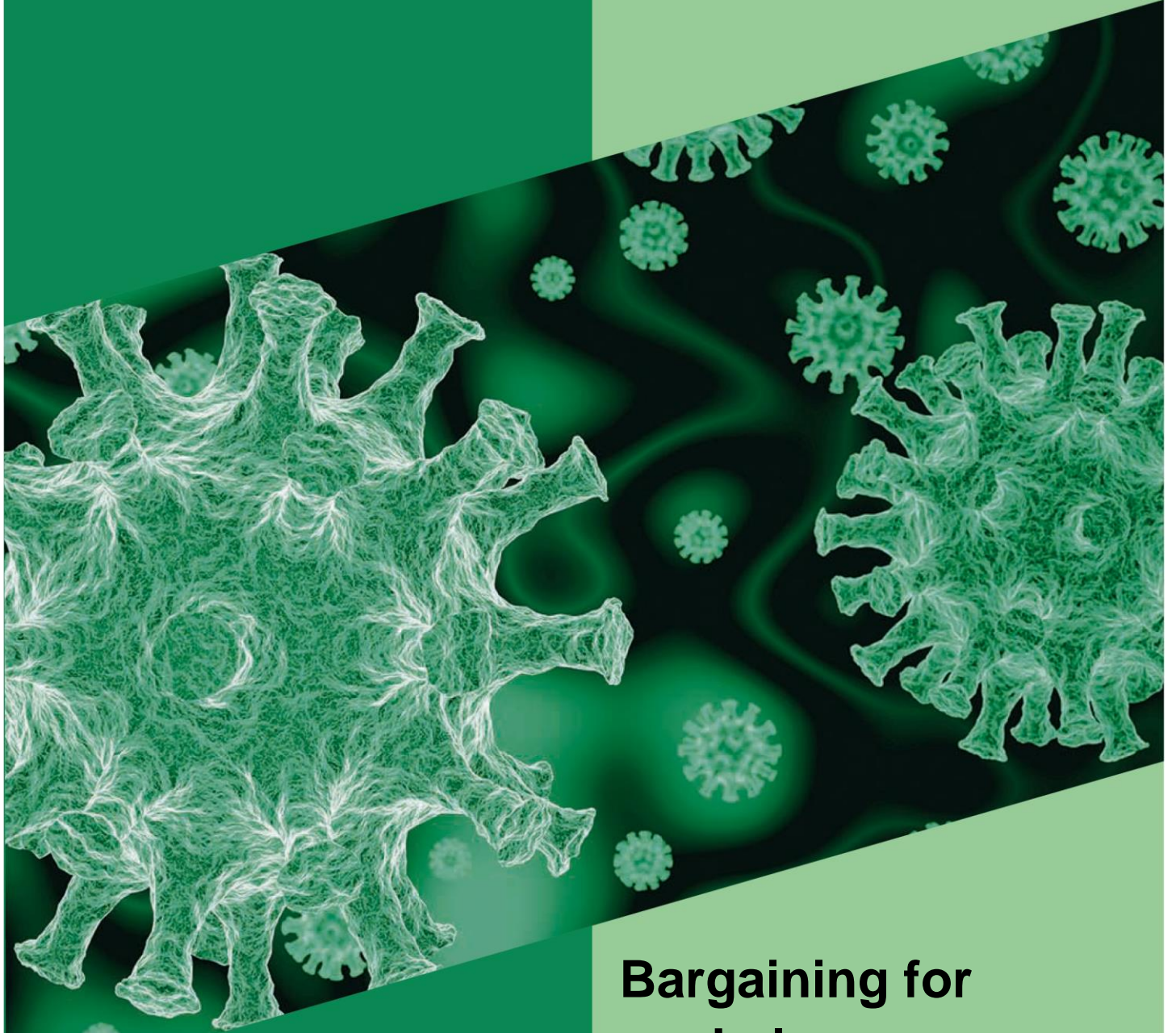


**Bargaining Support Group**



**Bargaining for  
workplace  
practices during  
the easing of  
Covid-19 lockdown**

**UNISON**  
*the public service union*



# Bargaining for workplace practices during the easing of Covid-19 lockdown

## Introduction

In the wake of the UK government's announcement on 10 May, the 'lockdown' that has been in place across the UK since 23 March is being lifted in stages according to occupation and the differing approaches of the devolved governments.

Many key workers have been attending their normal place of work throughout the 'lockdown', however, for others the announcement is bringing to an end an extended period away from the workplace.

This guide seeks to assist negotiators in ensuring that, as the easing of restrictions unfolds, the return to work process is managed in a way that treats the protection of staff health and safety with the highest priority.

It sets out the main features for reaching an agreement with employers that ensures the path out of 'lockdown' is not rushed and instead each step is considered carefully, while regular discussion with union reps is put in place to consider the effectiveness of policy implementation and adjust measures taken in response to staff views.

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## Deciding who returns and when

The starting point in discussions with employers over responding to easing of lockdown measures should be the government's advice that staff should continue to work from home where such arrangements are feasible. However, where this is not possible, decisions over when different groups of staff return to the workplace should be based on a thorough Covid secure risk assessment of the workplace for all roles.

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 next section of this guide sets out the range of mitigating steps that may be taken to deal with these risks.

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 and 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.

In staging return, 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.

### Vulnerable workers

The most at risk are those classified as '**clinically extremely vulnerable**' workers who were advised by the government to '**shield**' at home and avoid any face-to-face contact over that time. Since 1 August, they were advised they could go to the workplace as long as it is Covid secure, **but should carry on working from home wherever possible.**

This staff in this category are those listed as having the following conditions:

- 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 which 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 and inborn errors of metabolism that significantly increase the risk of infections (such as SCID, homozygous sickle cell);
- People on immunosuppression therapies sufficient to significantly increase risk of infection;
- Pregnant women who have significant heart disease, congenital or acquired.

For this group, the [government guidance](#) (covering Scotland, Northern Ireland and England) is now: “You can go to work as long as the workplace is [Covid-secure](#), but should carry on working from home wherever possible. You may be able to take up an alternative role or change your working patterns temporarily. If you need support to work at home or in the workplace, [you can apply for Access to Work](#).”

Currently in Wales it remains in place until 16 August 2020 although may be extended if the number of COVID-19 cases in the community starts to rise significantly.

After this group, the more widely defined government classification of ‘**clinically vulnerable**’ people takes in those who are aged 70 or over, pregnant women and those aged under 70 with an underlying health condition that demands a flu jab each year on medical grounds.

These conditions are as follows:

- Chronic (long-term) respiratory diseases, such as asthma, chronic obstructive pulmonary disease (COPD), emphysema or bronchitis;
- Chronic heart disease, such as heart failure;
- Chronic kidney disease;
- Chronic liver disease, such as hepatitis;
- Chronic neurological conditions, such as Parkinson’s disease, motor neurone disease, multiple sclerosis (MS), a learning disability or cerebral palsy;



- Diabetes;
- Problems with the spleen – for example, sickle cell disease or if had spleen removed;
- A weakened immune system as the result of conditions such as HIV and AIDS, or medicines such as steroid tablets or chemotherapy;
- Being seriously overweight (a body mass index (BMI) of 40 or above).

Any member of staff who is pregnant or breastfeeding has specific protections under the Management of Health and Safety at Work Regulations that demand a workplace risk assessment, the consideration of suitable alternative work where the risks cannot be mitigated and medical suspension on full pay where no safe alternatives can be arranged. [The Equality and Human Rights Commission](https://www.equalityhumanrights.com/en/advice-and-guidance/coronavirus-covid-19-guidance-employers-your-duties-pregnancy-and-maternity) 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](https://www.equalityhumanrights.com/en/advice-and-guidance/coronavirus-covid-19-guidance-employers-your-duties-pregnancy-and-maternity)

### Disabled workers

In the case of disabled workers, health and safety protections are supplemented by the demands of equality legislation. Under the Equality Act 2010<sup>1</sup>, 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 has classified as 'clinically vulnerable' or 'clinically extremely vulnerable' will be considered disabled workers under the equality legislation. Although the government advice is that people who were 'shielding' can now go to work as long as the workplace is [Covid-secure](#), they should carry on working from home wherever possible. 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.

From 1 August workers will no longer be entitled to Statutory Sick Pay to help them to shield at home, so there could be greater pressure on returning to work. **It is crucial that workplace risk assessments are thorough and take account of disabled workers and clinically vulnerable workers specific circumstances.**

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.

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<sup>1</sup> In Northern Ireland, this requirement is enshrined in the Disability Discrimination Act 1995

Other employers have furloughed shielded staff, (although the scheme is now closed to new entrants) and can continue to do so until October. 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](#) 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](http://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](http://www.gov.uk/access-to-work) ([www.nidirect.gov.uk/articles/access-work-practical-help-work](http://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, as outlined in the [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](#).

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.

What is needed in the workplace is simply 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.

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.

### **Workers who live in the same household as a vulnerable person**

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

An employer may have decided to furlough such an employee (although the furlough scheme is now closed to new entrants). 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 shielding because they are disabled or pregnant) then the individual may have a claim of direct associative discrimination.

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. However, as shielding has now been paused (or due to be in Wales from August 16) whilst ensuring that the workplace is Covid secure for workers returning, employers must undertake thorough **risk assessments and take account of the particular circumstance of those with live in the same household as the clinically vulnerable.**



## **Workers with caring responsibilities**

Beyond these groups who face heightened risks if they contract Covid-19, staging a return to work in the normal workplace should also consider staff that have caring responsibilities, whether vulnerable dependants or children.

Staff with school-age children are likely to see their caring responsibilities return to normal arrangements as more children return to education settings. However, this process may take some time, particularly since children are also expected to return according to a staged timetable that may vary significantly from area to area or even within areas by individual education setting.

Additionally, normal options for out-of-school childcare such as at grandparents or friends may not be possible due to continuing social distancing requirements. Playschemes places may also be limited due to increased demand and fewer opportunities. Therefore, staff return should be co-ordinated with these arrangements.

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

However this may not always be feasible and 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, and before the possibility of redundancies is explored.

Employers can continue to furlough staff under the government's Job Retention Scheme, which is continuing through to October although it is now closed to new entrants.

## **Workers facing other issues that may impact on work such as 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.

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 from [Galop](#) for LGBT+ people.

Best practice would also be for employers to provide job flexibility at this time, and possibly 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.

### **Staff returning from furlough**

Any staff who have been furloughed will need to complete the three-week minimum period on furlough for employers to be eligible for Job Retention Scheme funding. Therefore, if staff payment is dependent on the scheme, it will be in the interests of those staff to see the minimum period to a conclusion before being considered for a return to the workplace.

As of 1 July 2020, employers have been able to bring furloughed staff back to work on a part-time basis. The employer will have to pay their normal wages for any hours that they are in work.

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. Guidance on these arrangements have been set out in full in the Covid-19 section of the UNISON Bargaining Guides web page at [www.unison.org.uk/bargaining-guides](http://www.unison.org.uk/bargaining-guides)

### **Staging a return**

A key bargaining objective for the union is seeking to determine the staging of a return so that staff in the above categories should receive extended salary protection as part of a safe return to the workplace.

In some instances, employees may not have been receiving full pay during their absence from the workplace. 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 puts the health of all their staff at risk.

### **Combating stigma and discrimination**

Everybody's work experiences during lockdown and its gradual easing 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 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 on 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.

## Putting in place measures to reduce risks

Employers must carry out a thorough Covid-secure risk assessment of the workplace which should identify the practical steps that will be taken to reduce the risks of infection spreading through the workforce via respiratory secretions or contaminated surfaces. They must also consult with UNISON's Safety Reps on anything affecting their members' safety, which includes the outcomes of any risk assessments.

The checklist 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](http://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 clothing 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, and all “hot-desking” arrangements are put on hold (or in England, where people cannot be two metres apart, the ability to be one metre apart and to additionally manage transmission risk).
- 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](http://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 (see [UNISON's Bargaining Over Sickness Absence](#) guide available from [www.unison.org.uk/bargaining-guides](http://www.unison.org.uk/bargaining-guides) for achieving the best terms for employees who are forced to self-isolate).
- 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. For further information available below in the section headed ‘Test, 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.

The TUC have set up the website [COVID Secure Check](https://covidsecurecheck.uk/) 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)

<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. UNISON’s [guidance on redeployment](http://www.unison.org.uk/bargaining-guides) during the pandemic is available from [www.unison.org.uk/bargaining-guides](http://www.unison.org.uk/bargaining-guides)

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.

### **Test, track and trace in the workplace**

During the coronavirus pandemic and easing of lockdown in the UK, employers may propose that staff are tested for the virus or in some cases for the antibodies. Under the 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 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 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 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/>

Concern has also been expressed about the downloading of any test and trace or contact-tracing app onto smartphones. Although the government has delayed the implementation of an app developed in the UK by the NHS's digital research division, NHSX, the intention has not been abandoned. There were serious concerns about the original app that was trialled on the Isle of Wight, as it was believed to breach our privacy and GDPR rights but an app is still being developed.

How long the data collected will be kept, where it will be held, whether it might be vulnerable to a potential cyber attack, how it could be used or shared in the future and whether additional features could or would be added to any such app are some of the present privacy concerns. There are also concerns that an app reliant on Bluetooth signals to alert people potentially exposed to someone with COVID-19 could lead to false alerts.

It would also be important to identify the data controller and data processor, which could include consideration of not only the employer but the app developer, the 'cloud' provider etc.

Again, the individual's consent to download and use such an app is essential. The employer would need to make very clear all requirements 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."

The Information Commissioner's Office (ICO) warns in one of their blogs "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 starting point for reps and branches therefore 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](http://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, access and implementing the testing 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.

### **Checklist**

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

- 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
- NHS data protection, employment, health and safety, employment contract obligations, equality regulations must all be compliant
- Contact-tracing apps should only be used in the workplace if specific requirements are met and set out in a Data Protection Impact Assessment (DPIA)
- 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 have a legal right to be consulted before an employer starts to collect data and make data-driven decisions in the workplace

## 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](#) guidance.
- 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 UNISON's [Bargaining over Redeployment guide](#) at [www.unison.org.uk/bargaining-guides](http://www.unison.org.uk/bargaining-guides)
- 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, 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.

## Disciplinary, capability and grievance procedures

An example where the postponement of non-essential workplace activities has been agreed is in the NHS, where 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.”

[Acas has also 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.”

Acas also states that, if video 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 set out the views that for most disciplinary or grievance meetings held by video, there will be no reason to record the meeting and emphasises 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 those principles.

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 and respect other organisational rules that may have been put in place to limit use of shared facilities and movement between staff in different departments;
- 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.

UNISON's normal model policies for disciplinary, capability and grievance procedures, which form the basis on which these amendments can be made during the pandemic, can be found at [www.unison.org.uk/bargaining-guides](http://www.unison.org.uk/bargaining-guides) .

## 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](http://www.gov.uk/guidance/holiday-entitlement-and-pay-during-coronavirus-covid-19) ([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)), 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](http://www.acas.org.uk/coronavirus/using-holiday) ([www.acas.org.uk/coronavirus/using-holiday](http://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](http://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 may provide an important break from work and worries, and boost to the health and wellbeing of workers.

As the easing of lockdown continues and holidays away may become more possible in the future, it will be important that employees do not lose out on bookings made a long time ago that may yet be allowed to go ahead later in year.

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. However, 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 (the grant to employers is to be further reduced to 70% and 60% as the scheme winds down although the employer must still top it up so that the worker continues to receive 80%). This means that the employer would have to make up the difference when an employee is due 100% of normal wages whilst on leave.

Note also that 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.

The Job Retention Scheme has now closed to new entrants who have not already been furloughed for at least the minimum furlough period of three weeks. The only exceptions to this rule are if the employee was on parental leave or on army reservist duty before the 10 June, and they work for an organisation who has had others on furlough. From 1 July 2020, the employer was able to bring furloughed staff back to work on a part-time basis. The employer will have to pay their wages for any hours that they are in work.

### **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, shielding 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**

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, and self-isolating (sometimes referred to as being 'in quarantine') for 14 days, except in very limited situations for certain people with specific roles. In addition, 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](http://www.gov.uk/guidance/travel-advice-novel-coronavirus) and on entering the UK from abroad at [www.gov.uk/uk-border-control](http://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](http://www.gov.uk/guidance/coronavirus-covid-19-travel-corridors). For Wales, the guidance from travellers coming from abroad is at <https://gov.wales/exemptions-self-isolation-coronavirus-covid-19-html>. For Scotland, the guidance is at [www.gov.scot/publications/coronavirus-covid-19-public-health-checks-at-borders/pages/exemptions/](http://www.gov.scot/publications/coronavirus-covid-19-public-health-checks-at-borders/pages/exemptions/) and for Northern Ireland, the guidance is at [www.nidirect.gov.uk/articles/coronavirus-covid-19-travel-advice](http://www.nidirect.gov.uk/articles/coronavirus-covid-19-travel-advice).

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

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 (up until September 2020, then reducing) as well as employer National Insurance and pension auto-enrolment contributions (up until 1 August 2020);
- 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 or had been 'shielding' in line with Public Health guidance. Shielding staff were also eligible to be placed on furlough although shielding has now been paused from 1 August (from 16 August in Wales);
- 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.

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 '[Dismissal, Redundancy and Transfers](#)' is available on the UNISON bargaining guides page at [www.unison.org.uk/bargaining-guides](http://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 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 [bsq@unison.co.uk](mailto:bsq@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 [bsq@unison.co.uk](mailto:bsq@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 October 2020 should offer a strong basis for avoiding redundancies, although the scheme is now closed to new entrants and the amounts available to employers is reduced. 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 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.



## Assisting staff in returning to the workplace

### 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.

### 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](http://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](http://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](http://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](http://www.gov.uk/when-someone-dies)

**British Psychological Society's advice on coping with death and grief**

[www.bps.org.uk/coronavirus-resources/public/coping-death-and-grief](http://www.bps.org.uk/coronavirus-resources/public/coping-death-and-grief)

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

[www.cruse.org.uk](http://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](http://www.dyingmatters.org)

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

[www.thegoodgrieftrust.org](http://www.thegoodgrieftrust.org)

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

[www.ataloss.org](http://www.ataloss.org)

### **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.

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. For example, in the LGBT Foundation's [May 2020 online survey](#), 42% of the LGBT+ people who responded said they would like to access support for their mental health during the pandemic.

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](http://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."

## 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 problems experienced by workers caused by stress 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](http://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/](http://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](http://www.hse.gov.uk/stress/index.htm)

**Acas information on Coronavirus and mental health at work**

[www.acas.org.uk/coronavirus-mental-health](http://www.acas.org.uk/coronavirus-mental-health)

**Mind 'taking care of your staff'**

[www.mind.org.uk/workplace/mental-health-at-work/taking-care-of-your-staff](http://www.mind.org.uk/workplace/mental-health-at-work/taking-care-of-your-staff)

**Mind 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](http://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](http://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](http://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/](http://www.nhs.uk/oneyou/every-mind-matters/)

**NHS information on mental health and wellbeing**

[www.nhs.uk/conditions/stress-anxiety-depression](http://www.nhs.uk/conditions/stress-anxiety-depression)

**NHS information on post-traumatic stress disorder**

[www.nhs.uk/conditions/post-traumatic-stress-disorder-ptsd/](http://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](http://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](http://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](http://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/](http://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](http://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](http://www.bps.org.uk/news-and-policy/psychologists-produce-advice-key-workers-and-their-children)

## **Caring responsibilities**

Many workers will be faced with the dilemma of how to safely care for their children at home, whilst normal childcare providers and schools remain fully or partly closed. Additionally, other options for childcare such as grandparents or friends may remain impossible because of social distancing guidance and requirements to protect the vulnerable.

Some workers may also be faced with the dilemma of having to care for vulnerable adults, including those that have been 'shielding.'

During lockdown, employers may have made arrangements for workers with caring responsibilities to work from home if they can. But as lockdown restrictions start to be eased, the employer should continue to take account of the needs of workers with caring responsibilities.

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.

Employers should be encouraged to explore the possibility of continuing homeworking for these employees with caring responsibilities, 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 furlough staff under the government's [Job Retention Scheme](#), which is continuing until the end of October 2020, although the scheme is now closed to new entrants from 30 June who have not already been furloughed for at least the minimum furlough period of three weeks. The only exceptions to this rule are if the employee was on parental leave or on army

reservist duty before the 10 June, and they work for an organisation who has had others on furlough. From 1 July 2020, the employer will be able to bring furloughed staff back to work on a part-time basis. The employer will have to pay their wages for any hours that they are in work.

Whilst qualifying employees are also entitled to unpaid dependants' or emergency leave and to 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.

### **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?
- Has 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 flexihours 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](http://www.unison.org.uk/bargaining-guides)

**Coronavirus: your rights at work**

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



## **Coronavirus legal guidance**

[www.unison.org.uk/get-help/services-support/legal-services/](http://www.unison.org.uk/get-help/services-support/legal-services/)

**Bargaining on carers' policies** [www.unison.org.uk/content/uploads/2019/10/Carers-policies-guide-1.pdf](http://www.unison.org.uk/content/uploads/2019/10/Carers-policies-guide-1.pdf)

## **Negotiating for working parents**

[www.unison.org.uk/content/uploads/2020/03/Negotiating-for-working-parents.pdf](http://www.unison.org.uk/content/uploads/2020/03/Negotiating-for-working-parents.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](http://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](http://www.familyfriendlyworkingscotland.org.uk)

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

[www.gingerbread.org.uk](http://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](http://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/](http://www.unison.org.uk/get-help/services-support/there-for-you/)

## **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.

### **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 there 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?
- If this is not feasible, have they considered furloughing these staff members?

### **More information**

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

#### **Coronavirus: your rights at work**

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

#### **Coronavirus legal guidance**

[www.unison.org.uk/get-help/services-support/legal-services/](http://www.unison.org.uk/get-help/services-support/legal-services/)

#### **Time off for medical appointment and health screening**

[www.unison.org.uk/content/uploads/2017/05/Medicalscreeningleave.pdf](http://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](http://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](http://www.unison.org.uk/content/uploads/2018/10/Proving-Disability-and-Reasonable-Adjustments-Oct2018.pdf)

## Staff continuing to work from home

During the easing of lockdown, the emphasis from the [UK government](#) remains that “workers should continue to work from home rather than their normal physical workplace, wherever possible” and that this should be the case for the “foreseeable future”. The [UK government](#) stress the need for staff to be able to work safely and although now “it is at the discretion of employers” as to how this is achieved, “working from home is one way to do this.” Whilst “those classed as Clinically Extremely Vulnerable can go to work as long as the workplace is Covid-19 Secure but should carry on working from home wherever possible.”

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.

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.

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.

As well as considering adaptations for the worker’s physical environment, it is important that employers also 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.

Enforced isolation can additionally lead to feelings of loneliness and lack of connection with work colleagues.

A different way of working may also 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.”

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 continue to 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.

Workplace reps and branches will want to make sure that employers are providing sufficient advice and support on working from home and reasonable adjustments for disabled workers. Do disabled workers know about the Access to Work [Access to Work programme? \(further details on page 5\)](#).

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

Staff may need to check with their home insurers, mortgage providers or landlords if there are any issues with them working from home long-term. If there are any additional costs involved (such as higher insurance premiums) negotiate with the employer to cover them.

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 of £6 per week or £26 per month for monthly paid employees to an employee working regularly at home without the employer having to justify the amount paid. 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](http://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](http://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.

### Checklist

- How is the employer fulfilling their responsibility to carry out a risk assessment to check where the employee is working from during the continuing period of social distancing, such as guiding employees through the risk assessment process and provide guidance

and equipment to reduce or eliminate risks? Is the UNISON health and safety rep involved in providing guidance?

- Is the employee's home suitable for homeworking? 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 sufficient advice and support on working from home and 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?

### **More information**

**From bargaining support** [www.unison.org.uk/bargaining-guides](http://www.unison.org.uk/bargaining-guides) including guidance on working from home during the Covid-19 pandemic.

#### **More guidance on lone working**

[www.unison.org.uk/content/uploads/2018/02/24830\\_Working\\_Alone\\_Web.pdf](http://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](http://www.hse.gov.uk/toolbox/workers/home.htm)

**Acas guidance on working from home**

[www.acas.org.uk/working-from-home](http://www.acas.org.uk/working-from-home)

## 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.

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.

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](http://www.unison.org.uk/regions)) and seek legal advice if appropriate.**

Although from 1 August (16 August in Wales), those classified as [classified as vulnerable or extremely vulnerable](#) workers no longer need to shield and therefore can go into work if they cannot work from home, it is essential that the business is Covid-safe and takes proper account of their particular circumstances.



It can further be argued that refusal to allow working from home may be a breach of the Equality Act 2010 duty to provide reasonable adjustments to disabled workers. This may also cover other workers with an underlying health condition (but 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-safe workplace or not properly address the specific concerns of the worker through their risk assessment. Pausing of the shielding system, should not automatically mean that vulnerable workers should now 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.

More information is available in the [UNISON](#) guides, 'Bargaining in support of staff unable to work' and 'Return to work frequently asked questions' available at [www.unison.org.uk/bargaining-guides](http://www.unison.org.uk/bargaining-guides)

## **Appendix 1 – Government designation of “essential 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

Hospital car parking is free across Wales and in Scotland only three sites charge staff to park. In England and Northern Ireland, many employers charge for staff parking.

As part of the response to the Covid-19 crisis, the government agreed to cover the costs of providing free car parking to NHS staff working in hospitals during “this unprecedented time.” In addition to this, local authorities and private providers have also offered free parking to health and social care staff.

It is not known how long this free provision will run for.

From 13 May, people who can't work from home were being encouraged to return to their workplace in England. Although people are being asked to avoid using public transport if possible, many will have no other way of getting to work.

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:

<https://www.unison.org.uk/at-work/health-care/big-issues/hospital-parking-charge-far/>

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 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)

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 by accessing the UNISON bargaining guide page at [www.unison.org.uk/bargaining-guides](http://www.unison.org.uk/bargaining-guides)

Bargaining guidance specific to service groups can be accessed through the Coronavirus Rights at Work page at [www.unison.org.uk/coronavirus-rights-work](http://www.unison.org.uk/coronavirus-rights-work)