaining guides page at www.unison.org.uk/bargaining-guides

However, the key issues in responding to any proposals in the context of the COVID-19 pandemic are set out below.

In England, Scotland and Cymru/Wales, to have full protection from unfair dismissal a member must be legally defined as an 'employee' rather than a 'worker'. Some types of staff such as zero hours workers may be workers and not employees. For any employee whose employment began on or after 6 April 2012 they must have two year's continuous service with the same employer. If their employment began before 6 April 2012, they need only one year's continuous service. In Northern Ireland, the qualifying period remains one year.

Any proposed dismissal must be for a fair reason and follow a fair procedure. In the case of proposals brought forward as a result of damage to the business caused by the pandemic, employers are likely to seek to classify the reason as falling under a 'redundancy situation.'

In observing a fair process, where an employer is proposing to dismiss between 20 and 99 staff in one 'establishment', they must open consultation at least 30 days before the first of the dismissals takes effect. Where they are proposing to dismiss 100 or more staff, they must open consultation at least 45 days before the first of the dismissals takes effect.

This consultation must be genuine and meaningful, while proposals are still at a formative stage. The consultation has to cover ways of avoiding the dismissals, reducing the numbers of employees to be dismissed and mitigating the consequences of the dismissals.

In making the case for avoiding or reducing redundancies, it may be valuable to assess the financial position of the company.

If you require assistance in obtaining or analysing an organisation's latest accounts, contact Bargaining Support at bsg@unison.co.uk.

This material can sometimes support the union's case by showing the profitability of the organisation's operations and the scale of employee costs within the organisation's revenue. In this way, it can expose where employers are seeking to take advantage of the pandemic for cost-cutting purposes.

The case can also be made that the downturn in the economy as a result of the pandemic is a temporary phenomenon and most forecasters are predicting a considerable bounce-back in 2021 [again, for the latest material on economic forecasts, contact Bargaining Support at bsg@unison.co.uk]. Therefore, it can be expected that financial problems constitute a 'bridging period' until an organisation's normal profitability is restored.

The extension of the Job Retention Scheme for furloughed staff until the end of April 2021 should offer a strong basis for avoiding redundancies. The enormous state backing of loans listed above, some of which are interest free, also offers a 'bridge' to the predicted economic upturn. If problems remain beyond this timeframe, negotiators will need to decide if there can be justification in co-operating with cost-saving measures for a limited period.

Where consultation moves on to the process of selecting staff for redundancy, a 'selection pool' of employees who are at risk of being made redundant will need to be defined, which may be the entire organisation or certain departments / roles within it.

The criteria for selection from this group of staff must be fair and objective, using consistently applied job related criteria, backed by evidence where possible. It should be non-discriminatory on grounds of any protected characteristic i.e. age, disability, gender reassignment, race, religion or belief, sex, sexual orientation, marriage and civil partnership and pregnancy and maternity. Care should also be taken that there is no discrimination on the grounds of trade union membership, part-time or fixed-term contract status.

One further potential dimension specific to the COVID-19 pandemic is that the [Coronavirus Act 2020](#) could introduce a right for staff to be absent from work on emergency volunteering leave. It would be inadmissible for an employer to dismiss any employee because they took or sought to take such leave. However, to date the leave is not in force.

Absence from the workplace should be avoided as a criteria for redundancy selection in general, but there is an even stronger case for excluding any form of absence due to COVID-19 from considerations.

Negotiators are reminded that where collective redundancies of 20 or more employees in one establishment apply, they should insist on the full legal rights to disclosure of the following information to the union in writing:

- The reasons for the proposals
- The numbers and descriptions of employees it is proposed to dismiss as redundant
- The total number of employees of any such description employed by the employer at the establishment in question
- The proposed method of selecting the employees who may be dismissed

- 'Suitable information' about its use of agency workers
- The proposed method of carrying out the dismissals, taking account of any agreed procedure, including the period over which dismissals are to take effect
- The proposed method of calculating any redundancy payments, other than those required by statute, that the employer proposes to make.

Where employers are proposing to make less than 20 staff redundant in one establishment, they are not required to follow a legally defined minimum period for consultation, however, they are still required to follow a fair and 'reasonable' process. Negotiators should seek to use the same template as that applied to 20 or more redundancies to ensure 'fairness' is observed.

It should be noted that for staff who have been furloughed, statutory redundancy pay should be based on 100% of their salary rather than the reduced furlough rate. Reps and branches should try to negotiate with employers a fair approach and base entitlement to contractual redundancy pay on normal pay, rather than any lower rate of furlough pay. Care should particularly be taken where an employee's earnings vary to check that any weeks used for calculations in which they were furloughed, should be treated as normal full pay as determined by the employer at the time of furloughing.

Appendix 1 – Government designation of “critical workers”

The key workers who are defined as critical to the COVID-19 response are almost entirely in the sectors where UNISON represents members - health, social care, childcare and early years, areas of local government, emergency services, transport and utilities.

The government definition of these sectors and the critical roles within them is as follows.

Health and social care

This includes but is not limited to doctors, nurses, midwives, paramedics, social workers, care workers, and other frontline health and social care staff including volunteers; the support and specialist staff required to maintain the UK’s health and social care sector; those working as part of the health and social care supply chain, including producers and distributors of medicines and medical and personal protective equipment.

Education and childcare

This includes childcare, support and teaching staff, social workers and those specialist education professionals who must remain active during the COVID-19 response to deliver this approach.

Key public services

This includes those essential to the running of the justice system, religious staff, charities and workers delivering key frontline services, those responsible for the management of the deceased, and journalists and broadcasters who are providing public service broadcasting.

Local and national government

This only includes those administrative occupations essential to the effective delivery of the COVID-19 response, or delivering essential public services, such as the payment of benefits, including in government agencies and arms length bodies.

Food and other necessary goods

This includes those involved in food production, processing, distribution, sale and delivery, as well as those essential to the provision of other key goods (for example hygienic and veterinary medicines).

Public safety and national security

This includes police and support staff, Ministry of Defence civilians, contractor and armed forces personnel (those critical to the delivery of key defence and national security outputs and essential to the response to the COVID-19 pandemic), fire and rescue service employees (including support staff), National Crime Agency staff, those maintaining border security, prison and probation staff and other national security roles, including those overseas.

Transport

This includes those who will keep the air, water, road and rail passenger and freight transport modes operating during the COVID-19 response, including those working on transport systems through which supply chains pass.

Utilities, communication and financial services

This includes staff needed for essential financial services provision (including but not limited to workers in banks, building societies and financial market infrastructure), the oil, gas, electricity and water sectors (including sewerage), information technology and data infrastructure sector and primary industry supplies to continue during the COVID-19 response, as well as key staff working in the civil nuclear, chemicals, telecommunications (including but not limited to network operations, field engineering, call centre staff, IT and data infrastructure, 999 and 111 critical services), postal services and delivery, payments providers and waste disposal sectors.

Appendix 2 – Car parking charges for staff

Parking was made free for all staff in the early part of the pandemic and remains free in Scotland and Northern Ireland. In Wales, parking has been free for staff since before the pandemic.

At the beginning of July, the prime minister confirmed that parking would remain free until the end of the pandemic. In addition, NHS England People Plan, which was published at the beginning of August, stated that: “NHS organisations should continue to give their people free car parking at their place of work for the duration of the pandemic”.

However, UNISON is aware that some hospital trusts have already reinstated or are planning to reinstate parking charges for staff – even though the Coronavirus crisis is not over. Although people are being asked to avoid using public transport if possible, many who cannot afford the parking charges, will have no other way of getting to work.

In spite of government assurances that parking would remain free for staff, until the end of the pandemic, some trusts have reintroduced charges. In the West Midlands, for instance, four hospital trusts reinstated car parking charges to staff at the beginning of July, while another five trusts chose not to do so.

Local organisers have reported that, when challenged, trusts say the decision is a financial one.

On 1 December, a debate held in Westminster Hall saw the issue raised by Labour’s Zarah Sultana MP, whose Coventry South constituency includes one of the hospitals that have reintroduced charges.

Ms Sultana told the hall that, in November, the secretary of state for health and social care repeated the government’s pledge on the subject, telling ‘Good Morning Britain’ viewers: “We don’t have parking charges in English hospitals and we’re not going to for the course of this pandemic.”

She pointed out that, “as the Royal College of Nursing and UNISON highlight, travelling to work by car reduces the risk of NHS staff catching or spreading the virus. Reintroducing parking charges makes that safer option more expensive.”

Responding for the government, health minister Edward Argar stressed that the decision on parking lies with individual trusts, but reiterated the government’s manifesto pledge that “disabled blue badge holders, frequent outpatient attendees, parents of children staying overnight, as well as night shift NHS staff, will be given free parking at hospitals”.

It is important to protect the health and social care workforce staff from contact with the general public for two reasons:

- a) to reduce the likelihood of health and social care workers contracting the virus from the public and
- b) to avoid general public exposure to the virus via health and social care workers.

This means that driving to work is a necessity for many working in health and social care and having access to free parking at or near their workplace is a lifeline.

What is UNISON calling for?

- Car parking charges should continue to be free for the foreseeable future. This will help maintain a healthy health and social care workforce
- Employers to lobby government, local authorities and private providers to continue with existing free provision.

You can read more about UNISON's hospital parking campaign at: www.unison.org.uk/at-work/health-care/big-issues/hospital-parking-charge-fair/

UNISON wants to hear from members if they have to pay to park on a daily basis. Please drop an email about your experience to health@unison.co.uk

Appendix 3 – Dealing with online (virtual) hearings

Where possible, the employer and union representatives may need to consider the postponement of disciplinary and grievance procedures during the continuing COVID-19 pandemic, unless the workplace is able to operate in-person meetings, whilst sufficiently remaining COVID-secure and compliant with government guidelines on social distancing etc.

As the [Acas guidance on 'Disciplinary and grievance procedures during the coronavirus pandemic'](#) stresses, “employers should try to find a safe, fair and reasonable way to go ahead with procedures. If this is not possible, they should consider if it might be fair to suspend a procedure.”

However, it is important for the employer and union representatives to recognise that an employee may feel that a delay could cause them undue anxiety. Additionally, the issue may be sufficiently serious to need urgent resolution.

It is essential that any temporary changes to disciplinary or grievance procedures to accommodate COVID-19 restrictions are agreed in advance with union reps. Whatever changes are decided, the procedures should still always comply with employment law and the [Acas Code of Practice on disciplinary and grievance procedures](#).

When deciding if a disciplinary or grievance procedure should go ahead, the employer and union representatives must carefully consider:

- the circumstances of each case
- if the workplace is open and safe to carry out the procedure in person
- if the procedure has to be carried out remotely, and whether it is fair and reasonable to do so, and can be clearly justified
- if video meetings should be recorded.

Employers and union representatives must also ensure that the following are maintained:

- the employee's right to be accompanied
- the employee's right of appeal

as well as considering the impact of a temporarily amended procedure on any claim made to an employment tribunal that the employee may subsequently wish to make.

Should procedures go ahead, Acas states that, if online meetings are to be used, employers should ensure that:

- Everyone involved has access to the technology needed for video meetings, for example the necessary equipment and internet connection
- Any reasonable adjustments needed are made for anyone involved who has any disability or other accessibility issues that might affect their ability to use video technology

- Any witness statements or other evidence can be seen clearly by everyone involved during the hearing
- It will be possible to fairly assess and question evidence given by people interviewed in a video meeting
- It's possible to get hold of all the evidence needed for the investigation or hearing, for example records or files that are kept in the office
- It's possible for the person under a disciplinary investigation or who raised a grievance to be accompanied during the hearing.

If an employee has chosen a union rep to accompany them in a hearing, Acas adds that the procedure must allow the rep to:

- Put and sum up the employee's case
- Respond on behalf of the employee to anything said
- Talk privately with the employee at any point
- Suggest another time and date for a meeting and in the context of the pandemic it may be appropriate to allow more than the five-day delay considered reasonable in normal circumstance.

Acas also suggest that for most disciplinary or grievance meetings held by online video, there will be no reason to record the meeting.

They emphasise that the employee must maintain the right of appeal.

It may be useful to quote from the [Acas guidelines](#) where it is felt that an employer is contravening these principles.

Acas guidance on disciplinary and grievance procedures during the coronavirus pandemic

www.acas.org.uk/disciplinary-grievance-procedures-during-coronavirus

Acas Code of Practice on Disciplinary and Grievance Procedures

www.acas.org.uk/acas-code-of-practice-on-disciplinary-and-grievance-procedures

However, negotiators may want to consider arguing a more assertive position based on the following points:

- The default position should be postponement of disciplinary and grievance procedures unless an employee feels that delay would cause them undue anxiety or the issue is sufficiently serious to need urgent resolution.
- Where hearings proceed, the union should be able to choose with the member whether representation of their interests is best served through conducting that hearing through written communication, telephone / video conferencing or a face-to-face meeting.
- Conducting hearings through written communication should only proceed where timeframes are sufficiently extended to allow responses to claims across several rounds of claim and counter claim.

- Conducting meetings through telephone or video conferencing should only proceed where the union rep and member are persuaded that they will not be put at a disadvantage. In many cases, managers likely to be leading hearings will have considerably greater experience of using telephone and video conferencing than a member. Technical issues can often make such meetings a disjointed experience and the ability of members and reps to confer in the course of the hearing will usually be problematic
- Face-to-face meetings should only proceed where there are facilities that allow for adequate social distancing between participants with hand sanitiser available etc, and that respect other organisational rules that may have been put in place to limit use of shared facilities and movement between staff in different departments. They should also take account of any travel involved by participants particularly by those who are reliant on public transport, the additional risks involved or government guidance on travel.
- Whatever method is planned for the hearing, if appropriate to the case, there may be some benefit in considering the preparation and sharing with the hearing panel a detailed written case well in advance of the hearing date. Providing a comprehensive range of evidence that anticipates likely hearing questions and statements will provide a clear audit trail and help guarantee an opportunity to fully present the case, regardless of any technical problems that may be experienced on the day of the hearing
- Recording of meetings should only take place with the consent of all parties. It will be for the judgement of the union rep and member whether it would be an advantage to have the verbatim recording of what is said or whether recording would unnerve the member / lead to a less frank and open exchange
- Although hearings and investigation meetings (in whatever format) should ideally take place promptly, because of potential difficulties with technology and IT equipment and reliance on possibly delayed postal services for the sharing of written evidence etc, there may need to be a slightly longer notice period agreed to take account of these issues.
- Additional time may also be necessary to prepare and to read online documentation.
- Negotiate that employers provide the IT equipment to be used by employees to ensure that they are using equipment of a reasonable standard that is virus-free, pre-loaded with the video conference software to be used.
- Because of potential problems with technology, it would benefit both the employer and employee for there to be a test of equipment before use of telephone or video conference for the hearing or meeting. There should also be an agreed protocol should any difficulties be experienced during the course of the actual hearing. Perhaps it may be agreed with employers that employees can call on a family member or friend within their support bubble to assist them with technical issues during the hearing, although not the business of the hearing itself.

The other key protocols when representing members online are the same as in face to face hearings:

- Data protection and the GDPR
- UNISON's case management form
- UNISON's rulebook
- Race discrimination protocol
- Employment tribunal protocol and time limits
- Referral of professional registration cases/

UNISON case study

The following example paragraphs resulted from negotiations with a local government employer over temporary changes to grievance and disciplinary procedures:

“The first consideration will be whether it is absolutely necessary for the particular procedure to be invoked and whether all necessary steps have been taken to resolve the matter informally or by mutual agreement by both parties.

The second consideration will be whether or not it is essential to proceed immediately with the actions required to complete the formal procedure. Among the points to consider will be the effects of a delay on the ability for [the employer] to deliver key services, on safety and also on the mental health and wellbeing of the individuals involved. A decision to delay should ideally be reached through mutual agreement by all parties involved. In situations where the employee has stated that they have trade union representation, the trade union representative should also be consulted.

The third consideration will be the form that the meeting or hearing takes. Options will include:

- Resolving the matter through written correspondence.
- Discussing the matter through video-conferencing technology
- Discussing the matter face-to-face in a COVID-secure fully risk assessed setting applying appropriate social distancing and other measures to reduce risk.

The employee and trade union will have the opportunity to raise any concerns they have over the form that the meeting takes. A deferral of the process will be considered if [the employer] or the trade union representative consider that justified objections have been provided such as when the employee is not conversant with the technology proposed to undertake their hearing.

Both parties will have the opportunity to call adjournments. Processes will be agreed in advance of the hearing as to how practically any confidential discussions undertaken during an adjournment can be appropriately facilitated.”

Quick checklist

In preparation for an online hearing, reps, branches and regional organisers will need to carefully consider the following issues:

What steps do you need to take to ensure that this case is properly prepared before the hearing takes place?

- How will you meet in advance with the member? In the pre-meeting, check the member's suitable access to technology and any welfare issues they may have, as well as using the time to go through their case.
- How will the investigator obtain all information and evidence and share and present it at the hearing? Ensure you get hard copies sent to the member and their rep of all case papers and have a clear understanding of how witnesses will be used at the hearing? How does the member and their rep plan to contact and use witnesses?
- How will all participants be given access to technology without disadvantage? Check whether the member has the digital skills needed to enable them to fully participate. Are they disabled or do they have any accessibility requirements? Do they have a safe, secure location to log in, concentrate and participate fully during the hearing?
- How will a fair hearing process be ensured by the employer? Will the hearing be recorded? All participants must agree. Who will be in the 'virtual' room? This must be clear in advance. How will breaks and adjournments be determined? What is the protocol for speaking during the meeting? What timescales have been agreed for the process?
- How will you be able to support the member during the hearing? Consider how you will be able to 'replicate' sitting alongside member. How will you communicate during the hearing – by email, 'chat', text? What support will there be for the member at home? Consider if any additional access requirements are needed for the member such as a BSL interpreter.

How do you plan to handle the actual hearing to ensure that it is fair and sticks to the employer's policy?

- Have you communicated with the member at a pre-meet, confirmed and tested how you plan to keep contact during the hearing (such as having appropriate signals etc)? Are there any unexpected issues about the technology, the equipment, internet, or privacy? Are you able to ensure no distractions?
- If a collective issue is being heard, agree in advance with the members who will talk and when?
- Is any agreed protocol being followed for speaking and listening without interruption (use of chat and hands up functions, un/muting mics etc), as well as allowing private conversations and 'breakout rooms'? Is the meeting set up to avoid any distractions (particularly important to remember if some participants are logging in from home)?
- Has the Chair outlined how the hearing will work and the process to follow should the technical side fail in some aspect? Or if there are any distractions, how to deal with them

(such as adjournment), and when the breaks are to be taken (particularly as the process can be so tiring)?

- Don't be afraid to stop the meeting if necessary, to call for an adjournment, or to be allowed time to check papers etc.
- Make sure you have drinking water, a pen and paper etc to hand before the meeting goes ahead! Remind the member to charge their phone or laptop.
- Check that all outcomes are clear, timescales are highlighted, and the process for appeal outlined by the Chair – otherwise ask for clarification.
- If agreed in advance is the hearing being recorded, or notes being taken? How will the union rep and member access them and by when? Is it clear to everyone who is in the 'virtual' room?

Have you planned on what would you need to consider after the virtual hearing has taken place?

- Have you carried out a post hearing debrief with the member to check on their understanding of what happened, options for the way forward, as well as to check on their welfare? What support does the member have at home?
- Allow for a break for reflection and to check your notes. Are you clear on what happens next, the next steps the member can take, use of the appeal procedure if required and timelines?
- What has the member decided? Will you need to lodge an appeal?
- What is the employer going to do next? Are there any mitigating circumstances to be taken into account?
- If the member is to return to work, can they be assured they will be safe and that the workplace is COVID-secure? Are any additional risk assessments needed?
- If appropriate use the experience to feedback to the employer about the process of an online hearing.

There is a UNISON webinar on dealing with online hearings available at

<https://attendeegotowebinar.com/recording/644791411452606987>

For more information and courses please go to <https://learning.unison.org.uk/>