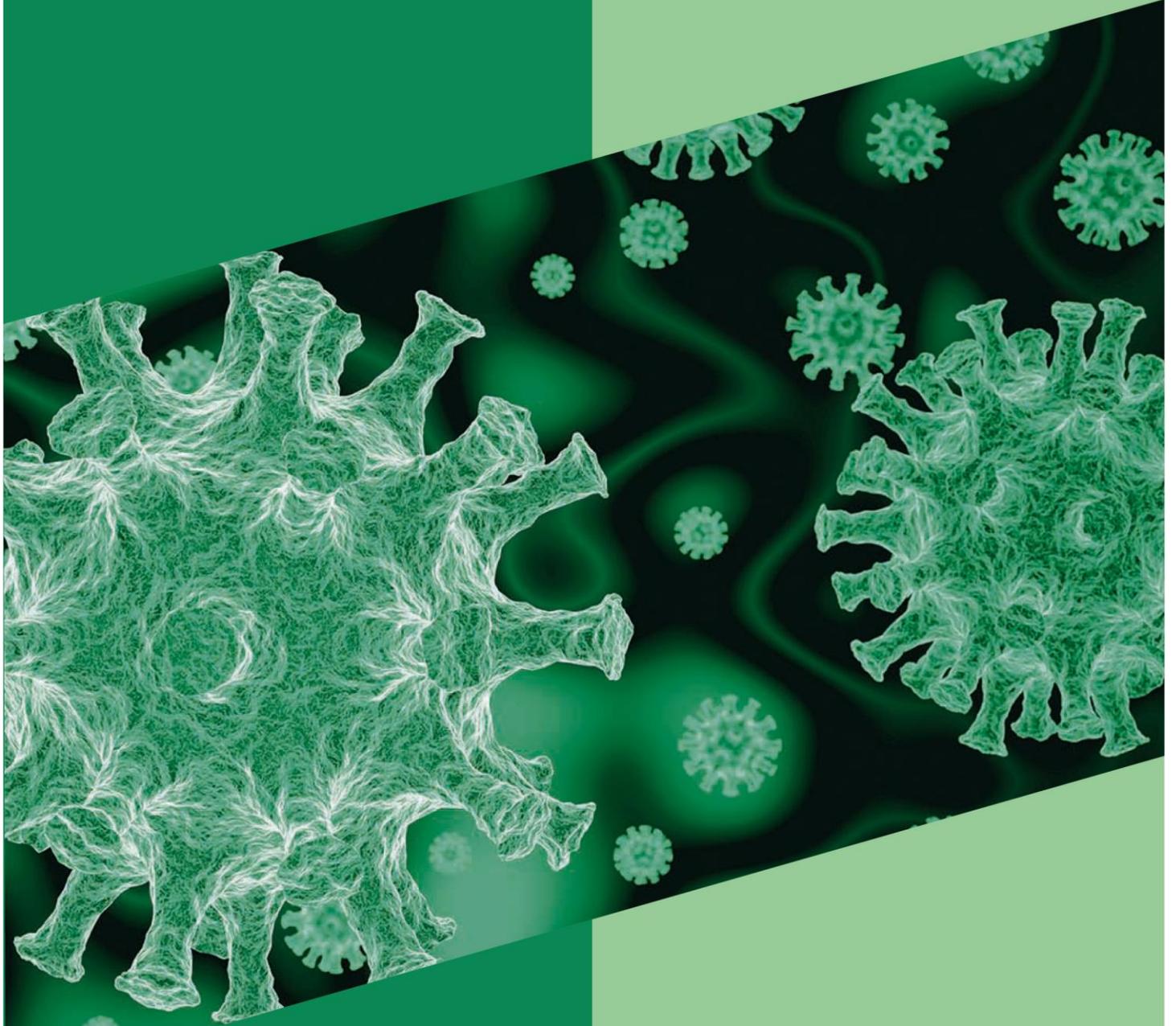


**Bargaining Support Group**



**COVID-19 pandemic  
Bargaining in  
support of  
pregnant workers**

**UNISON**  
*the public service union*

UNISON will seek to update this guidance as developments unfold and applies across the UK. If negotiators have any comments on this guidance or any experience of the scheme that could be usefully incorporated in the guidance, please contact Bargaining Support at [bsg@unison.co.uk](mailto:bsg@unison.co.uk)



# COVID-19 pandemic Bargaining in support of pregnant workers

## Introduction

This short guide is intended to assist negotiators when supporting pregnant workers during the COVID-19 pandemic.

The guide highlights best practice in health and safety, and terms and conditions for this group of workers.

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

**More guidance for UNISON reps on COVID-19** [www.unison.org.uk/coronavirus-rights-work/covid-19-advice-reps](http://www.unison.org.uk/coronavirus-rights-work/covid-19-advice-reps)  
and from bargaining support [www.unison.org.uk/bargaining-guides](http://www.unison.org.uk/bargaining-guides).

## Social distancing

The [government advice for pregnant women](#) is clear:

**“We are advising those who are at increased risk of severe illness from coronavirus (COVID-19) to be particularly stringent in following social distancing measures. This group includes... those who are pregnant.”**

These measures include

- avoiding contact with someone who is displaying symptoms of coronavirus (COVID-19). These symptoms include high temperature and/or new and continuous cough
- avoiding non-essential use of public transport when possible
- working from home, where possible.

## Working from home

The government has advised “stay at home, protect the NHS, save lives”. Employers should not expect any worker to travel to work and continue working at their normal workplace unless it is absolutely not possible or if they are [a critical worker](#).

The simplest way of preventing transmission of COVID-19 is to completely eliminate any work-related travel and social contact, and this can best be achieved by employers instructing and facilitating workers to work from home.

### More guidance on home working

[www.unison.org.uk/content/uploads/2020/04/Homeworking-model-policy-and-bargaining-guidance-April-2020-1.docx](http://www.unison.org.uk/content/uploads/2020/04/Homeworking-model-policy-and-bargaining-guidance-April-2020-1.docx)

## Redeployment

If the job isn't suitable for homeworking, then the employer should consider whether the pregnant worker could be temporarily redeployed to a role that would allow home working for the duration of the COVID-19 pandemic, on full pay.

It's 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.

## Shielding

Under [government advice](#), women who are pregnant and have significant heart disease, congenital or acquired, are regarded as extremely vulnerable and at very high risk of severe illness of COVID-19. They should be undertaking shielding measures which includes staying at home at all times and avoiding any face-to-face contact for a period of at least 12 weeks (this period of time could change.)

### **More government guidance on shielding**

[www.gov.uk/government/publications/guidance-on-shielding-and-protecting-extremely-vulnerable-persons-from-covid-19](http://www.gov.uk/government/publications/guidance-on-shielding-and-protecting-extremely-vulnerable-persons-from-covid-19)

Employers should consider the medical suspension on full pay of pregnant workers who are shielding themselves (see below).

Alternatively workers who are undertaking shielding measures can be furloughed under the government's [Job Retention Scheme](#). However, such treatment might breach legal protections for pregnant workers and suspension is what should be called for. Employers should also be careful to avoid the unlawful discrimination of individuals who have protected characteristics (eg disability, pregnancy) under the Equality Act 2010.

### **More guidance on furloughing and the Job Retention Scheme**

[www.unison.org.uk/content/uploads/2020/04/Job-Retention-Scheme-QA.pdf](http://www.unison.org.uk/content/uploads/2020/04/Job-Retention-Scheme-QA.pdf)  
[www.unison.org.uk/content/uploads/2020/04/Job-Retention-Scheme-Bargaining-Guidance.pdf](http://www.unison.org.uk/content/uploads/2020/04/Job-Retention-Scheme-Bargaining-Guidance.pdf)

## Self-isolation

As with all workers, if the pregnant worker develops symptoms of COVID-19 they should stay at home and not leave for 7 days from when their symptoms started.

If the pregnant worker is living in the same household as someone who develops symptoms of COVID-19, the government states that they should self-isolate at home for 14 days. If they are regarded as extremely vulnerable, they are advised to try to stay with friends or family for the period of 14 days, but if that is not possible to observe strict social distancing rules.

### **More government guidance on self-isolation**

[www.gov.uk/government/publications/covid-19-stay-at-home-guidance](http://www.gov.uk/government/publications/covid-19-stay-at-home-guidance)

Workers who are self-isolating but cannot do their work at home, should by law, at least receive statutory sick pay. Employers may also provide contractual sick pay.

Employers should consider the 'medical exclusion' of pregnant workers who are self-isolating (see below).

## Continuing work at the normal workplace

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.*” Employers already have a legal obligation 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.

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.

As COVID-19 is an infectious disease your employer’s duty to take health and safety action only applies if there is a “level of risk at work which is in addition to the level to which a new or expectant mother may be expected to be exposed outside the workplace.” Since the restrictions on travel and closure of all non-essential businesses on 26<sup>th</sup> March, most workplaces still open are likely to have a higher risk of infection than outside the workplace. And for those working in a public or patient-facing role such as in health and social care, there is an undoubted higher risk of infection than outside the workplace.

Therefore, your employer must assess the risks of contracting COVID-19 and take reasonable action to remove the risks. This action must take into account the Coronavirus Restrictions Regulations which class pregnant women (at whatever stage of pregnancy) as vulnerable.

Actions include ensuring that pregnant workers can work from home where possible, avoid public transport and keep a 2m distance from others. If it is not possible to avoid the risks by taking such action, your employer must provide suitable alternative work, if available and which complies with government guidance on social distancing, on the same terms and conditions. If no suitable alternative work is available, then the employer should suspend you on full pay.

The risk assessment must be kept under review throughout your pregnancy and as lockdown restrictions change.

[Maternity Action outline in their guidance](#) that “the risk assessment must take into account:

- their [the pregnant worker’s] job,
- any pre-existing health conditions,
- use of public transport,
- social distancing guidance on minimising social contact and maintaining 2m distance.”

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.

**Maternity Action briefing on the protection of pregnant women at work during the COVID-19 pandemic** <https://maternityaction.org.uk/wp-content/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-for-health-and-safety-protection-during-pregnancy/>

## Medical exclusion

An employer should apply 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. This would be the case where self-isolation is necessary.

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. Local government employers also have already acknowledged that in some cases they will need to allow staff who can't work from home to stay at home on full pay.

Due to 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 (Health and Safety Order 1978 in Northern Ireland) to protect staff should be interpreted in this way.

## Health and safety or medical suspension

Where the nature of a pregnant worker's role means there is no suitable alternative work available that could be done from home, the employer should consider suspending the employee for medical reasons 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.

Regulation 16 (3) in particular states that:

“(3) If it is not reasonable to alter the working conditions or hours of work, or if it would not avoid such risk, the employer shall, subject to section 67 of the 1996 Act suspend the employee from work for so long as is necessary to avoid such risk.”

Regulation 16 (4) makes an exception for infectious disease and only requires employers to treat it as a workplace risk if there is a level of risk of infection which is:

“in addition to the level to which a new or expectant mother may be expected to be exposed outside the workplace.”

However, if the worker is not able to follow necessary social distancing and other measures advised by the government within the workplace, then the risk is clearly higher than outside the workplace.

Full pay should be based on their usual earnings, not pay based on their contractual hours. As the [government](#) confirm, 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.” Branches and reps should try to negotiate to extend this period if necessary dependent on the duration of the COVID-19 pandemic and accompanying risks.

The [Health and Safety Executive \(HSE\)](#) confirms this requirement in their 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.”

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.

## Maternity leave and pay

Employees who are pregnant during the COVID-19 pandemic can start maternity leave as usual. Statutory maternity leave and pay entitlements do not change and the normal rules apply.

However, government guidance appears to show that an employee who is on maternity leave could also be furloughed by the employer. In this case the employer could claim for enhanced contractual maternity pay through the [Job Retention Scheme](#). (This is also the case for contractual adoption, paternity and shared parental pay.)

Once the 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.

However, it should be noted that if the employee is furloughed before the start of their maternity leave, it may impact on the maternity pay due to them if it reduces the average weekly earnings.

## Further information

NHS COVID-19 advice during pregnancy

[www.nhs.uk/start4life/pregnancy/coronavirus-covid19-advice-during-pregnancy/#faq-where-can-i-get-information-on-coronavirus-and-pregnancy](https://www.nhs.uk/start4life/pregnancy/coronavirus-covid19-advice-during-pregnancy/#faq-where-can-i-get-information-on-coronavirus-and-pregnancy)

The RCOG have also updated their [occupational health guidance for pregnant healthcare workers](#) (as of 21 April 2020) stating that

- all pregnant women should have a risk assessment about the risk of continuing work, carried out by a person appointed by their employer, during the COVID-19 pandemic
- responsibility lies with the employer to modify the working environment, to reduce the risk of the pregnant woman being infected
- pregnant women who are under 28 weeks' gestation can only continue working in direct patient-facing roles, where the risk assessment supports this
- pregnant women who are more than 28 weeks can only continue working where the risk assessment supports this.

The guidance is of relevance to any pregnant worker who is unable to work from home and has a public-facing or patient-facing role

[www.rcog.org.uk/globalassets/documents/guidelines/2020-04-21-occupational-health-advice-for-employers-and-pregnant-women.pdf](https://www.rcog.org.uk/globalassets/documents/guidelines/2020-04-21-occupational-health-advice-for-employers-and-pregnant-women.pdf)

## Bargaining checklist

**More guidance for UNISON reps on COVID-19**

[www.unison.org.uk/coronavirus-rights-work/covid-19-advice-reps](http://www.unison.org.uk/coronavirus-rights-work/covid-19-advice-reps)

and from bargaining support [www.unison.org.uk/bargaining-guides](http://www.unison.org.uk/bargaining-guides)

- 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 risk assessments?
- Has the employer put in place measures to eliminate or minimise risks for pregnant workers including 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 that allows the pregnant worker to work from home?
- Has the employer considered the medical exclusion on full pay those workers who need to self-isolate because they have contracted COVID-19 or a member of their household has contracted COVID-19?