

COVID 19 – know your rights

Guidance for Black members

COVID 19 and Black people

It's become clear that Black, Asian or Minority Ethnic (described here as 'Black') people are more vulnerable to COVID-19 than white people.

With the publication of the 'Beyond the data' part of Public Health England's review of COVID-19 impact on Black communities, as well as much more research, the evidence is clear. The review found "that the highest age standardised diagnosis rates of COVID-19 per 100,000 population were in people of Black ethnic groups (486 in females and 649 in males) and the lowest were in people of White ethnic groups (220 in females and 224 in males)... Death rates from COVID-19 were higher for Black and Asian ethnic groups when compared to White ethnic groups."

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

What does it mean in practice for you and your job? Employers have a particular duty to look after the safety of their Black staff during the current crisis and this guide outlines your rights at work.

Do I have to go to work?

Many key workers have been attending their normal place of work throughout the 'lockdown' and local restrictions. However, for others, with some easing and then a return of restrictions at varying rates within Scotland, Wales, Northern Ireland and England, a period away from the workplace may fluctuate or continue.

Whilst there is specific government guidance for 'clinically vulnerable' and 'extremely clinically vulnerable' people (or 'shielded'), there is no specific guidance for Black people.

What if I have to go to work?

If you are a Black worker, your employer should consider the implications of research pointing to Black workers being disproportionately adversely affected by COVID-19 compared to other groups, in their workplace health and safety risk assessments. The risk assessment should be thorough and take account of your specific circumstances.

Your employer should act immediately on the findings of their risk assessment. This does not necessarily mean treating you exactly the same as other staff, but instead responding to your individual needs and circumstances.

It is also important that safety concerns are reported to your employer. However, it is recognised that many Black workers may not feel safe to identify risks and issues without fear of losing their job. Speak to your local representative if you would like support or advice.

The Equality Act 2010

If you are a Black worker then you have additional rights under the Equality Act 2010 (in England, Scotland and Wales – Race Relations (NI) Order 1997 in Northern Ireland) that are particularly important at this time.

The Equality Act defines race (including colour, nationality, and ethnic or national origins) as a 'protected characteristic'. It is unlawful to directly or indirectly discriminate against people at work because of a protected characteristic, such as race.

Black people may face a disadvantage at work as they are more vulnerable to COVID-19. Therefore employers should be engaging with Black staff groups including union networks, as part of their equality and diversity action plan, to understand their issues and find solutions.

Employers should 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.

Risk assessments

All employers must do an overall risk assessment of the workplace, but they should also carry out a risk assessment specifically for Black staff. Employers will need to prioritise higher risk workers for specific personal risks assessments to mitigate risks to these groups of workers.

There should be no detriment to your pay, benefits or employment rights.

The risk assessment should cover the following:

- do you come into contact with other people at work?
- does your job allow you to maintain an appropriate social distance from colleagues and members of the public as recommended by the government? (distancing requirements are to keep 2 metres apart from another person, and in England, where people cannot be 2 metres apart, to have the ability to manage transmission risk)
- do you face any other additional risks that may make you more vulnerable to COVID-19?

It is also best practice to include how you travel to work.

Risk assessments should also specifically consider those staff who live with a Black person.

Acting on the risk assessment

The employer must then look at how to remove or reduce the risks that have been identified.

This could include some or most of the following:

- organising your workload to allow you to work from home as much as possible
- redeploying you to the safest available on-site role, enabling you to stay appropriate distance away from others
- reducing your shift lengths so you have less interaction with other people
- providing you with additional personal protective equipment (PPE)
- staggering your start time so you travel when public transport is less busy.

If you are unable to maintain the appropriate social distance from others, your employer should carefully assess whether this involves an acceptable level of risk.

What if I need PPE?

You may need to wear PPE. This depends on what you do, who you work with and where. You are more likely to require PPE if you are providing direct care to service users, or cleaning premises contaminated by COVID-19.

However, there may be other circumstances when social distancing and other measures are not possible. Your employer has a duty to provide the PPE so you can do your job safely.

Fighting everyday race discrimination

UNISON Black members are leading discussions around the wider issues of racism the pandemic is revealing.

Our members have always been at the forefront of challenging the major social issues of our time. We need to continue to be pro-active and visible in standing with all our members and communities.

We need to improve employment opportunities, challenge employment discrimination, implement positive action measures to redress employment and economic exclusion of Black people.

Speak to your local representative if you would like support or advice.

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 to 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.

If you feel you are being put at risk, it is crucial to get advice and discuss the situation with your UNISON representative. Contact your branch and if needed you can seek advice from our regional office or legal team.

What if I'm also vulnerable to COVID-19 for other reasons?

Disabled people (who may come into the government's classification of 'clinically vulnerable' and 'extremely clinically vulnerable' people) may be more vulnerable to COVID-19 than non-disabled. In addition, men have been found to be more vulnerable than women and the risk increases the older people are, and the larger their BMI. Pregnant women are also considered 'clinically vulnerable'. Where you live, the number of people in your household and deprivation are also factors that will affect your risk.

When your employer is assessing your risk, they should also include the additional risk you face, for example due to being disabled and being 'clinically vulnerable'. Note that the impact on a protected characteristic (eg disability, sex, age, pregnancy) will be relevant for potential rights under the Equality Act 2010.

What if I don't feel safe at work?

UNISON believes that our members should never be in a situation where they might endanger themselves and others in the course of doing their jobs.

Putting you in that situation is potentially a breach of health and safety law and may also spread coronavirus to others. It may also amount to unlawful discrimination.

As a last resort, when faced with a dangerous working environment which cannot reasonably be averted,

UNISON Black members groups

UNISON is committed to increasing its representation and participation of Black people within the union. It is important that there is a visible and vocal presence of the Black members' experience.

There is a whole spectrum of activity that members can be involved in from becoming a workplace contact to sitting on one of UNISON's national committees.

UNISON's Black members group works with all parts of our union to improve equality in the workplace and challenge racism and discrimination.

Black members equality