

Bargaining Support Group



**Bargaining to
support those who
had been shielding
during the COVID-
19 pandemic**

UNISON
the public service union

Contents

Who are the 'clinically extremely vulnerable'?	2
Shielding advice and UNISON's call to extend it	2
Who are the clinically vulnerable?	3
Who else may be more at risk from COVID-19?	5
Will the employer agree that vulnerable workers can continue to work from home?..	5
What alternatives should be negotiated if working from home is not possible?	5
What if the employer still expects them to return to the workplace?	6
Individual risk assessments	6
Reasonable adjustments for a safe return.....	6
Quick checklist.....	8

Bargaining guidance for branches and reps including continually updated guidance on issues during the COVID-19 pandemic www.unison.org.uk/bargaining-guidance

Bargaining guidance specific to service groups can be accessed through the 'Coronavirus Rights at Work' page www.unison.org.uk/coronavirus-rights-work

Who are the ‘clinically extremely vulnerable’?

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

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

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

Shielding advice and UNISON’s call to extend it

People in the clinically extremely vulnerable group should have previously received a letter from the NHS or from their GP confirming this and advising them to shield. This meant that they needed to take extra care to not contract COVID-19 including staying at home at all times except for exercise or to attend a medical appointment.

However [UK government advice for the clinically extremely vulnerable to shield ceased from 1 April](#).

Further details for the devolved nations:

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

“If you are on the shielding list, our advice is that you should not go to work if you live or work in a Level 4 area, unless you can work from home. This applies even if you have had a coronavirus vaccine. We will let you know if this advice changes as we learn more about the impact of the vaccination.”

Shielding extremely vulnerable people in Cymru/Wales

<https://gov.wales/shielding-extremely-vulnerable-people>

“As cases of the virus have reduced significantly across Wales the Chief Medical Officer has reviewed the advice to people who are clinically extremely vulnerable and recommended the advice to follow shielding...should be paused.”

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

“A graduated easing of the advice for CEV people is planned, to commence on 12 April 2021.”

Although the government has made some changes to its shielding guidance, it is still advising that **all workers should work from home if possible**. The general advice on working from home applies equally to all disabled workers and is even stronger for extremely vulnerable or shielded workers who should take extra precautions to stay safe.

The new UK government advice for those who had been shielding are for them to continue “to maintain strict social distancing and to keep their overall social contacts at low levels, such as working from home where possible.”

UNISON’s position is that employers should continue to allow workers who had been previously shielding to stay at home on special leave on full pay until at least 21 June, if working from home is not possible.

Who are the clinically vulnerable?

After this group who had been advised to shield, the more widely defined classification of ‘**clinically vulnerable**’ people at moderate risk of getting more seriously ill from the virus, include people who:

- are 70 or older
- have a lung condition that's not severe (such as asthma, COPD, emphysema or bronchitis)
- have heart disease (such as heart failure)
- have diabetes
- have chronic kidney disease

- have liver disease (such as hepatitis)
- have a condition affecting the brain or nerves (such as Parkinson's disease, motor neurone disease, multiple sclerosis or cerebral palsy)
- have a condition that means they have a high risk of getting infections
- are taking medicine that can affect the immune system (such as low doses of steroids)
- are very obese (a BMI of 40 or above)
- are pregnant

Pregnant workers

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

The **Health and Safety Executive (HSE)** states:

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

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

Disabled workers

It is clear that many of those whom the government and NHS has classified as ‘clinically vulnerable’ or ‘clinically extremely vulnerable’ will be considered **disabled workers** under the equality legislation.

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

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

Who else may be more at risk from COVID-19?

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

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

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

In addition, if **a worker lives with someone who is either clinically vulnerable or clinically extremely vulnerable** then best practice is for the employer to also give some special consideration to the risks faced from COVID-19. It is important for workers to tell the employer their particular circumstances.

UNISON reps and branches should seek to secure additional protection and support for all our members who have been identified as more likely to get seriously ill from coronavirus, and those members who live with someone who is more vulnerable.

Will the employer agree that previously shielding workers can continue to work from home?

If the vulnerable worker's job can't be done from home then your employer should consider whether they can temporarily redeploy the worker to a job that can be done at home.

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

What alternatives should be negotiated if working from home is not possible?

If working from home is not possible, even with redeployment, then the next step is for the employer to consider other options that will keep the worker safe. Best practice is to allow previously shielding staff to stay at home on **special leave on full pay** for the duration of the pandemic.

Employers can also continue to **furlough** previously shielding staff (through the Job Retention Scheme). The [UK government](#) has clearly stated that employees who are clinically extremely vulnerable may be furloughed under the Coronavirus Job Retention Scheme, even though shielding has been paused.

However, while an employer may decide to put a previously shielding employee on furlough, it must not subject anyone with a protected characteristic (e.g. disability or pregnancy) to unlawful discrimination under the Equality Act 2010. Similarly an employer should avoid making a decision which is discriminatory due to a worker's association with someone who is disabled, pregnant or on maternity leave.

What if the employer still expects them to return to the workplace?

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

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

Employers should carefully consider whether the return to the workplace of more vulnerable workers constitutes an acceptable level of risk.

Individual risk assessments

The individual risk assessment should cover the following:

- does the vulnerable worker come into contact with other people at work?
- does their job allow them to maintain appropriate social distance from colleagues and members of the public?
- do they have any reasonable adjustments that need to be taken into account?

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

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 the vulnerable worker's workload to allow them to work from home as much as possible
- redeploying them to the safest available on-site role, enabling them to maintain social distance
- reducing their shift lengths so they have less interaction with other people
- providing them with additional personal protective equipment (PPE)
- staggering their start time so that they can travel when public transport is less busy.

Reasonable adjustments for a safe return for disabled workers

Any reasonable adjustments for a safe return must be assessed and provided if the

worker is disabled, 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

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

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

Raise awareness amongst members by highlighting **UNISON's guidance for disabled members and those with underlying health conditions**

<https://www.unison.org.uk/content/uploads/2021/04/26353.pdf>

Quick checklist

- Seek preference for working from home where an employee or those they live with have greater vulnerability to severe health consequences from contracting COVID-19.
- If the job cannot be done from home, will the employer consider redeploying the employee to another role that can be done at home.
- Aim for achieving continued full pay for any staff member who is unable to work due to the vulnerability of their health.
- If this cannot be achieved, seek a significant extension of paid special leave for such staff.
- Where an employer is looking to continue to furlough staff under the [Job Retention Scheme](#), highlight that government guidance has specifically allowed furloughing of staff classified as clinically extremely vulnerable workers.
- Review procedures to ensure that any related absence does not contribute to triggers for management action in disciplinary, capability, attendance management or redundancy policies.
- If the employee has greater vulnerability to severe health consequences from contracting COVID-19 and is expected to return to the workplace, has the employer undertaken an individual risk assessment?
- Has the employer considered how to remove or reduce the risks that have been identified? This could include: redeploying them to the safest available on-site role, enabling them to maintain social distancing at all times; reducing their shift lengths so they have less interaction with other people; providing them with additional personal protective equipment (PPE); staggering their start time so they travel when public transport is less busy PPE.
- If the worker is disabled, do they have any reasonable adjustments that need to be taken into account?