



NHS Covid-19 workforce guidance (England) –a guide for UNISON branches

In this bulletin

To deal with workforce issues arising from the Covid-19 emergency, a suite of guidance covering: terms and conditions; health, safety and wellbeing; other workforce policies and procedures has been issued. All NHS employing organisations in England are expected to apply the provisions in this guidance to their direct and indirectly employed staff. Due to the exceptional circumstances, these have been produced rapidly and have therefore not been subject to the usual consultation and agreement. But UNISON via the NHS Staff Council Executive has had input and this enabled us to push for some key features such as full pay for Covid-19 related staff absence.

We have agreement that the guidance will be regularly reviewed and updated during the Covid emergency. This means we can raise any gaps; areas where we believe it does not go far enough; and areas where clarifications are needed. We have also established a 'clearing house' to deal jointly with any requests for interpretation of the guidance or additional content that local employers and trade unions submit.

In this guide you will find:

- A summary of temporary changes to Agenda for Change (AfC) terms and conditions
- Key points from workforce health, safety and well-being guidance
- Key points from other guidance on employment policies

Please use this guide as a reference tool to help you navigate the NHS Employers guidance and find the sections that will be most useful to you.

1) Temporary changes to AfC terms and conditions

The NHS Employers guidance applies to

- NHS organisations
- Outsourced services

- NHS services commissioned from non-NHS organisations

Sickness absence

- For sickness absence related to Covid-19, AfC sick pay will be at full pay. So, for staff whose sick pay under AfC is normally paid at basic salary only, they will get full pay ie the pay they would have received if at work including enhancements using a locally agreed reference period or policy
- Sickness absence related to Covid-19 should not be counted for the purposes of sickness absence triggers or sickness management policies

[Read the full details on sickness absence](#)

Pay for staff who need to self-isolate

- Staff should receive full pay – this “***must be interpreted as paying what the staff member would otherwise have earned***” including any pay enhancements, and using usual processes for calculating this eg agreed reference period or other local agreed policy
- **Bank workers:** should receive full pay for all pre-booked bank shifts that they would have worked. This applies to staff with substantive contracts and to Bank-only staff. On the first day of self-isolation trusts should refer to the booking system and arrange payment on the normal pay date for shifts booked. (NHS Professionals are following this approach). Alternatively, a ‘look-back approach’ using a reference period may be used.
- **Agency workers:** earnings that substantive staff have from agency shifts will not be counted towards ‘full pay’ for self-isolation or sickness absence. Agencies are responsible for determining pay for any agency workers sick or self-isolating. Agencies have been advised that they must ensure staff they are offering to the NHS do not need to be self-isolating.
- **Contractor staff:** Trusts should ensure that contractor staff who have to be physically present at an NHS facility to carry out their duties receive full pay while self-isolating. This may include staff groups involved in soft facilities management, hard facilities management, wholly-owned subsidiaries and other relevant outsourced services.

[Read the full details on pay and self-isolation](#)

****Top tip for members**:** Advise your members who work on the Bank to ensure they are booking shifts as far in advance as they can to ensure they will have full pay protection if they subsequently have to self-isolate.

Members doing agency shifts should check with their agency what pay they will get if they need to self-isolate. Members may wish to consider switching to Bank work if they have concerns about this.

Following government advice on self-isolation

- Staff must follow the government guidance on self-isolation and may be advised to do so by their employer, a GP, NHS 111 – or may fall into a category where government public information recommends this
- Staff should notify their employer of the need to self-isolate using the local procedure
- Staff who need to self-isolate but are well enough to work should agree with their line manager whether home working is a possibility

Returning to work after self-isolation

- Staff may need to self-isolate for longer than the standard seven or 14-day period eg if they belong to a high-risk group
- Staff who are not required to self-isolate or in high risk groups but have other concerns about working should be handled sensitively including consideration of unpaid leave, working flexibly or use of annual leave

[Read the full details on self-isolation](#)

Recording periods of self-isolation

- This is to be recorded as Covid-19 related special leave with full pay ie the pay that the staff member would receive if they were at work including enhancements, following the process set out in the Electronic Staff Record (ESR) user notice
- This should not be counted against any entitlements staff may have under local special leave policies
- Staff may need more than one period of self-isolation – ***“self-isolation will not be discouraged and these arrangements will apply to each period of self-isolation.”***
- Where staff are self-isolating but are working from home there is no requirement to record this as special leave

[Read the full details on how employers should record staff self-isolation](#)

Other absence

- Employers should exercise the maximum amount of flexibility and discretion in relation to leave policies such as special leave, carers' leave and bereavement leave recognising the exceptional circumstances of the pandemic. They should be as supportive and flexible as possible.

- Requiring staff to exhaust annual leave, special or carers' leave entitlements is inappropriate
- Despite the critical worker provision in schools and nurseries it may still be the case that staff with caring responsibilities may require time away from work. Employers should use discretion to support staff and provide flexible working, home working or temporary alterations to hours where appropriate

[Read the full detail on other absence](#)

Working hours and working time regulations

- Working prolonged and sustained excessive hours is not good for staff or patient care and managers should ensure rest breaks are taken and hours monitored
- There should be no requirement for staff to sleep on site – but where facilities are provided for optional use there should be increased infection control measures
- Caring responsibilities of staff should be considered when setting working patterns/shift rotas
- If employers establish a potential need for critical staff to opt out of 48-hour working time regulation limits this should be for the pandemic crisis only and should only be used in exceptional circumstances when absolutely necessary
- Staff cannot be pressured to opt out – this is voluntary – and those choosing not to should not be subjected to any detriment. Inducements cannot be offered and staff who opt out can choose to opt back in at any time
- Employers should engage in discussion with a view to reaching local agreements on how the Working Time Regulations (WTRs) should apply or be modified via collective agreement eg extended reference periods covering night work limits, rest periods and rest breaks – and building in compensatory provisions.

[Read the full detail on working hours and WTRs](#)

Annual leave

- Employers need to recognise the need of staff to rest and recuperate.
- Decisions to cancel leave must be considered very carefully, only as a last resort in operationally critical situations, and in consultation with local staff side reps. Branches may need to be particularly alert to this in light of the upcoming Easter period

- There may be instances where pre-booked leave has to be delayed, or periods where leave cannot be booked, but these must be discussed with individuals and handled sensitively following consultation with the trade union – all other possible avenues should be discussed first
- Decisions must be implemented in line with WTR requirements around delaying of leave including notice periods
- [WTR have now been amended](#) so that statutory annual leave (up to 4 weeks) can be carried over into the next two leave years. The NHS Employers guidance will be updated to include this
- Statutory provisions allowing the remaining 1.6 weeks to be carried over into the next leave year still apply and leave above 28 days can under statutory provisions be paid in lieu

[Read the full detail on annual leave](#)

Additional work to support the emergency

- Agenda for Change sets out [provisions for overtime payments](#) where additional hours are worked (s3) covering staff in bands 1-7. Employers are also encouraged to optimise the use of trust Banks
- However, the agreed provisions say “Overtime and additional hours payments should be considered for the appropriate staff groups by employers.” You may want to use this to raise the benefits of running additional hours on an overtime payment system rather than through the bank.
- **Apprentices:** the requirement for 20% of time to be spent in off-the-job learning is temporarily suspended, releasing apprentices to work on the job to support the emergency. Apprentices should not be disadvantaged by this in gaining their qualifications. Apprentice pay should be adjusted where necessary to ensure they are being paid the appropriate rate for the job they are doing.
- **Students:** some pre-registration nursing and midwifery students will be joining the workforce. Other allied health professional students are likely to follow. Employment will be on AfC terms and pay should be in line with the work they come in to do. Further guidance will be issued about pay, job descriptions and banding.

[Read the full detail on additional work to support the emergency](#)

Returning to work in the NHS to support the emergency

- **Returners:** should be paid at the top of the band for the job they are doing if they previously worked in that pay band or a higher one. They will

automatically be enrolled into the NHS Pension Scheme – they may opt out if they wish (except those who retired from the 1995 scheme where an alternative scheme must be offered). All restrictions regarding the amount of work/pay they can do/earn without losing pension are being removed including abatement restrictions for Special Class scheme members.

- **Early returners from family-related leave:** staff may choose to return early but this must be entirely voluntary. They should not lose any of their contractual entitlements if the effect of returning is to bring their leave to an early end. This can be achieved by allowing additional paid leave at a later date in lieu of the family-related pay and leave they gave up.

[Read the full detail on returning to work in the NHS](#)

[Read the full detail on NHS Pensions for staff returning or increasing hours](#)

Re-prioritising work

- During the pandemic any local requirements to demonstrate standards for pay progression purposes are suspended and pay progression should be automatically applied from the pay-step (incremental) date unless there are concerns that cannot be resolved through further support/training etc

[Read the full detail on re-prioritising](#)

Health branches – please let us have your feedback

Now that this employer guidance has been published we hope it will deal with some of the most common problems branches are reporting, eg pay for self-isolating staff.

We have got agreement that the guidance will be reviewed, added to and updated regularly and that employers and local unions can access further advice on interpretation which will be provided jointly.

So please let us know if you:

*Encounter problems with your employer around interpretation of any of the above provisions

*Are dealing with situations or issues during the pandemic where it would be useful to have sections added to the guidance on terms and conditions

*Believe that the guidance requires clarification or further explanation

Contact health@unison.co.uk – and put ‘*Covid AfC terms and conditions guidance*’ in the subject line

2) Health, safety and well-being guidance

[Read the full set of guidance](#) – there is a lot of useful material laid out in several sections. Below we pull out some key extracts which you may find particularly helpful.

Staff well-being and support

[Full details here](#) – useful points to note:

- “Employers have the same duty of care to staff during a pandemic as in other circumstances.”
- “NHS organisations must consult with...staff unions to develop a local plan to support the workforce. Trade union safety representatives should also be involved and consulted...Employers may want to encourage staff to use their reps as a route for flagging up concerns.”
- Employers should conduct a “review of security arrangements to protect staff from the potential of increased violence and abuse, including community staff who may be targeted if they are carrying sanitiser and PPE”

Infection control

[Full details here](#) – useful points to note:

- Staff should follow standard advice for the public regarding hygiene, self-isolation and household quarantine
- On a strictly voluntary basis, where a member of staff has a member of their household showing symptoms they can [access NHS funded hotel accommodation](#) as an alternative to the 14-day household isolation policy
- “Organisations will have a clear process in place to enable staff to raise any concerns about PPE. Staff should be encouraged to continue to use established incident reporting procedures (for example Datix) alongside occupational exposures being reported to the HSE via RIDDOR”
- Beards and facial hair can prevent PPE masks being able to seal to the face and pass the fit test. Employers should explore the reasons for any objections to being clean shaven; involve staff side unions; engage with local faith groups; consider alternatives in the form of hoods or helmets (although these are more expensive and would require a couple of hours’ training). Where a voluntary approach is not accepted by staff, employers will need to consider the implications of requiring staff to be clean shaven including whether this could be indirectly discriminatory and whether it is proportionate.

Supporting most vulnerable staff

[Full details here](#) – useful points to note:

- Groups of staff who fall into the high-risk categories identified by the government must be supported to follow the shielding advice. This means contributing to work, where national guidance allows and adjustments can be made to enable staff to work from home. This might include redeployment where appropriate to work remotely in 111, dispatch or virtual patient consultations
- Staff who live with someone in a high-risk group must be supported so that they can continue to work where national guidance allows and reasonable adjustments can be made to ensure their family member can stay safe and well
- Occupational health services should advise employers and specialist medical advice may be required
- Employers should follow [the guidance provided by the RCOG et al](#) on healthcare workers who are pregnant. This includes the advice that healthcare workers after 28 weeks' gestation or with an underlying health condition should be recommended to stay at home, working remotely if possible.

3) Other workforce guidance

Click on the links to read more about:

- [Partnership working and need for additional facilities time to support TU reps](#)
- [Temporary Disclosure and Barring Service \(DBS\) fee waivers and fast-tracking for new recruits and redeployments](#)
- [Indemnity cover by employers for staff working differently during the pandemic](#)