Bargaining over workplace issues during the COVID-19 pandemic
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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 that could be usefully incorporated in its next update, please contact Bargaining Support at 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, including links to guidance specific to service groups, at www.unison.org.uk/coronavirus-rights-work

TUC help for union reps is available at www.tuc.org.uk/CoronavirusRepsGuide
Working from home or in the workplace

Everybody’s work experiences during the pandemic restrictions has varied considerably. Many workers will have continued to deliver key services working in their normal workplaces throughout, whilst others will have been working from home and a considerable further number will have been furloughed.

Whilst restrictions have been gradually lifted across the UK, details vary within each nation.

Currently, the general advice or guidance is to work from home where possible.

More details

For England [www.gov.uk/coronavirus](http://www.gov.uk/coronavirus)  
“Work from home, if you can.”

“Work from home if possible”

For Wales [https://gov.wales/coronavirus](https://gov.wales/coronavirus)  
“Work from home or meet people virtually.”

“You should continue to work from home where possible.”

Working from home is one clear way of keeping staff safe from the virus and any new variants that emerge. In some circumstances, it may continue to be the starting point in discussions with employers.

But if working from home is not feasible, such as for those who work in childcare or education and essential public services, decisions about working in the normal workplace should be based on a thorough COVID-secure risk assessment for all roles and all vulnerable groups.

For sector-specific advice see:

- Education workers
- Healthcare workers
- Social care workers
- Local government workers
- Police staff
- Energy workers
- Water Environment and Transport workers

Bearing in mind the requirements of any local or national restrictions, the CIPD (Chartered Institute of Personnel and Development) suggest employers should consider three key tests when considering if employees should return to the workplace, when they have previously been working from home.
These lay out the issues clearly:

- Is it essential?
- Is it sufficiently safe?
- And is it mutually agreed?

It is important to clarify from the employer the reason for a return to the workplace and it should be clearly linked to service delivery and business need.

**Returning to the workplace for some**

Key to a smooth return as restrictions are lifted will be ensuring a continuation of COVID-secure workplaces, particularly taking account of those who are more vulnerable to the virus including some disabled people, older people, Black people and pregnant women. Individual risk assessments should be undertaken for those more vulnerable.

**From the joint NJC circular dated 16 July 2021 agreed by the trade unions and local government employers:**

“Employers should discuss the timing and phasing of a return with their employees and trade union representatives. These discussions should also include arrangements for the continuation of home working.

Employers must continue to follow statutory health and safety requirements, conduct a risk assessment, and take reasonable steps to manage risks in their workplace...

CEV [clinically extremely vulnerable] employees should be offered individual risk assessments and their requests to continue working from home should be properly considered and granted unless there are compelling reasons not to do so. Consideration should be given to requests from employees to be based at a site other than their usual workplace...

Employers may wish to refer to the guidance produced by NHS Employers which sets out how to enhance existing risk assessments particularly for at-risk and vulnerable groups within the workforce. It includes workers returning to work, and existing employees who are potentially more at risk due to their race and ethnicity, age, weight, underlying health condition, disability, or pregnancy.”

Disabled workers may also have found that there were advantages for their wellbeing and productivity to work from home, and it may be a reasonable adjustment to allow them to continue to do so.

Many other workers too may seek to continue working from home all the time or part of their working week because of benefits to their work/life balance, being more able to accommodate their caring responsibilities, to focus on work without distractions, or to improve their health and wellbeing.

UNISON would hope that employers would be more open to this type of flexible working request in the future, particularly as many workers have proven they can be happier and more productive whilst working from home.
UNISON view is that employers should ensure that there is a genuine choice for workers.  

Whilst some members may have found benefits to working from home, too many have encountered its disadvantages. Some workers have found that it has made them become invisible within the workforce, unable to progress in their career, unable to access training, reducing their social connections, leaving them feeling isolated, unable to ‘disconnect’ from their work and creating health and safety risks for them.

More information from UNISON’s legal team’s ‘Return to work Q&A’

Bargaining to support those who had previously been shielding
www.unison.org.uk/covid-19-pandemic-bargaining-to-support-those-who-had-been-shielding/

Risk assessment checklist for Safety Reps
www.unison.org.uk/26094/

Risk assessment for Black and vulnerable workers
www.unison.org.uk/26104_oct/

UNISON workplace health and safety review toolkit to help review risk assessments
Workplace Health and Safety Review | UNISON Branch Service

Bargaining support guidance and a model policy to help workplace reps and branches in negotiations about homeworking and hybrid working (sometimes called blended or agile working)

Combating stigma and discrimination
The impact of personal experiences during the pandemic will have varied enormously, with many having to juggle caring responsibilities and work, or struggling to manage their own 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 upon 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.

Sadly, at a time when the demands on health workers have been greater than ever, some groups of workers such as community healthcare staff, ambulance staff and those at vaccination centres, have also been subject to verbal abuse from some members of the public.

Under health and safety legislation (The Management of Health and Safety at Work Regulations) **employers need to assess the risk of violence and abuse from the public and put in place measures to protect staff.**

Employers should take a zero-tolerance approach to any forms of bullying and harassment at work and have robust policies to protect workers from harm. Safety reps can play a key role in highlighting the issues and helping to develop policy.

**More information on health and safety and becoming a safety rep**

**More information on equality issues and UNISON’s self-organised groups**
[www.unison.org.uk/about/what-we-do/fairness-equality/](http://www.unison.org.uk/about/what-we-do/fairness-equality/)
Staff previously furloughed (on the Job Retention Scheme)

The UK government continued to provide the Job Retention Scheme until 30 September 2021, which gave employers in England, Cymru/Wales, Scotland and Northern Ireland grants for wages and costs of keeping qualifying employees on temporary leave (furloughing) due to reasons relating to the current coronavirus pandemic.

The scheme was intended to support employers to continue paying staff who would otherwise be made redundant or put on an unpaid period of lay-off.

As the scheme was wound down, employers will have brought staff off furlough. The employer should have given them notice that they are required to return to work. Hopefully this will have been specified in their furlough agreement, otherwise it should at least be reasonable in the circumstances.

However, the much wider concern is that many previously furloughed staff will now be facing redundancy.

Case study

A large community sector employer had furloughed over 2,500 staff. However (as of 06/08/20) redundancies were expect amongst retail staff with at least 79 charity shopss not re-opening due to unsuitability or previous loss-making.

Additionally, of 300+ staff previously working in their Business Services department, only 48% continued to work during lockdown and, after a management review and changes in working practice, it was decided they could operate efficiently with 52% of the current workforce. Union reps have expressed concern regarding the levels of expectation for job roles and responsibilities of the remaining staff. There was also concern there may not be sufficient volunteers for redundancy and compulsory redundancies may follow.

Senior management are also reviewing the effects of the majority of staff working from home and looking at the possibility of closing some offices and centres, in particular where they currently own the building.

Source: Labour Research Department Payline
Responding to threats of redundancy

Whilst the Office for National Statistics (ONS) reported that redundancies returned to the same as pre-pandemic levels between May and July 2021, there is a fear from trade unions that employers are planning many more as the fallout of the pandemic on the economy bites, and the various schemes are wound up.

However 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, although in many cases these are now ended or are coming to an end:

- Under the Recovery Loan Scheme, still open until 31 December 2021, businesses of any size can access loans and other kinds of finance so they can recover after the pandemic and transition period.

- The Job Retention Scheme made available funding for furloughed staff until the end of September 2021.

- The government 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 self-isolating staff or for those who had been ‘shielding’ in line with Public Health guidance (now ended) if they were off work on or before 30 September 2021.

- Although the Local Restrictions Support Grants and Closed Businesses Lockdown Payment closed to new applications on 31 March 2021, they provided grants to many business premises forced to close in England. (Money was also distributed to Scotland, Cymru/Wales and Northern Ireland, and allocated as the devolved administrations decided.)

- Whilst the Coronavirus Business Interruption Loan Scheme and Coronavirus Large Business Interruption Loan Scheme closed to new applications on 21 March 2021, they had provided organisations with the right to access loans and other kinds of finance. Also the COVID-19 Corporate Financing Facility (closed to new applications on 31 December 2020) had helped large businesses through the purchase of their short-term debt.

For Scotland, further information on the support available for businesses can be found at https://findbusinesssupport.gov.scot/coronavirus-advice

For Cymru/Wales, further information on the support available for businesses is at
Through analysis of annual accounts and current financial budgets, and particularly through engagement with members experienced in the areas targeted by an employer for redundancy, it may be possible to develop viable proposals for cutting non-staff costs. This may help to avert redundancies or dissuade an employer from dismissal and re-engagement.

If you require assistance in obtaining or analysing an organisation’s latest accounts, contact Bargaining Support at bsg@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 2021/22 [again, for the latest material on economic forecasts, contact Bargaining Support at bsg@unison.co.uk]. Therefore, it can be expected that financial problems constitute a ‘bridging period’ until an organisation’s normal profitability is restored.

But if problems remain beyond the timeframe of the various schemes and loans that had been available to businesses, negotiators will need to decide if there can be justification in co-operating with cost-saving measures for a limited period.

However, where tackling staffing costs is an unavoidable measure, reps will need to consider whether members would support implementation of alternative ways of cutting costs, particularly if such measures can facilitate achievement of a no-compulsory redundancy agreement.

Alternative measures may include some of the following options:

- Establishing a voluntary redundancy or early retirement scheme
- Limiting the refilling of posts when staff leave the organisation and placing restrictions on recruitment
- Reducing the use of temporary, agency or casual staff
- Reducing or eliminating overtime
- Reducing working hours
- Limiting pay rises or increments
- Moving staff into other roles through suitable alternative employment and redeployment schemes
• Promoting voluntary unpaid leave (possibly including career breaks)
• Promoting forms of flexible working that reduce costs, such as home working or job sharing.

Further details on challenging financial justifications and putting forward alternative measures, can be found in UNISON’s full guidance, ‘Bargaining over collective redundancy’ available on the UNISON bargaining guides page at www.unison.org.uk/bargaining-guides

In England, Scotland and Cymru/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.

Where consultation has moved 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.

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.

It should be noted that for staff who have been furloughed, statutory redundancy pay should be based on 100% of their salary rather than the reduced furlough rate. Reps and branches should try to negotiate with employers a fair approach and base entitlement to contractual redundancy pay on normal pay, rather than any lower rate of furlough pay. Care should particularly be taken where an employee’s earnings vary to check that any weeks used for calculations in which they were furloughed, should be treated as normal full pay as determined by the employer at the time of furloughing.

**The TUC have a number of interactive guides** for union reps to support members at every stage of the redundancy process, including helping them access the knowledge, training and skills they need to move forward afterwards.

Giving clarity to staff over COVID-19 related absence

The procedure issued by employers for staff to follow in the event of experiencing Covid-19 symptoms should be in line with the latest NHS advice at www.nhs.uk/conditions/coronavirus-covid-19/

It should be highlighted to staff that the main symptoms of COVID-19 are:

- **a high temperature** – this means you feel hot to touch on your chest or back (you do not need to measure your temperature)
- **a new, continuous cough** – this means coughing a lot for more than an hour, or 3 or more coughing episodes in 24 hours (if you usually have a cough, it may be worse than usual)
- **a loss or change to your sense of smell or taste** – this means you've noticed you cannot smell or taste anything, or things smell or taste different to normal.

If a member of staff develops at least one of these symptoms whilst at work, they should be sent home immediately and told to get a PCR test to find out whether they do have COVID-19.

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.

The worker should then stay at home, as should members of their household (unless the members of their household are fully vaccinated, are below the age of 18 years and 6 months, have taken part in, or are currently part of, an approved COVID-19 vaccine trial or are not able to get vaccinated for medical reasons) and not have any visitors until they get the results of the test.

**Testing**

**People with symptoms should self-isolate and get a free PCR test** (either as a home test or at a test centre) to confirm if they have COVID-19.

More details at: Get a free PCR test to check if you have coronavirus (COVID-19) - GOV.UK (www.gov.uk). Individuals can phone 119 if they can't book a test online.

People can also use this service if they have been in contact with someone who’s tested positive or been asked to get a test by a local council or someone from NHS Test and Trace or a GP or other health professional.

**People without symptoms can get regular rapid lateral flow tests** for free (either as a home test or at a test centre). About 1 in 3 people with COVID-19 do not have symptoms but can still infect others.

More details at: Regular rapid lateral flow coronavirus (COVID-19) tests - NHS (www.nhs.uk)

In Scotland: Coronavirus (COVID-19): Get a test if you do not have symptoms | NHS inform
In Wales: Get rapid lateral flow COVID-19 tests if you do not have symptoms | GOV.WALES

In Northern Ireland: Rapid Tests | Department of Health (health-ni.gov.uk)

If there are any queries about the symptoms or testing, individuals can contact the NHS at https://111.nhs.uk/covid-19/ or by calling 111.

Any advice needed should be obtained through NHS 111 and not through visiting a GP surgery, pharmacy or hospital.

Staff who are self-isolating

Self-isolation is when a person does not leave their home for 10 days because they have or might have COVID-19, in order to help stop the virus spreading to other people.


Self-isolation means that the staff member must:

- not go to work, school or public places – they should work from home if they can
- not go on public transport or use taxis
- not go out to get food and medicine – they should order it online or by phone, or ask someone to bring it to their home
- not have visitors in their home, including friends and family – except for people providing essential care
- not go out to exercise – they should exercise at home or in your garden, if they have one.

The UK government continues to be clear that “it is an offence for you (as an employer) to allow a worker to attend the workplace if you are aware that the worker is legally required to self-isolate."

Staff members will need to self-isolate immediately if:

- they have any symptoms of COVID-19 (a high temperature, a new, continuous cough or a loss or change to their sense of smell or taste)
- they have tested positive for COVID-19 – this means they have the virus
- someone they live with has symptoms or tested positive
- they have been told they have been in contact with someone who tested positive by NHS Test and Trace or the NHS COVID-19 app
- they have returned from abroad and need to quarantine www.gov.uk/guidance/how-to-quarantine-when-you-arrive-in-england  There are different rules if you’ve been in a red list country in the 10 days before you arrive in England.

There are some circumstances in some of the nations where self-isolation is not
necessary, such as if the staff member is fully vaccinated but has been in close contact with someone who tests positive for COVID-19 but not the Omicron variant.

These requirements vary between the nations. Even if self-isolation is not required, there are still very specific requirements for regular testing, both lateral flow and PCR testing, that must be followed to ensure the staff member does not eventually test positive for COVID-19 themselves.

Should they have a positive PCR test for COVID-19, they must then self-isolate for 10 days.

And, as the Northern Ireland executive advise: “even if you’re fully vaccinated, if you have been identified as a close contact, you are advised not to visit hospitals or care homes for 10 days and to minimise contact with those known to be at higher risk if they contract COVID-19, such as the Clinically Extremely Vulnerable Group (CEV) for 10 days.”

Please note that in Scotland, if you’re identified as a household contact of a positive COVID-19 case, you are advised to self-isolate for 10 days - irrespective of vaccination status, PCR test result and age.

Further details on self-isolation and on testing requirements for those who are fully vaccinated but have been in close contact with someone testing positive for COVID-19:

In Wales
In Northern Ireland
In Scotland

If the person is a health or social care worker who has been identified as a household contact and are exempt from self-isolation, there is additional guidance available that they and their employer should follow to reduce the risk of spread of COVID-19 in these settings. COVID-19: management of staff and exposed patients or residents in health and social care settings - GOV.UK (www.gov.uk)

Further information from UNISON: Changes to self-isolation guidance from 16 August for NHS staff (England)

NHS Test and Trace

Employers should raise awareness of NHS Test and Trace and encourage staff to take these messages seriously and self-isolate in order to protect others:

England – NHS Test and Trace
Scotland – Test and Protect
Cymru/Wales – Test Trace and Protect
Northern Ireland – Testing and Contact Tracing

NHS Test and Trace will also contact people who have tested positive for COVID-19. They will be asked where they have been recently and who they have been in close
contact with. This will help the NHS contact anyone who may have caught the virus from them, including colleagues they work with.


**Self-isolation and medical exclusion**

Staff who are self-isolating but cannot do their work at home, should ideally be classified as **medically excluded from the workplace** on full pay.

An employer applies medical exclusion to prevent infection to the rest of their workforce where it is believed an employee may carry a particularly high threat of being contagious. In effect, the employer is instructing its workers not to attend the workplace on the basis of a government demand, and therefore the employer must continue with full payment.

**Medical exclusion clauses** are sometimes established elements of collective agreements, most commonly in NHS trusts, given the extra dangers of transmitting an illness to patients. However, in light of the unprecedented threat of Covid-19 an argument can be made that such exclusions should apply more widely and the general duties under the Health and Safety Act to protect staff should be interpreted in this way.

Further pressure can be brought to bear on employers by highlighting that agreements have been reached for local government staff on NJC terms and conditions and NHS staff on Agenda for Change terms and conditions to receive full pay during any period of self-isolation that has been entered into on the basis of government advice.

This includes workers in GP practices. NHS England and Improvement have reiterated their position that GP practices should “pay full pay to any GP practice staff who are absent from work with COVID-19, suspected COVID-19 (self-isolating) or who are clinically extremely vulnerable and are therefore unable to come into the workplace and see patients face to face (shielding).”

Similar agreements have been established in Scotland for local government and NHS staff. The NHS agreement includes bank workers and sub-contractors who have to be physically present at an NHS facility to carry out their duties. Full pay is interpreted as “paying what the staff member would have otherwise earned if they were not in isolation, which would include any pay enhancements.”

The list below shows how some other private sector employers have provided the best terms for those self-isolating, and could provide examples for negotiations.

**Allianz Engineering Inspection** (private sector, providing Engineering activities and related technical consultancy) – full pay for staff who are self-isolating.

**Aramark** (private sector, covering catering staff working at the Department for Business, Energy & Industrial Strategy) – full pay for staff who are self-isolating; staff who are sick with COVID-19; staff at high risk and so advised to reduce or minimise contact with others, or limit travel; staff in any other group where the advice from government is to reduce or minimise contact with others, or limit travel; staff who live with someone who is in any of the groups above; staff who need to be home to care for children who are...
unable to go to school; staff who are unable to attend work for a reason related to COVID-19, for example due to closure of public transport, quarantine etc.

**Atomic Weapons Establishment** (private sector, covering the industrial workforce, firefighters, and craft & manual workers) – employees with medical conditions which put them at greater risk from Covid-19 and those who have vulnerable family members have been able to self-isolate on full pay, initially for 12 weeks.

**Co-operative Group Retail** (private sector) - Pandemic special leave: Paid; As required; Compulsory Absence: Where a colleague is compelled by a medical authority to be absent from work following contact with a notifiable disease, this will be classed as special leave with pay, rather than sickness absence. If any benefits are paid under any statutory or local authority regulations, the Co-op shall pay the amount necessary to make up the normal wage.

**Morrisons Retail and Manufacturing** (private sector) - Bonuses/pay enhancements: Morrisons will pay a 6% bonus on earnings over the next 12 months. This equates to approximately £1050 for full-time staff and will also be paid to staff off sick or self-isolating. The bonus will be paid on a quarterly basis. Sickness absence policies/procedures: Paid sick pay from Day 1 of absence (previously Day 4) for workers showing symptoms and self-isolating. Pandemic special leave: Maternity suspension on full normal/average pay for all pregnant workers employed in the stores.

Additionally in the public sector, the following agreements have been negotiated with UNISON reps and branches:

**Bassetlaw District Council** - Sickness absence policies/procedures: Staff required to self-isolate who cannot work from home continue to receive full pay. COVID-related sick leave excluded from sickness absence procedures. Long COVID currently treated on a case-by-case basis.

**Birmingham University (support staff)** - Sickness absence policies/procedures: Covid-related absence is not recorded as normal sickness absence and therefore does not count towards attendance management nor towards occupational sick pay entitlement.

**Burnley Borough Council** - Sickness absence policies/procedures: COVID-related absence is excluded from sickness absence triggers. Staff required to self-isolate who can't work from home continue to be paid in full.

**Environment agency** - Sickness absence policies/procedures: Sickness absence due to Covid-19 is automatically disregarded for attendance management.

**Four Seasons Health Care Group** - Sickness absence policies/procedures: All staff at the company’s 185 care facilities will receive full pay for any coronavirus-related absence. This covers 15,000 care workers previously receiving only SSP and will be paid retrospectively back to April.

**Halton Council** - Sickness absence policies/procedures: Full normal pay for all care worker staff required to self-isolate or who become ill with Covid-19 including staff on zero-hour contracts, bank/relief contracts or multiple contracts. Absence due to Covid-
19 excluded from absence management triggers.

**Nottingham Community Housing Association** - Sickness absence policies/procedures: Absence due to Covid-19 symptoms being dealt with outside the Sickness Absence policy as Absence due to National Emergency. For staff self-isolating due to symptoms or where a member of their household has symptoms, salary is paid in full, even if they are probationary staff. NCHA does not normally pay company sick pay to staff in the first year of employment but this is not considered sickness absence and therefore they are paid.

**Sefton Council** - Sickness absence policies/procedures: Full normal pay for all care worker staff required to self-isolate or who become ill with Covid-19 including staff on zero-hour contracts, bank/relief contracts or multiple contracts. Absence due to Covid-19 excluded from absence management triggers.

**Trafford Metropolitan Borough Council** - Sickness absence policies/procedures: Full normal pay for all care worker staff required to self-isolate or who become ill with Covid-19 including staff on zero-hour contracts, bank/relief contracts or multiple contracts. Absence due to Covid-19 excluded from absence management triggers.

**Self-isolation and sickness absence and sick pay**

Medical exclusion is a case that can be made to an employer, but the government has only gone as far as stating that self-isolating staff should be treated as being on sickness absence. Therefore alternatively, if the employer will not agree to medical exclusion, the self-isolating staff should, by law, at least receive statutory sick pay from the first day they are off sick or isolating, rather than having to wait three days to become eligible, as remains the case for any other form of sickness than that relating to COVID-19.

This includes staff who have to self-isolate when they are to undergo a surgical or other hospital procedure and have been advised by the hospital to stay at home prior to being admitted for that procedure. By law they should at least receive statutory sick pay, but ideally they should be medically excluded on full pay.

An agreement has been reached for local government staff on NJC terms and conditions concerning self-isolation prior to admission to hospital which is an example of good practice:

“The NHS has instructed that anyone who is due to go into hospital as an in-patient (including day surgery) for planned or elective surgery / medical care must self-isolate, along with all members of their household, for 14 days prior to admission.

Unless already on sick pay, and in line with previous NJC guidance, all employees should remain on normal full pay for the duration of the self-isolation period. Those who can work from home (either in their own role or on alternative duties), should do so. We very much hope that dates scheduled for hospital admission do not get deferred, resulting in a further period of self-isolation being required, but this may be something that employers will unfortunately have to accept as a consequence of the current situation.”
The statutory sick pay (SSP) rate is currently only £96.35 per week (normally increasing each April). To qualify, workers have to receive income of £120 per week. To surpass that threshold, a worker’s wage is considered in total, i.e. if they have more than one job, the income from each job is aggregated.

However, this threshold can clearly create a problem for staff on forms of contracts that are vulnerable to dips in income below the weekly figure, such as zero-hours workers. If such staff do not qualify, the only recourse is to seek support through Universal Credit or New Style Employment and Support Allowance. In addition, individuals may be eligible for Self-isolation support payments (see below). UNISON members can also be directed to advice through UNISON’s There For You welfare charity.

Recent polling by the TUC shows that a fifth of workers who have been forced to self-isolate, but who are unable to work at home, have received no sick pay (or wages) at all.

The poll also revealed that two fifths of workers said they would have to go into debt or go into arrears on their bills if their income dropped to SSP. This number rises to nearly half (48%) for disabled workers.

The TUC is therefore calling on the government to:

- Increase the rate of SSP from £96.35 to the real living wage (£330 per week);
- Extend SSP to all workers so nobody misses out due to not meeting the pay threshold; and
- Introduce a more extensive support package for household finances, including increasing the local authority hardship fund and providing support for those struggling with council tax and rent.

In the public sector, most staff will be part of an occupational sick pay scheme, which will entitle them to payment from the first day of sickness and follow a pre-set pattern of full pay and then half pay.

For further information including an outline of terms for the main schemes see the UNISON sickness absence guide

www.unison.org.uk/content/uploads/2020/03/25815_revised03_20.pdf

However, particularly among private contractors delivering public services and voluntary sector employers, entitlement may be nothing more than the statutory sick pay provision.

The inadequacy of SSP should be used as an argument for keeping staff on full pay under medical exclusion, since it should be apparent to employers that SSP encourages staff to attend work out of financial necessity. This could then lead to putting other staff at risk and endangering the organisation’s entire operations.

Reps and branches should also try to get the employer’s agreement that any absence for periods of self-isolation will not be counted towards any sickness absence policy trigger points.

For example, this has been agreed for NHS staff and the majority of local government
staff (i.e. those covered by national joint council (NJC) terms and conditions.) A similar agreement is in place for local authority workers in Scotland whose terms and conditions are agreed at the Scottish joint council (SJC):

“Employees who have been instructed to self-isolate and who are unable to work from home will be granted paid leave under the provision [below]... for the duration of the self-isolation or until they develop symptoms.

An employee who is prevented from attending work because of contact with infectious disease will advise the Head of Department immediately and will be entitled to receive normal pay. The period of absence on this account will not be reckoned against the employee’s entitlements under this scheme.”

Self-isolation or quarantine after foreign travel

Individuals will also have to self-isolate when returning to the UK from abroad if they have been in a ‘red list’ country in the 10 days before they arrive in England, or they are not fully vaccinated, more details at www.gov.uk/guidance/travel-to-england-from-another-country-during-coronavirus-covid-19.

However, in this circumstance, staff are not eligible for statutory sick pay if they do not need to self-isolate for any other reason.

Reps and branches should similarly try to get employers to agree to ‘medically exclude’ on full pay these self-isolating staff returning from abroad, as a way of encouraging workers to do the right thing and follow government guidance on self-isolation and not potentially infect others.

Alternatively, employers may at least pay contractual sick pay, rather than workers having to use their annual leave or unpaid leave for this quarantine period.

Further information below in section ‘Travelling abroad and ‘quarantine’ or self-isolation on return’

The self-isolation note

Staff who need to self-isolate, can get an isolation note to send to the employer as proof they need to be off work. They do not need to get a note from a GP.

If a worker lives with someone who has symptoms of coronavirus and they are not fully vaccinated, or if they have been told to self-isolate by a test and trace service or the NHS COVID-19 app, they can also get an isolation note to send to their employer as proof they need to stay off work by completing the online questionnaire at https://111.nhs.uk/isolation-note/. They do not need to get a note from a GP. Whether experiencing coronavirus symptoms or not, the worker will need to self-isolate and similarly should at least receive statutory sick pay if they earn at least £120 per week.

Quick checklist

- Ensure the employer raises awareness of the symptoms and testing available for COVID-19 and clarifies the sickness absence and self-isolation procedures for staff based on NHS guidance.

- Negotiate continued full payment for self-isolating staff on the basis of medical...
exclusion from the workplace if possible or at least payment of enhanced or occupational sick pay. Statutory sick pay is the legal minimum to be paid.

☐ Ensure the employer reviews notification procedures for sickness and self-isolation absences, with the acceptance of isolation notes as proof for continued absence.

☐ Negotiate the omission of COVID-19 related absence from any triggers for management action in disciplinary, capability, attendance management or redundancy policies.

Support payments for people on low incomes whilst self-isolating

In Northern Ireland, discretionary support grants from the Department for Communities are available to assist with short term living expenses where a person, or any member of their immediate family, is diagnosed with COVID-19 or is advised to self-isolate in accordance with guidance.

In England the Test and Trace self-isolation support payment scheme will provide a one-off lump sum payment of £500 to eligible applicants who were told to self-isolate on or after 28 September 2020. The UK government has announced it will extend the scheme until the end of March 2022.

The scheme is part of a bigger package, including substantial new fines for those breaching self-isolation. This includes potential fines for employers who knowingly allow a worker who should be self-isolating to come into the workplace (under the Health Protection (Coronavirus, Restrictions) (Self-Isolation) (England) Regulations 2020). The worker also now has a legal obligation to notify their employer of the requirement to self-isolate and the start and end dates of the isolation period.

To be eligible for the support payment, the individual must be

- employed or self-employed
- they, or a child they’re the parent or guardian of, have tested positive for coronavirus (COVID-19), or been told they or the child are a close contact by NHS Test and Trace
- they cannot work from home and will lose income by self-isolating or staying at home to care for the child
- they’re not exempt from self-isolating
- currently receiving at least one of the following:
  - Universal Credit
  - Working Tax Credit
  - income-based Employment and Support Allowance
  - income-based Jobseeker’s Allowance
  - Income Support
  - Housing Benefit
  - Pension Credit.

Other individuals may be eligible for a £500 discretionary payment if they are on a low income and will face financial hardship as a result of not being able to work while they are self-isolating. The payment of £500 will be in addition to statutory sick pay and benefits.
Individuals who have been notified by NHS Test and Trace will need to phone or apply online at their local council and submit supporting evidence including their Test and Trace ID, a bank statement, proof of employment and confirmation from their employer that they are unable to work from home. Councils are expected to deliver the payments and administer the system, receiving reimbursement from the government.

In Scotland, a similar scheme of a self-isolation support grant of £500 is available from local councils for people who receive certain benefits and have been notified by NHS Test and Protect that they must self-isolate. Individuals will need to apply through their local council in Scotland.

In Cymru/Wales, the scheme is called the self-isolation support scheme. The grant now increased to £750 is available from local councils for people on low income and who have been told by NHS Wales Test, Trace, Protect service that they must self-isolate. Individuals will need to apply through their local authority in Wales.

COVID-19 related illness and sickness absence policies

In these unprecedented times, it is important for reps and branches to get the agreement of employers to disregard COVID-19 related illness (including ‘Long COVID’ or illness related to vaccination side effects) and self-isolation in sickness absence records that contribute to trigger points within the sickness absence policy.

Absence policies often include ‘trigger points’ for some kind of employer intervention including initiation or escalation of capability or disciplinary procedures.

If employers insist on continuing to operate sickness absence triggers, union reps should seek to ensure that meetings (including ‘virtual’ meetings) at least in the first instance, explore causes so that employees can be supported to return to work or improve their attendance.

It should also be remembered that changes to trigger levels for disabled staff can constitute a reasonable adjustment.

Where a worker has had COVID-19 (including long COVID), has been off sick but is hoping to return to work, Acas advises employers to talk with the employee about any support they may need. This could include:

- getting an occupational health assessment
- making changes to the workplace or to how the employee works such as different working hours, working from home, paid leave for medical appointments, support with workload
- a phased return to work
- temporary redeployment to a more suitable role
- what they want to tell others at work about their illness.

UNISON believes that any employer that takes some form of disciplinary or capability action including formal sickness absence hearings against staff because of absence due to COVID-19 related illness (including those who are diagnosed as having long
COVID) is acting unfairly.

- Help ensure employers treat all absences related to COVID-19 fairly by raising awareness amongst members and actively supporting members with long COVID.

Care should also be taken that absence due to attending testing or vaccination appointments, caring for family or in response to bereavement are not mixed up with sickness absence. All these issues should be dealt with under separate policies that set specific leave entitlement for these purposes.

A case can be made that all these entitlements are part of a healthy workplace approach which puts the avoidance of stresses that can cause further sickness absence ahead of a short-sighted, penny-pinching approach.

**Further information:** Negotiating sickness absence agreements [www.unison.org.uk/content/uploads/2020/03/25815_revised03_20.pdf](www.unison.org.uk/content/uploads/2020/03/25815_revised03_20.pdf)

**Caught COVID-19 at work?** Or if you’re the relative of a UNISON member who has tragically died from contracting the disease at work, call UNISON’S free legal helpline for advice: 0808 252 2783 [www.unison.org.uk/get-help/services-support/legal-services](www.unison.org.uk/get-help/services-support/legal-services)

Meanwhile general sickness absence rates in the UK have dropped to their lowest level since 1995 according to the Office for National Statistics¹, probably because of furloughing, social distancing, shielding and homeworking measures. Since April 2020, Covid-19 has accounted for 14% of all sickness absences. But most sickness absence was due to minor illness such as coughs and colds and musculoskeletal problems.

**Long COVID**

There are likely to be many thousands of workers whose health is being adversely affected in the long-term because they had COVID-19.

“The Office for National Statistics (ONS) estimates that over a million people in the UK were reporting symptoms associated with long COVID at the beginning of March 2021… An estimated 674,000 people reported that their symptoms have negatively impacted on...”

their ability to undertake their day-to-day activities." ²

Most people who have contracted coronavirus are expected to recover within 12 weeks. However, some people experience ongoing health complications and symptoms that may continue for many more weeks or months. It doesn't matter how ill the person was when they first got COVID-19. Even people who had mild symptoms at first may develop long-term problems.

As more is discovered about these ongoing health problems, it is important that workplace reps and branches recognise that some of our members will need particular support from their employers to ensure they can return to or remain in work.

Branches may need to represent members who find themselves subjected to absence management or capability policies. Members may need workplace or work modifications or adjustments to help with recovery. They may also need modifications when working with the health conditions and/or other adverse impacts of long COVID.

Some of the most commonly reported symptoms of long COVID include (but are not limited to):

- Breathlessness and cough
- Chest tightness, heart palpitations or chest pain
- Extreme tiredness
- Fever
- Cognitive impairment (‘brain fog’, loss of concentration or memory issues)
- Headache
- Difficulty sleeping (insomnia)
- Peripheral neuropathy symptoms (pins and needles and numbness)
- Dizziness
- Feeling sick, diarrhoea, stomach aches, loss of appetite
- Joint or muscle pain
- Depression or anxiety
- Tinnitus or earache
- Sore throat
- Loss of taste and/or smell
- Skin rashes

Some people can experience long-term organ damage including to the heart, lungs, kidneys, pancreas and liver. Post-COVID conditions also can include the longer-term effects of COVID-19 treatment or hospitalisation, including difficulties swallowing and changes to the voice, severe weakness and PTSD (post traumatic stress disorder).

² Prevalence of ongoing symptoms following coronavirus (COVID-19) infection in the UK: 1 April 2021
www.ons.gov.uk/peoplepopulationandcommunity/healthandsocialcare/conditionsanddiseases/bulletins/prevalenceofongoingsymptomsfollowingcoronaviruscovid19infectionintheuk/1april2021
Symptoms can last for weeks or months after first being infected by the virus - the full extent is not yet known. Some people’s symptoms may improve over time but then they can experience a relapse.


Read about real-life experiences of UNISON members in the UNISON magazine ‘Long COVID: It’s frightening not knowing where this will end up’

As long Covid is a new disease, [Acas](http://www.acas.org.uk) advise it would be better for employers to focus on what adjustments they can make for the employee, rather than trying to work out whether or not the member is a disabled person.


UNISON recommends that employers conduct individual risk assessments with any staff member who is experiencing long COVID. Employers should be encouraged to make workplace modifications for staff who are affected regardless of whether the worker fulfils the legal definition of being disabled.

**Quick checklist**

- Request that employers conduct an individual risk assessment for any staff member who has been diagnosed as having long COVID.
- Ensure safety reps are consulted on anything affecting members’ safety, including the outcomes of any risk assessments.
- Ensure employers provide workplace modifications that have been identified as required.
- Ask the employer to consider temporary adjustments while it is still unclear if the member is a disabled person.
- Reps and branches should encourage employers to follow UNISON guidance for disabled workers and workers with an underlying health condition as good practice.

Examples of modifications that might apply to a member with long COVID could include, but are not limited to:

- Reduced hours, phased return, working from home or working a more flexible day
- A change to duties so that a member who has trouble speaking due to breathlessness does not have to talk to service users
- Redeployment from a physically demanding role to an office job for a member who finds walking and standing difficult
• Period(s) of disability leave, not included for the purpose of sickness absence monitoring, so that the member can take time off to recover or to get through recurring symptoms

• Paid leave for medical appointments

• Changes to performance management or capability policies so that a member with ‘brain fog’ has more time to complete tasks

• Support with workload

• Other adjustments identified by the employee, their GP such as through a ‘Fit for Work’ statement or by an occupational health service provided by the employer.

NHS England has extensive information for those recovering from COVID-19
www.yourcovidrecovery.nhs.uk

including on returning to work
www.yourcovidrecovery.nhs.uk/your-road-to-recovery/returning-to-work


Health Education and Improvement Wales https://heiw.nhs.wales/covid-19/long-covid-syndrome-resources/

Long COVID support group www.longcovid.org
What about ‘vulnerable’ workers?

Some workers had been identified by the government as most at risk from the virus and were classified as ‘clinically extremely vulnerable’ (CEV).

This included:

- 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.

However current UK government advice is that:

“Following expert clinical advice and the successful rollout of the COVID-19 vaccine programme, people previously considered to be CEV are not being advised to shield again. If you were previously identified as CEV, you should continue to follow the guidance [Coronavirus: how to stay safe and help prevent the spread]. You should take advice from your health professional on whether additional precautions are right for you.”

Further details for the devolved nations:

In Scotland, shielding also ended. The Scottish government explains that “Shielding is often harmful to physical and mental health, and can lead to social isolation. There are now other ways of reducing your risk from Covid other than shielding, including vaccination, and ensuring you and everyone else in Scotland continues to follow the
advice we give to protect you. This means we now see shielding as a last resort and we’re unlikely to ask you to shield again.” More details [www.mygov.scot/covid-highest-risk](www.mygov.scot/covid-highest-risk)


In Northern Ireland, the Executive’s COVID-19 guidance for clinically extremely vulnerable and vulnerable people remains that “If you are CEV you should work from home where this is possible” [www.nidirect.gov.uk/articles/coronavirus-covid-19-guidance-clinically-extremely-vulnerable-and-vulnerable-people](www.nidirect.gov.uk/articles/coronavirus-covid-19-guidance-clinically-extremely-vulnerable-and-vulnerable-people)

However, whilst many CEV workers will have received 2 doses of the vaccination and booster jabs, it is still unclear about the level of protection for some with immunosuppression. They also confirm that “no vaccine is 100% effective and therefore even if you have had both doses, there is still no absolute guarantee that you will not become ill from COVID-19.”

UNISON’s position is that employers should continue to allow workers who were shielding to continue to work from home or to be temporarily redeployed to a role that can be done at home. This advice is particularly the case for workers who are immunosuppressed or immunocompromised.

If this is not possible, then the employer should individually risk assess the workers and temporarily redeploy them to the safest onsite role.

Union reps should seek to negotiate:

- Workplace policies that make clear that shielding workers should not be asked to return to workplaces before they have received both doses of the vaccine and their booster jabs
- Risk assessments conducted on an individual basis to account for health conditions, which make relevant adaptions to work duties to reduce transmission risk
- That COVID-19 safety measures remain in place regardless of workers’ vaccination status, including reducing face-to-face contact and ventilation control.

After this group who had previously been advised to shield, there had also been a classification of ‘clinically vulnerable’ people including 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 – see advice below about pregnant workers

There are other things that may 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).

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.

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.

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.

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

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.

In April 2021, NJC guidance issued when shielding measures had been paused, outlined what had been agreed with employers:

“The letter sent to those who were shielding up to 31 March notes that no vaccine is 100 per cent effective and even with both doses, there is no absolute guarantee that a CEV person will not become ill from COVID-19.

The government continues to instruct that everyone who can work at home should continue to do so but those that cannot, including CEV employees and those that live with them, can attend a risk assessed COVID-secure workplace, including schools, with social distancing measures in place. Employers will, however, have the discretion to maintain home working arrangements as an option for CEV employees to work safely.

The government advises that employers should carry out a risk assessment of the workplace in line with HSE guidance and other relevant guidance for the setting, and consult with employees or trade unions and then share the results of the risk assessment with employees through their website. Separate workplaces should be risk assessed accordingly, eg. offices, vehicles, depots, call centres, schools etc each of which may present their own particular challenges and may require specific COVID-related risks to be addressed.

Employers may wish to refer to the guidance produced by NHS Employers which sets out how to enhance existing risk assessments particularly for at-risk and vulnerable groups within the workforce. It includes workers returning to work, and existing employees who are potentially more at risk due to their race and ethnicity, age, weight, underlying health condition, disability, or pregnancy.

Consideration should also be given to requests from employees to be based at a site other than their usual workplace.

There will be circumstances in which outbreaks of COVID in specific geographic areas will require local restrictions that may include the reintroduction of shielding. Employers will need to follow local instructions and guidance as such instances occur.

If employees were previously in the shielded categories, it should be made clear what steps are being taken to protect them, for example discussing an option to reassign them to tasks where stringent social distancing guidelines can be followed if that cannot be assured in their normal role.”
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, intensified caring responsibilities, transport limitations, local restrictions.

☐ If this cannot be achieved, seek a significant extension of paid special leave for such staff. If this is not possible, then the employer temporarily redeploy them to the safest onsite role.

☐ 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 reduce face-to-face contact with others; 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?

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 2010, 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.”

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

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

It is crucial that workplace risk assessments are thorough and take account of disabled workers’ and clinically vulnerable workers’ specific circumstances.

It should also be noted that Office for National Statistics (ONS) data\(^4\) from early in the pandemic, has shown that disabled adults are more likely than non-disabled adults to be experiencing some form of depression during this time. Around one in three disabled adults experienced moderate to severe depressive symptoms during the pandemic. Risk assessments should also take account of the additional stress placed on disabled staff aware of the potential increased COVID-19 risk they face and the victim-blaming approach of much of society.

**Quick checklist**

Risk assessments for disabled workers (and for those who live with a disabled person or clinically vulnerable person) should cover the following:

- Could the disabled worker work from home?
- If not, does the disabled worker come into contact with other people at work?
- Does their job allow them to maintain an appropriate social distance from colleagues and members of the public if required?
- Does the disabled worker have any reasonable adjustments that need to be taken into account?
- Do they face any other additional risks that may make them more vulnerable to COVID-19?
- Does the risk assessment include consideration of how the disabled worker travels to work and any additional risks this might pose?
- Has the employer considered how to remove or reduce the risks that have been identified? This could include: allowing the disabled worker to work from home as much as possible; redeploying them to the safest available on-site role, enabling them to stay an appropriate distance away from others; 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.

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\(^4\) ONS 18 August 2020  
www.ons.gov.uk/peoplepopulationandcommunity/wellbeing/articles/coronavirusanddepressioninadultsgreatbritain/june2020
A **UNISON survey** in 2020 received responses from more than 4,000 disabled workers across the UK which showed that half worked from home during the Covid-19 crisis. It also found that nearly three quarters (73%) of disabled staff felt they were more productive or as productive working from home compared to their pre-lockdown place of work.

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 **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.  **The Office for National Statistics**
highlighted in December 2020 that analysis of the characteristics of people testing positive for the coronavirus (COVID-19) in England found that people from other ethnic backgrounds are more likely to test positive than people of White ethnicity in the majority of regions in England.

This continues to reflect the earlier 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.  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.

The complex reasons for the disparities are being further investigated but action is needed now to protect Black workers.

UNISON believes that workplaces require the 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 as a result of any action taken.

Quick checklist

Risk assessments for Black workers (and for those who live with a Black person) should cover the following:

- Could the Black worker work from home?
- If not, does the Black worker come into contact with other people at work?
- Does their job allow them 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 they face any other additional risks that may make them more vulnerable to COVID-19?
- Does the risk assessment include consideration of how the Black worker travels to work and any additional risks this might pose?
- Has the employer considered how to remove or reduce the risks that have been identified? This could include: allowing the Black worker to work from home as much
as possible; redeploying them to the safest available on-site role, enabling them to
limit face-to-face contact with others; 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.

More information:
Risk assessments for Black, disabled and other vulnerable workers
www.unison.org.uk/26104_oct/
UNISON guidance for Black members
www.unison.org.uk/content/uploads/2020/10/26128_Covid-19_Black_members_leaflet-
v2-1.pdf

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 and
redundancy as well as the treatment of vulnerable and shielding workers do not have a
disproportionate impact on any groups.

Pregnant workers
Under the UK government coronavirus advice, pregnant women “of any gestation
should not be required to continue working if this is not supported by the risk
assessment. Pregnant women require special consideration as contained in government
guides for different industries.” The government also recognises that pregnant women who are unvaccinated or not fully vaccinated, should take a more precautionary approach.

Whilst the UK government no longer advises that pregnant workers should work from home if possible, they should continue to consider the risks of close contact with others, particularly if they are clinically extremely vulnerable or not yet fully vaccinated.

Members who are pregnant and unvaccinated or not fully vaccinated have an increased risk of becoming severely ill and of pre-term birth if they contract COVID-19. They should seriously consider getting the COVID-19 vaccine and completing their vaccination schedule of 2 doses to protect themselves and their baby.

More information for members at www.unison.org.uk/about/what-we-do/fairness-equality/women/key-issues/pregnant-workers-covid-19/

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.

As Maternity Action highlight in their guidance, “all employers have a duty to assess workplace risks and this must specifically include risks to pregnant women and new mothers at whatever stage of pregnancy.”

If it is not possible for a pregnant worker to work from home, particularly if they are not fully vaccinated, it is essential that the employer undertakes a risk assessment of each individual pregnant worker’s working environment and specifically looking at their role within it. If the employer undertook a risk assessment prior to the COVID-19 pandemic, they should carry out a new assessment to consider these particular circumstances.

The employer’s risk assessment should also take account of any additional risks to the pregnant worker such as if the woman is Black or has any pre-existing medical condition. A UK Obstetric Surveillance System study in May 2020 found that pregnant women “from black, Asian and minority ethnic (BAME) backgrounds are more likely than other women to be admitted to hospital for coronavirus. Pregnant women over the age of 35, those who are overweight or obese, and those women who have pre-existing medical problems, such as high blood pressure and diabetes, also appear to be at higher risk of developing severe illness.”

It could be unlawful discrimination on the grounds of pregnancy if an employer unreasonably pressurises a pregnant worker to go to work or disciplines them for not going to work when they have a reasonable belief that they are at risk of infection.

Where the risks in the workplace cannot be mitigated, the employer should look at whether they can temporarily redeploy pregnant workers to a job that can be done at home.

However, it is important that pregnant 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.

Sadly, pregnancy discrimination has continued through the pandemic. An online TUC survey via the website [www.pregnantthenscrewed.com](http://www.pregnantthenscrewed.com) of over 3,400 women who have been pregnant or on maternity leave during the coronavirus crisis showed that one in four (25%) had experienced unfair treatment at work, including being singled out for redundancy or furlough or short-time working.

Pregnant women also reported to the TUC that they were required to take sick leave when they were not sick, to take unpaid leave, to start their maternity leave early or to leave the workplace, because their employer did not act to make their workplace safe for them.

Employers should be careful to avoid the unlawful discrimination of individuals who have protected characteristics such as pregnancy, under the Equality Act 2010. Workplace reps and branches should also remind them of their responsibilities under Health and Safety legislation.

Where there is no suitable alternative work available that could be done from home, the employer should consider suspending the pregnant worker on full pay in line with requirements for the risk assessment of pregnant workers under The Management of Health and Safety at Work Regulations 1999.

The Health and Safety Executive is clear in their advice to employers:

“If you cannot put the necessary control measures in place, such as adjustments to the job or working from home, you should suspend the pregnant worker on paid leave. This is in line with normal requirements under regulation 16(3) of the Management of Health and Safety at Work Regulations 1999.”

Paid leave should be on full pay, based on the pregnant worker’s usual earnings, not just the pay based on their contractual hours. As the government states, suspension “will last as long as the employee, or their baby, is in danger… The employee has the right to normal pay (including bonuses) for up to 26 weeks, as long as they’ve been in their job for a month or more.”

The Health and Safety Executive (HSE) confirms this requirement in their general guidance:

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

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

Branches and reps should try to negotiate to extend this period of suspension on full pay if necessary, dependent on the duration of the COVID-19 pandemic and accompanying risks.

Pregnant workers should not be put on sick pay (which ultimately could also affect the amount of maternity pay they will receive) nor forced to use annual leave or unpaid leave. Pregnant workers should only be paid sick pay if they are actually sick.

Employees who are pregnant during the COVID-19 pandemic can start maternity leave as usual. Statutory maternity leave and pay entitlements do not change and the normal rules apply. However, the employer can start the maternity leave automatically 4 weeks before the pregnant worker’s expected week of childbirth if they are absent from work wholly or partly because of their pregnancy (including risks to pregnancy caused by COVID-19).

**Quick checklist**

- Can the pregnant worker work from home? Is the worker fully vaccinated?
- If working from home is not possible and the worker is not fully vaccinated can the pregnant worker be reasonably redeployed to other duties that can be carried out from home? It will need the pregnant worker’s agreement and appropriate support from the employer such as training and IT equipment.
- If the pregnant worker is continuing to work at their normal workplace, has the employer made special provision for pregnant workers and undertaken individual COVID-19 risk assessments?
- Has the employer put in place sufficient measures to eliminate or minimise risks for pregnant workers including strict social distancing and isolation measures as required, handwashing and alcohol-based hand sanitisers, and use of personal protective equipment (PPE) where appropriate?
- If the pregnant worker is continuing to work at their normal workplace, can they follow any rules in place on social distancing and keeping themselves safe not only whilst at work but during their travel to and from work?
- Has the employer considered the suspension of pregnant workers on full pay if they are not able to work from home and action cannot be taken to address all the risks identified in the risk assessment at their normal workplace, and if suitable alternative employment is not available to allow the pregnant worker to work from home?

**More information**

**UNISON guidance for pregnant members** [www.unison.org.uk/about/what-we-do/fairness-equality/women/key-issues/pregnant-workers-covid-19/](www.unison.org.uk/about/what-we-do/fairness-equality/women/key-issues/pregnant-workers-covid-19/)
The Equality and Human Rights Commission has further information on employer responsibilities towards pregnant workers during the COVID-19 pandemic

Maternity Action ‘Know your rights: Pregnant at work 2021’
https://maternityaction.org.uk/advice/pregnant-at-work/

NHS COVID-19 advice during pregnancy


Workers who live in the same household as a vulnerable person

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

It is important for workers to tell the employer their particular circumstances. 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.

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 taking account of the particular circumstances of the clinically vulnerable they live with. Employers should also consider if the worker has to travel by public transport and additional risks this creates.
Workers facing other issues that may impact on their work

With the continuation of the pandemic across the world, the UK government has recognised that the impact on individuals is not only on their physical health. There may be other issues and concerns that people are experiencing at this time, which directly or indirectly impact on their work.

It is important for union reps and branches to encourage employers to be flexible and sympathetic, and highlight any support that may be available to staff whether from their organisation or external sources.

Good practice example

Lambeth council have put together a series of five pledges, that they describe as "tangible actions that … the corporate leadership team will ensure are delivered to support our collective wellbeing." They are:

1 Taking care of ourselves

We will continue to provide a programme of training, events, workshops and webinars that are designed to educate all of us to better manage our own health and wellbeing, no matter what our work setting.

We will offer all staff the opportunity to take part in the 'laughter' wellbeing programme that has been piloted successfully by Residents Services.

We will work with managers to ensure that each team can best support the wellbeing of its individual members, including encouraging the use of the Wellbeing Toolkit.

2 Looking out for each other

We will build out our existing network of mental health first aiders and champions across our directorates. We will continue to offer the confidential Employee Assistance Programme, available for all staff.

As sponsors of the staff forum, we will work with each forum to ensure there are regular safe-space opportunities to share experiences, and that key issues arising are taken up to management board.

We will ask all staff to take part in the Samaritans ‘well-being in the workplace’ training so that we are all better to able to identify and respond to colleagues who are distressed.

3 Your work setting

We will work with managers to double check that all staff, no matter where they are working from – home, office, out in the borough, on the frontline - have the resources and equipment needed to do their job safely, properly and comfortably.

For office-based staff who cannot work from home, we will continue to provide you with the option to come and work from the office, subject to a risk assessment.

As the pandemic allows, we will provide opportunities for all staff to spend some time in Council offices for team building and collaboration.
4 Your working day

Within each directorate we will work further with managers to support a healthy working day which features appropriate breaks, time away from the screen, time to connect with colleagues, and recognise any additional caring responsibilities staff may have.

For those who are out and about in the borough, opportunities to regroup and provide mutual support will be factored in.

Each team will be encouraged to allocate an hour a month to hold a Time-to-Talk session.

5 Taking your annual leave

We strongly want staff to be able to take annual leave, and to be able to use that leave to support their own resilience and recuperation.

But where staff are unable to take annual leave due to work demands, we will allow staff to carry over up to 10 days of annual leave, which can be taken at any time over the next year.

Unplanned caring responsibilities

Workers may still be struggling during the COVID crisis because of unplanned caring responsibilities perhaps for vulnerable or elderly adults, or for children who are unable to go to their normal childcare provider.

Education and childcare settings are open and children (below the age of 18 years and 6 months) no longer have to stay in a consistent group or 'bubble', nor self-isolate if they live in the same household as someone with COVID-19 or are a close contact of someone with COVID-19.

However, there still may be times when children may have to self-isolate should they show one or more coronavirus (COVID-19) symptoms or have tested positive for COVID-19.

Additionally, normal options for out-of-school childcare such as at grandparents or friends may not be possible due to concerns about protecting the vulnerable.

Playscheme places may also be limited due to increased demand and fewer opportunities. Therefore, any expectation of staff return to the normal workplace or continuing to work in the normal workplace should be coordinated with these arrangements.

The TUC has recently published research showing that around 2 in 5 working mothers with children under 10 can’t get – or are unsure whether they will get – enough childcare when returning. Their survey found that of those who were sure they wouldn’t be able to access childcare:

- 45% said they don’t have their usual help from friends and family;
- 35% said they can’t get places at afterschool clubs;
- 28% have lost childcare provided by school breakfast clubs
- 28% don’t have their usual nursery or childminder available.
During the initial lockdown, employers may have made arrangements for workers with caring responsibilities to work from home if they can. Hopefully the employer will continue to take account of the needs of workers with caring responsibilities as and when additional restrictions are put in place by central, devolved or local governments.

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.

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

Whilst qualifying employees are entitled to unpaid dependants’ or emergency leave as well as 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.

Good practice would be for employers to provide special leave, ideally at full pay in order to deal with unplanned caring responsibilities. For example, the NHS, have paid COVID-19 special leave available for staff whose child has a suspected case or confirmed case of COVID-19 and there is a government requirement for the employee to self-isolate.

If workers are forced to take unpaid leave, they should be reminded that they may be eligible for a one-off Test and Trace Support Payment of £500 from their local authority if their child has been advised to self-isolate by NHS Test and Trace. Further information on claiming financial support under the Test and Trace Support Payment scheme is available.
Quick 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?

☐ 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 flexi-hours 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?

☐ For those workers unable to work from home, will the employer provide paid special leave?

More information

Working parents leave and rights
www.unison.org.uk/negotiating-for-working-parents/

Carers' leave and rights

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

Family Friendly Working Scotland, works with employers, government, families and others to promote a flexible and family friendly working culture.
www.familyfriendlyworkingscotland.org.uk

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

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/
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 wellbeing.

The Office for National Statistics (ONS) recently reported that in the second week of January 2021 levels of anxiety were at the highest they have been since April 2020. Measures for happiness, life satisfaction and feeling like things in life are worthwhile all decreased from the week before.

Research from the University of Oxford shows that levels of stress, depression and anxiety among parents and carers have increased with the pressures of the lockdowns. Issues include difficulty relaxing, feeling hopeless and being irritable. Cathy Creswell, professor of clinical developmental psychology at Oxford University and co-leader of the study, said that "our data highlight the particular strains felt by parents during lockdown when many feel that they have been spread too thin by the demands of meeting their children’s needs during the pandemic, along with home-schooling and work commitments."

According to research reported in FE News in January 2021, 26% of the population of the United Kingdom reported stress, anxiety or great sadness during COVID-19, ranking second in the world with such a high proportion of people affected, after the U.S.

A study of over 2,600 healthcare workers employed by 10 NHS hospital trusts across the West Midlands, published in BJPsych Open, found around a third of hospital healthcare workers reported clinically significant symptoms of anxiety (34.3%) and depression (31.2%), while almost a quarter (24.5%) reported clinically significant post-traumatic stress disorder (PTSD) symptoms.

UNISON’s own report ‘Worry in Mind: COVID and the mental wellbeing of health staff’ found that almost half (48%) of health employees, including nurses, porters, paramedics, healthcare assistants and A&E staff across the UK, “have struggled to cope” during the pandemic. Fear of getting sick (60%) with Covid was the top reason given for a deterioration in their state of mind, followed by being unable to see friends and family (55%), and increased workload (49%).

To help address these issues, UNISON is calling on the government to expand the package of mental health support available for staff both now and long term. This includes extending free access to wellbeing apps at least until the end of this year, telephone counselling that’s available around the clock, fast-track specialist treatment for those in crisis, and a significant pay rise to boost morale and reduce financial worries.

Although stress in itself, 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.

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.

The study of healthcare workers published in BJPsych Open, found that women, those with a history of physical illness, smokers, staff based on in-patient wards, emergency departments, and intensive therapy units, had an increased likelihood of clinically significant PTSD symptoms.

A study carried out by Kings College London of workers at nine intensive care units in England found that nearly half reported symptoms of severe anxiety, depression, post-traumatic stress disorder or problem drinking.

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.”

**Quick 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 workers 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’
https://shop.unison.site/product/bargaining-on-mental-health-policies-a-practical-guide-for-unison-branches/

UNISON's general advice on tackling stress in the workplace

Health and Safety Executive (HSE) Stress at work
www.hse.gov.uk/stress/index.htm

Acas information on Coronavirus and mental health at work
www.acas.org.uk/coronavirus-mental-health

Mental health at work
www.mentalhealthatwork.org.uk/

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

Government information on mental health and wellbeing

NHS Every Mind Matters
www.nhs.uk/oneyou/every-mind-matters/coronavirus

NHS information on mental health and wellbeing
www.nhs.uk/conditions/stress-anxiety-depression

NHS information on post-traumatic stress disorder
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
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.

Quick 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 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?

More information

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

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)
Workers experiencing 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.

The CIPD (Chartered Institute of Personnel and Development) have recently highlighted that, with more people working from home, “escape routes or time apart from an abuser may be dramatically curtailed.” They add that “employers need to think about how support can be maintained as we all work in different ways. An empathetic, non-judgmental approach and flexibility (for example in working hours or concerning work tasks) are two key areas employers should focus on.”

The CIPD have produced guidance with the Equality and Human Rights Commission on Managing and supporting employees experiencing domestic abuse

UNISON recognises that controlling and abusive behaviour can occur in mixed and same sex relationships, and within extended families, regardless of gender identity. 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 Galop for LGBT+ people.

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

**Acas** outlines the sort of support employers should make clearly available if an employee is experiencing domestic abuse, such as:

- finding a way to communicate safely, for example by text message if calls are not possible, or a different email address if their email is being monitored by the perpetrator
- agreeing on a code word or hand signal for someone to use to alert others that they’re experiencing domestic abuse
- arranging another place they can do their work instead of at home
- being flexible around working hours
- time off, for example to attend support appointments
- helping the person get other appropriate support.

Further information from Acas on domestic violence and abuse and the employer’s duty of care whilst staff are working from home: [www.acas.org.uk/working-from-home/health-safety-and-wellbeing](http://www.acas.org.uk/working-from-home/health-safety-and-wellbeing)

**Quick checklist**

- Make sure support services for workers experiencing domestic abuse are widely publicised amongst staff.
- Encourage employers to treat victims/survivors of domestic abuse within their workforce sympathetically and allow flexible working and paid special leave.
- Remind employers that they have a legal duty of care to their staff and that this includes looking out for signs of domestic abuse and responding appropriately.
- Encourage employers to develop a domestic abuse policy in consultation with union reps and staff.

**More information:**

Domestic violence and abuse: a trade union issue
[https://www.unison.org.uk/content/uploads/2017/02/24192.pdf](https://www.unison.org.uk/content/uploads/2017/02/24192.pdf)

The TUC has a 5-minute guide for reps on domestic abuse and coronavirus
[https://learning.elucidat.com/course/5e875ae4d0715-5e8c6417dfc28](https://learning.elucidat.com/course/5e875ae4d0715-5e8c6417dfc28)

**Support for individuals:**

National Domestic Violence helpline
Open 24 hours, freephone 0808 2000 247

Men’s Advice Line
For men experiencing domestic abuse Call freephone 0808 801 0327
[www.mensadviceline.org.uk](http://www.mensadviceline.org.uk)
Bargaining over workplace issues during the COVID-19 pandemic

Women’s Aid
Women’s Aid is the national charity working to end domestic abuse against women and children. [www.womensaid.org.uk](http://www.womensaid.org.uk)

Welsh Women’s Aid/Cymorth i Ferched Cymru
Call freephone 0808 80 10800 [www.welshwomensaid.org.uk](http://www.welshwomensaid.org.uk)

Scottish Women’s Aid
Call freephone 0800 027 1234 [www.scottishwomensaid.org.uk](http://www.scottishwomensaid.org.uk)

Women’s Aid Federation Northern Ireland
Call freephone 0808 802 1414 (for women and men) [www.womensaidni.org](http://www.womensaidni.org)

Galop
Galop provide a national lesbian, gay, bisexual and transgender domestic abuse helpline giving emotional and practical support for LGBT+ people experiencing domestic abuse.
Call 0800 999 5428 Monday to Wednesday 10am to 5pm, Thursday 10am to 8pm, Friday 1pm to 5pm and Sunday 12pm to 4pm. Tuesday 1pm to 5pm is a trans specific service.
Email: help@galop.org.uk
Online chat: 3pm to 7pm Saturday, 3pm to 7pm Sunday [www.galop.org.uk](http://www.galop.org.uk)

Bereavement

During the COVID-19 pandemic and lockdown restrictions, the likelihood that someone within the workplace will be directly affected 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 Office for National Statistics recently reported that, based on provisional data for January to December 2020, COVID-19 was the leading cause of death in England and Wales during the whole of 2020.

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 rules that may have been in place.

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.

As Acas stresses:

“Every person will deal with a death differently. It's important for employers to:
• be sensitive to what each person might need at the time
• consider the person's physical and emotional wellbeing, including once they've returned to work."

Dependant’s leave (sometimes in this situation called bereavement or compassionate leave) is a statutory right from day one of employment when 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 during this leave, under an employee’s terms and conditions of employment. Ideally, employers will allow for more than the statutory minimum of time off in the case of bereavement if this is needed by the individual and will also ensure this time off is paid, particularly when death of a loved one may also throw up considerable financial worries.

From 6 April 2020, eligible employees have had the 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. This may provide a starting point for negotiations to extend this right to all bereaved employees.

Sympathetic employers would also allow continued flexibility in working hours if needed during the following months after a bereavement, as the emotional and financial impact can be far-reaching beyond the first few days or weeks of bereavement. The employee may need time to sort out practical issues too such as additional caring responsibilities or for particular religious observances during the bereavement period.

Ideally managers will be flexible where they can about additional or special leave that may be needed. This flexibility will not only be appreciated by staff, ensuring greater loyalty and retention, but may help avoid longer periods of sickness absence later, where individuals have not been able to cope with their bereavement and have become ill as a consequence.

Any bereavement policy should make sure that line managers are appropriately trained to deal sensitively and sympathetically with staff, that communications are clear, supportive but not intrusive into the employee’s grief. Ideally the policy will take account of the impact of grief not only from the death of close family members but of friends and work colleagues.

Also, it would be important to negotiate that any subsequent sickness absence related to bereavement (such as due to insomnia, depression, anxiety) should not be counted towards any sickness absence policy trigger points.

Quick checklist

☐ Make sure support services for the recently bereaved are widely publicised amongst workers (such as bereavement counselling through an employee assistance programme if provided by the employer), 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 an on-line 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 external contacts, and providing support if appropriate, as well as sending condolences to the family and checking with them how they wish others to be informed of the death. The policy should also stress the need to finalise the deceased affairs (such as pay and pension provision) 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.

☐ Ask if managers have received training on the potential symptoms and impact of grief and how to deal sensitively and sympathetically with their staff, both in the initial few weeks of bereavement and in the longer term.

☐ Send condolences to any bereaved members and signpost to appropriate support including UNISON’s There for You, as well as information such as workplace policies. Respect the privacy of the individual and how much information, if any, they wish to be shared with colleagues.

More information:

Compassionate leave (or time off for dependants) guide
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

Support for individuals:

There for You, UNISON’s welfare charity for members experiencing financial and emotional difficulties www.unison.org.uk/get-help/services-support/there-for-you

UNISON information on Death in Service benefit
www.unison.org.uk/get-help/knowledge/pay/death-in-service

NHS: Grief after bereavement and loss
www.nhs.uk/conditions/stress-anxiety-depression/coping-with-bereavement

Government information on what to do when someone dies
www.gov.uk/when-someone-dies

**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)
Staff who had been working from home and the uncertainty of the post-lockdown world

Whilst restrictions have been gradually lifted across the UK, details vary within each nation.

Currently, the general advice or guidance is to work from home where possible.

More details

For England www.gov.uk/coronavirus
“Work from home, if you can.”

“Work from home if possible”

For Wales https://gov.wales/coronavirus
“Work from home or meet people virtually.”

For Northern Ireland www.nidirect.gov.uk/campaigns/coronavirus-covid-19
“You should continue to work from home where possible.”

Of the employed population, 35.9% did some work at home in 2020 according to the Office for National Statistics (ONS). 5

UNISON’s own equalities survey in 2020 found that 40% of our members who had continued working during the pandemic, worked from home.

Even with easing of restrictions, it is already clear that some employers are exploring the possibility of keeping remote working as a permanent full-time option for staff, with some companies shutting a proportion of their offices.

Many other employers are also considering the benefits of hybrid working (sometimes called agile working or smart working), where workers combine working from home with some days in the employer’s workplace.

An almost 9 in 10 workers told researchers for the recent (October 2021) Chartered Management Institute (CMI) and Work Foundation report ‘Making hybrid inclusive – key priorities for policymakers’, that they don’t want to return to pre-Covid working patterns.

There has been a plethora of surveys and studies looking at the issues of whether homeworking is effective, desirable and sustainable and these are considered within this guidance as evidence to back up negotiations.

For example, workers polled by the RSPH (Royal Society for Public Health, reported in February 2021) showed that the vast majority of people asked, didn’t want to go back to working in an office full time, with nearly three quarters of people (74%) saying that they wanted to split their time between homeworking and working in an office.

However, earlier research from the CMI suggests that many managers failed to consult staff ahead of any return to the workplace. It found that employees’ views were not being fed into the decision-making process.

It’s therefore crucial that UNISON reps and branches actively engage in the arguments for and against homeworking and hybrid working.

**UNISON wants our members to have a real choice in the matter, rather than having to accept new ways of working without consultation.**

Importantly, it must be remembered that for many of our members, because of the nature of the work they do, working from home was, is and will never be an option for them. Nonetheless, they still deserve careful consideration in the provision of flexible working options wherever possible.

**New bargaining support guidance and a model policy to help workplace reps and branches in negotiations about homeworking and hybrid working (sometimes called blended or agile working)**


The unit would welcome case studies and example workplace policies and agreements to help inform the guidance. Please contact bsg@unison.co.uk

**Key points for negotiations on hybrid and home working in the future**

**Make sure there is consultation with staff and that the trade union is involved**

Key to a successful workplace after the lifting of COVID-19 restrictions, is meaningful consultation with workers to reassure them that the workplace remains COVID-secure and that lessons have been learnt for any future change in working practice.

Employers may need to be reminded that homeworking during the restrictions did not impact on their ability to deliver services, and may in fact have permitted efficiencies in delivery.

However, for some workers this may have come at a price, perhaps with an adverse impact on their mental and physical health and wellbeing. That’s why the trade union must be involved in discussions to raise these issues with the employer.

Is the employer engaging with the trade union workplace reps and safety reps on any new working arrangements and consulting with staff?

Are employers addressing any concerns and properly preparing for new working practices?

Are employers focusing solely on working from home and neglecting other flexible working options that can enhance recruitment and retention of all staff?

**Share the experiences of staff homeworking during COVID-19 restrictions**

Have you collected details of the experiences of our members, perhaps with a workplace survey covering all staff – what were the particular benefits and challenges of
homeworking during lockdown and restrictions? Can you provide specific examples?

How do staff see themselves working in the future? Is homeworking an important part of it?

Armed with this type of evidence, you may be able to highlight the particular value not only to recruitment and retention of staff but their future productivity. It may emphasise the benefit of providing real choice to staff, of having a balanced approach to homeworking as one of the options available within flexible working.

Has the employer considered their duty to provide reasonable adjustments to disabled workers? As well as making adjustments for disabled workers who work from home, and for disabled workers who work in the office, has the employer also considered homeworking in itself as a potential reasonable adjustment?

You may also be able to point out the particular problems and challenges of homeworking for some workers, that in the long run can impact on their productivity as well as their mental and physical health.

Enforcing homeworking for all may de-motivate some workers, and could result in limiting the career progression of specific groups of workers, such as women and disabled people.

Make clear to the employer the particular benefits and challenges that have been experienced by our members, and that real choice and appropriate support is the best way of ensuring recruitment, retention and productivity.

**Remember those who cannot work from home**

Don't forget those within the workplace who do not have the option to work from home because of their job role and duties.

Can certain duties be done in different ways to enable some homeworking? Are these workers offered other forms of flexible working to help ensure a work/life balance?

If much of what these workers do is servicing colleagues who now work from home, such as the administrators, cleaners, caterers etc, is any homeworking policy creating a two-tier workforce? Are some jobs actually at threat if workers are not coming into the employer's workplace as before?

How is work being distributed between those in the workplace and those working from home? Does the more interesting, fulfilling work with greater opportunities for career development go to those that more visible in the workplace? Or those who are able to work productively from home because of their more comfortable, spacious and better equipped surroundings?

**Mix and match with care**

Is the trade union involved in deciding on which job roles are suitable for homeworking whether wholly or in part?

What criteria is the employer using to make selections? Are clear reasons given? Do they take into account the individual needs of a worker?
Are the employer’s decisions fair and consistent across the organisation and will they be reviewed in the future? Do they consider a variety of options – office working, occasional homeworking, hybrid working as well as permanent homeworking? Is it a choice for the employee?

**Be wary of employers focusing solely on saving overhead costs**

It’s important that employers do not shirk from their duties under health and safety whilst their staff are working from home. They will need to consult with the trade union including safety representatives (where recognised) on matters affecting members’ health and safety including when working from home. Even in a non-recognised workplace there is still a duty to consult either directly with employees or through an elected representative of employee safety.

This is crucial because homeworking is shown to have a direct impact on the physical and mental health and wellbeing of workers.

It’s important too that employers are reminded of their duties under the Equality Act 2010 for making reasonable adjustments for disabled workers. Whilst working from home may be a reasonable adjustment in itself for some disabled employees, is the employer imposing it as an excuse to avoid making reasonable adjustments in the workplace?

Employers may also see homeworking as an opportunity to make savings on office space and overheads. They may need to be reminded of a need to compensate workers for additional costs and concerns whilst working from home, and that homeworking is simply too stressful and difficult for some workers. Alternatives must still need to be considered if they want to avoid losing valuable staff and impact on staff morale.

If hybrid working is planned by the employer, and office space to be reduced, how will those who come into the office be allocated workstations? Is there to be a hotdesking policy on a first-come, first-served basis? Is there to be a booking system? Will it take account of the needs of disabled workers and any reasonable adjustments they may have, as well as other specific needs of workers (e.g. menopausal women wanting to be by a window that opens.)

**More information in ‘Bargaining on hotdesking policies’**

[www.unison.org.uk/content/uploads/2019/01/Hot-Desking.pdf](www.unison.org.uk/content/uploads/2019/01/Hot-Desking.pdf)

**Review the flexible working policy**

Make sure the employer is not just discussing homeworking. Remind them of all the many other options of flexible working that they could be offering to their staff.

Has the workplace got a flexible working policy in place? Should this be reviewed

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6 In Northern Ireland, this requirement is enshrined in the Disability Discrimination Act 1995
alongside any proposals for homeworking or a full return to the office?

What criteria does the organisation use for workers who can request flexible working?
Is it allowed as a day one right or only after the statutory period of service? Highlight the recruitment benefits of offering flexible working to all staff, including new staff.

**What should be considered when working from home?**

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.

The employer should update the health and safety policy to cover working from home during the pandemic and as part of flexible working, including setting out:

- preventative steps taken to protect workers
- how working from home risks are to be assessed, such as by providing a checklist and guidance to help workers assess their own work environment and identify problems
- steps taken to protect groups who may be at particular risk — e.g. pregnant, older, Black or disabled workers
- how risks may impact family members and housemates.

This should then be made widely available to staff so that they are fully aware of the details.

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**.

The main concern for an employer should be whether there is a **suitable workspace** at home for the employee to work. An employer has a duty of care for all their employees and it is the employer’s responsibility to check where the employee proposes to work from – desk, chair, computer, etc, or if any other workstation is needed. A risk assessment should take place, although the process may need to be adapted under COVID-19 restrictions (such as by providing a checklist to workers and training on safely setting up equipment and the workstation).

The employer is also responsible for the **equipment** it supplies including where there will be extensive use of computers and visual display units (VDUs) as these will be covered by Display Screen Regulations. It will be the employees’ responsibility to make sure they highlight any issues they know when the risk assessment takes place (for example, faulty electric plug points).

From data collected during the lockdown period in the UK as part of an ongoing, longitudinal study of home-based working under COVID19 measures funded by the UKRI/ESRC, the **Working at Home project** found that the homeworking environment clearly plays a significant role in work-life balance. Survey respondents who were afforded a dedicated room for work (53% of respondents), reporting statistically
significant better work-life balance.

Similarly, those who share their homeworking space with family members or co-residents (33% of respondents) report statistically significant poorer work-life balance than those who do not share their space.

The survey findings, however, suggest that organisations can support the work life balance of their employees by:

- supporting the homeworking environment (e.g. providing essential devices, an ergonomically appropriate chair, proper desk, second monitor);
- providing IT support (file sharing, video conferencing, remote collaboration tools, professional software, etc.).

As the control that can be exercised over a member of staff working from home is limited, particularly during this period of social distancing, the main responsibility will be with the home worker under Section 3 (2) of the Act. This places the obligations on home workers themselves to ensure that they and other persons, including members of the household (as well as the public) are not endangered by work activities undertaken at home.

Workplace reps and branches should highlight the importance of staff to raise any health and safety concerns whilst working from home with their line managers promptly. They should make sure any risk assessment checklists are thorough and cover all potential areas for consideration including the workstation and equipment.

However, it is important that employers 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. Homeworkers are also covered by the Working Time Regulations which set a limit of 48 hours on the working week.

Enforced isolation can additionally lead to feelings of loneliness and lack of connection with work colleagues. A different way of working may even 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.

Other dangers of home working have also been reported. Research from Gartner highlights how that at least three broadly drawn groups of workers are experiencing ‘unfair’ career consequences whatever their productivity when working from home.

They are:

- **Digital introverts** – employees who are less vocal in virtual meetings. They are more likely to be ignored by managers because of bias in favour of those who are more visible.

- **Women** – remote working is proving damaging to the progression of female workers and gender equality in the workplace. A big part of this is due to the increased childcare responsibilities that many women are taking on, but also many important gender equality initiatives are being deprioritised during the pandemic.

- **Newer staff** – inadequate remote training opportunities and not feeling valued as part of a team means new employees are struggling to progress and are less likely to be engaged during the remote working era.

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.”

Research from the Wales Institute of Social and Economic Research on ‘**Homeworking in the UK: before and during the 2020 lockdown**’, discovered that "a common fear among employers is that without physical oversight, employees will shirk and productivity will fall". However, the research also found that two-thirds of homeworkers said they were able to get as much done in June 2020 as they were 6 months earlier and a quarter said they got more work done.

**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 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.

However, it has been reported that there has been an increase in **monitoring and surveillance of staff whilst working from home**, using the latest technology. Recent research highlighted by the TUC in their report ‘**Technology managing people**’ found that the increase in homeworking during the Covid-19 pandemic has almost certainly already increased the use of artificial intelligence (AI) powered technologies to manage people. A recent survey conducted by the LSE’s Centre for Economic Performance found that more than 60% of firms have adopted new technologies or management practices since the start of the pandemic and more than 90% said they expected to keep the changes in place.

The TUC’s own research “suggests worker interests may often be marginalised or overlooked when new technology is introduced at work.”
The use of AI in people management can also impact on the employment rights of workers. For example, the deployed technology might result in discriminatory and unfair outcomes for workers, their human right to privacy might be infringed, and their data might not be handled in accordance with data protection law.

In addition, there are significant implications in terms of workers' physical and mental wellbeing, for example when workers experience the extreme stress and pressure of constant, AI-driven 'real-time' performance assessment and monitoring."

**Acas** warns “if monitoring is too much or does not respect the employee's privacy, it can damage employees' trust in the employer, cause stress and reduce productivity. Employers should also remember that employees are entitled to some privacy at work, including when they are working from home... Any monitoring arrangements must follow data protection law."

For any monitoring arrangements to be successful, employers should first consult with workers and give clear reasons for the monitoring. And these reasons should be legitimate and in proportion with the need. Employees need to be clear what information is likely to be obtained, why it is being obtained and how the employer wishes to use that information.

Further information on working from home for workplace reps from TUC Education
[https://learning.elucidat.com/course/5ea8201298996-5eac468ab5b70](https://learning.elucidat.com/course/5ea8201298996-5eac468ab5b70)

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

From the TUC ‘Technology managing people’ report

UNISON’s survey covered in the report ‘Covid 19 and disabled workers – time for a home working revolution?’ found that 54% of the respondents said they felt they would benefit from being able to work from home after the Covid-19 pandemic is over.

Generally, working from home was found to give **disabled workers** more control over the pattern of their working day. From later start and finish times to the ability to timetable in more breaks, disabled workers could better manage their impairments without the rigidity of the work environment.

Disabled workers also welcomed the positive impact of not having to commute on their pain and fatigue. Many reported of a daily battle to get to work and the huge impact this had on their ability to work once there. Home working had completely removed this barrier for many.

However some disabled workers were disadvantaged by working from home. Some felt the need to buy their own equipment as they could not access reasonable adjustments.

Deaf workers were often particularly excluded from work colleagues due to a lack of reasonable adjustments. This led to a sense of isolation amongst some.

Some neurodivergent respondents said that they needed clear boundaries between
work and home, and found it difficult to work from home without clear structures.

UNISON’s survey revealed some examples of best practice where disabled staff were given the tools and resources they need to work from home during the pandemic, and there appeared to be a growing realisation from many employers that they needed to allow more staff to work from home in a post-pandemic world. Good employers also ensured that staff have the same adjustments at home as they have at work – or have provided additional adjustments required for home working.

It should be remembered that reasonable adjustments are specific to an individual person’s needs. There are a variety of adjustments that could be made including altering work hours, installing software programmes on the worker’s computer, delivering specialist pre-assembled equipment like a work chair, providing speech-to-text support or a BSL interpreter to join video meetings, or installing a specialist phone.

More information

Reasonable adjustments: bargaining guide, model policy and accessibility passport
www.unison.org.uk/content/uploads/2019/10/25875_reasonableadjustments.pdf

However, of the disabled members who responded to UNISON’s survey:

- Only 5% had help from Access to Work, the government’s flagship agency that funds adjustments for disabled workers
- 41% did not know about Access to Work and 23% did not think Access to Work could help with working from home.

Reps and branches will also want to make sure that employers are providing sufficient advice and support on working from home and reasonable adjustments for disabled workers. 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).

The UNISON report also highlighted how we must also protect disabled workers who want to return to the workplace from being forced to work from home in order to save the employer money or help the employer avoid ensuring accessible workplaces. Home working should be a choice for disabled workers, not a requirement.

There must be safeguards so that disabled people are not made to work from home in order for employers to avoid the provision of accessible workplaces. This approach could easily lead to disabled workers being forced out of the visible workforce.
Quick checklist

☐ Where home working has shown to be unpopular with staff members because of the negative impact on work/life balance, will the employer agree to other forms of flexible working options?

☐ If home working is difficult for some staff, highlight the potential impact on their health and wellbeing and remind employers of their duty of care for all their employees, under health and safety law.

☐ If hybrid working is proposed, are they considering best use of time spent in the office (more collaborative work and activities that benefit from face-to-face meetings and informal sharing) and time spent working at home (work requiring focus and less distraction)? A fixed pattern of working at home and in the office may not be the most productive use of hybrid working.

☐ Check that the Health and Safety Executive (HSE) guidance for employers on health and safety for home workers is being followed.

☐ How is the employer addressing the health and safety risks of stress and mental health issues? Does the organisation have a mental health policy developed alongside the trade union, and does it take account of the specific needs of those staff members who are working from home?

☐ Are all workers aware of this policy and how it operates?

☐ Do managers receive training in mental health issues in the workplace, and do they act as role models in taking proper breaks, leave and switching off at the end of the working day?

☐ Do workers know where to go for mental health support such as the employee assistance programme or external organisations such as Mind?

☐ Does the employer have a budget specifically for action to help ensure the health and wellbeing of staff?

☐ Will the employer agree to rules about when staff can and cannot be contacted for work purposes outside of normal working hours? Do staff have a right to switch off and disconnect work from home life?

☐ Are all staff expected to properly use their annual leave for rest and relaxation and not to work whilst on leave or use it for sickness absence?

☐ Are all staff expected not to work whilst off sick?

☐ Are all staff expected to get the right breaks and to not work beyond contracted hours?

☐ How does the employer plan to support home workers who feel isolated and need assistance such as with often frustrating IT problems. Do staff know who to contact?

☐ Are staff being kept properly informed when they work from home so that they do not feel professionally isolated?

☐ Have employers made sure the workload of their staff is at a safe level and that they...
are not put under unreasonable stress?

☐ Does the worker have a suitable workspace at home? Has the employer made sure staff have the correct equipment to do their job?

☐ Has the employer updated the health and safety policy to cover working from home including setting out:
  • how working from home risks are to be assessed
  • providing a checklist and guidance and training to help workers assess and identify problems within their home working environment
  • steps taken to protect groups who may be at particular risk — e.g. pregnant or disabled workers
  • how risks may impact family members and housemates.

☐ Is the health and safety policy made widely available to staff so that they are aware of the details and confident that appropriate risk assessments are undertaken?

☐ Are workers aware of their responsibility to comply with the health and safety policy including reporting of concerns whilst working from home? Have they been sufficiently trained to undertake their own risk assessments at home? Workplace reps and branches should highlight the importance of staff to raise any health and safety concerns whilst working from home with their line managers promptly.

☐ If for whatever reason it was not safe for a worker to work from home (perhaps due to overcrowding, noise, light, musculoskeletal injuries, stress/mental health problems), is the employer clear about the measures they will take to eliminate that risk, which could include allowing some workers to work in the office?

☐ Are UNISON safety reps consulted on any risk assessment checklists, guidance and training provided by the employer to ensure they are thorough and cover all potential areas for consideration including the workstation and equipment.

☐ Are risk assessments regularly reviewed to ensure employees’ home working environments remain safe and healthy?

☐ Are individual risk assessments undertaken for disabled workers and pregnant workers when working from home?

☐ Where workers are home-based but go out to visit clients, is there a system set up to register their whereabouts so that their safety can be checked on (lone working issues)?

☐ Is there a domestic abuse policy agreed at work? Does it take account of the particular circumstances of employees who are working from home, including providing job flexibility at this time, and ideally 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? Are all employees aware of this policy? Are managers trained to operate this policy?

☐ 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 Galop for
LGBT+ people.

- Will employers consider permanent or hybrid home working in itself as a potential reasonable adjustment for disabled workers?
- Are employers putting pressure on disabled people to work from home just to get out of providing reasonable adjustments in the workplace?
- Will employers provide the same reasonable adjustments for disabled workers when they work from home such as equipment, BSL interpreters for online meetings, software, specialist phone? If necessary, will they provide additional adjustments?
- Do disabled workers know about Access to Work?
- What provisions have the employer made for the dealing with storage, use and security of confidential data whilst working at home?
- Has the employer taken account of data protection issues and confidentiality with the use of virtual meetings whilst home working? Is there an agreed protocol? Are workers invited to turn off cameras or use virtual backgrounds? Are meeting participants always asked first before there is any recording?
- Is the employer using technology to monitor workers’ activity etc. whilst working from home? If so, has the employer carried out a data impact assessment? How is this data used, stored and destroyed? Are individual workers aware of this collection of data and have they consented to it?
- Have employers consulted with workers before introducing any new monitoring arrangements for home workers? Have they given clear reasons for the monitoring? And are these reasons legitimate and in proportion to the need?
- Will all managers receive training on managing staff working at home?
- Are performance management systems being adapted so that they can work effectively for home workers?
- Are managers clear about team communications, their frequency and timing, and also when workers can be reached by phone, video link, text or email? And how members of their team can reach them?
- Do managers ensure that home workers experience the same career development opportunities as their colleagues based in the workplace?
- What will determine when an employee is expected to come into the office – on a rota basis? On a set pattern for each individual? In response to the needs of the work, particular duties, activities, projects, meetings?

**Pay and expenses whilst working from home**

Whether homeworking expenses and allowances are taxable or not can be a complicated issue. It’s important to note that Her Majesty’s Revenue and Customs (HMRC) does differentiate between those workers who choose to work from home and those who have to work from home.
Having to work from home and HMRC

For example, those who had to work from home during the pandemic because of COVID-19 restrictions could claim actual expenses for not only equipment and stationery, but a proportion of additional household expenses, such as gas or electricity charges.

HMRC had allowed this non-taxable allowance during lockdown because everyone was instructed to work from home by the government.

Because apportioning additional heating, electricity and water costs can be very difficult to work out fairly, HMRC stated that for tax years 2020/2021 and 2021/2022, employers can agree to a flat-rate tax-free payment of £6 per week or £26 per month for monthly paid employees for those employees working regularly at home, even if it is not for the whole year.

If the £6 guideline rate is paid, the employee does not have to keep any records to demonstrate the additional expenditure, such as providing receipts or copies of bills to their employer. 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 within the home.

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.

However, if the worker does not earn more than the tax-free personal allowance (currently £12,570 per year in 2021-22 tax year) 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 low paid workers 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.

Employees can check if they can make a claim by completing details requested via www.gov.uk/tax-relief-for-employees/working-at-home.

This tax-free allowance or tax relief (currently £6 per week or £26 a month for employees paid monthly) will continue to be available to employees if homeworking has been imposed by the employer in a new post-COVID way of working, and the contract of employment has been changed to reflect the new work-base. It is not available for employees who choose to work from home in part or full, rather than go into the employer’s workplace.

Employees can check if they can make a claim by completing details requested via www.gov.uk/tax-relief-for-employees/working-at-home.

HMRC currently state that employees “need to work from home, either because equipment they need is not available at your workplace, or their work means they have
to live too far away from your workplace to travel there every day.”

Any additional allowance provided will need to be proven as actual expense to HMRC otherwise they will need to be treated as taxable earnings.

If claims are for more than the HMRC’s £6 per week guideline amount, then the employee will need to:

- check with the employer beforehand to see if they will make these payments
- keep receipts.

Employees will only be able to claim for things that are solely used for work purposes and they will need to provide some proof (receipts, copies of bills, invoices etc.). Employees can either claim through PAYE if agreed by their employer, where the rebate will be paid through an adjusted tax code over the following tax year, or through a self-assessment tax return.

If the employee does not complete a self-assessment tax return (which is unlikely for most employees on low or middle incomes) employees can use an HMRC form, p87 that allows employees to claim back expenses up to a maximum of £2,500. The employee will need their employer’s name and PAYE reference (which they should be able to find on their payslip or P60), and their job title.

It should be noted that workers are 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 is solely set up for work use and any use for the employee’s private purposes is not significant.)

More details from HMRC on non-taxable expenses for employees who have to work away from the workplace www.gov.uk/hmrc-internal-manuals/employment-income-manual/eim21611

Choosing to work from home and HMRC

To HMRC, a genuine home worker is one who cannot perform their substantive duties anywhere other than their home, so a hybrid worker who works part of the time in the employer’s workplace is unlikely to be regarded as a permanent home worker for tax purposes.

In addition, if the employee chooses to work from home full-time, (such as through a flexible working option), but there remains an option to work at the employer’s workplace, they will not be able to claim the tax relief (currently £6 per week).

However, in both cases the workers can continue to have the actual cost of equipment and stationery reimbursed or provided to them by the employer tax-free, but not the additional household expenses such as utility costs.

If they get any additional household expenses paid or any homeworking allowance from the employer whilst choosing to work from home, this could be regarded as taxable earnings, and income tax and national insurance may be deducted from the amount.

However, this does not mean that employers should rule it out. Whilst homeworkers
may benefit from a reduction in travel costs to and from the workplace, they have to cover a considerable amount of additional expenditure, that is usually covered by the employer – from the teas and coffee available in the office, to the electricity, gas and metered water used throughout the working day.

Some individuals who work from home may also be penalised because their broadband contract is not unlimited and data is charged at a premium over certain usage. Extra use for work may mean considerable additional cost. Additionally, the broadband speed may be basic, adequate for personal use but slow and inconsistent for work use.

It may also be necessary to highlight to the employer problems with maintaining phone communication with homeworkers, even if a mobile phone is provided by the employer. Very often there are problems getting mobile phone signals inside people’s home and calls may just go straight to voicemail. Employers may need to take this practical issue into account when providing equipment and covering expenses.

**Additional costs and homeworking allowances**

Workplace reps and branches may need to provide some evidence of the additional costs to workers when negotiating with their employer, perhaps examples of utility bills before and after the homeworking period during the pandemic restrictions or staff responses on additional costs collected through a survey.

So far, an acceptance that a homeworking allowance is necessary in order to be fair to homeworkers, is not generally recognised.

However, there are some examples listed by the [Labour Research Department](#) across all sectors:

- **Care Quality Commission** - homeworkers allowance of £514 per year
- **Citizens Advice Bureau** - During the coronavirus outbreak, a £48 monthly homeworker allowance for all staff, and up to £250 for adjustments
- **Home Office** - Homeworking allowance recently increased from a £113pa to £312pa (£26pm) for staff who are contractually permanently based at home.
- **Santander UK/Santander Technology/Santander Operations** - Homeworking allowance: A financial allowance for S1/G1, S2/G2 (and equivalents in Santander Technology) staff who opt to take up the Santander Transformation dual location contract. This includes a one-time gross cash lump sum of £500 (subject to deductions) in order to allow staff to arrange a suitable home working environment (with IT equipment and chair already provided) no earlier than July 2021. Not pro-rated for part timers. Then, from July 2022 (at the earliest) a £500-a-year allowance paid from the anniversary of the £500 lump sum payment on an ongoing monthly basis. This is pro-rated for part timers and subject to deductions.

But employers vary widely in whether they consider homeworkers should be due an additional allowance or a pay cut.

A recent [HR software provider CIPHR survey](#) found that up to 68% of
Businesses contacted were debating whether or not to introduce pay cuts for staff who choose to work from home. This is despite over half of those surveyed (53%) agreeing that they saved money with an uptake of remote working.

However, in another recent poll for the Employee Benefits website, most employers asked rejected the idea of cutting pay for staff who continue to work from home once the COVID-19 restrictions are lifted. In fact, more than a quarter of these employers (27%) believed that these homeworkers should be paid more.

Nonetheless, during the pandemic, other than allowances provided for the purchase of equipment such as laptops, or reimbursement of actual costs or loan of items, in general employers have provided no contribution towards broadband connection, electricity, gas, water etc.

And UNISON reps and officers are reporting that employers are showing a reluctance to address the additional costs to homeworkers in the future, particularly for hybrid workers.

But even where allowances are provided by employers, negotiators should be wary in case the employer is offering them as an alternative to increasing pay overall, which will offer more long-standing benefits to all staff. A workplace survey could also indicate whether a more substantial pay rise that will benefit all staff regardless of whether they are working from home or not is preferred to bargaining over a homeworking allowance.

Staff may also prefer negotiations to focus on improved equipment and technology for homeworkers – such as ergonomic chairs, desks, mobile phones, printers, and better broadband connections.

**Travel expenses**

The issue of the work-base can similarly affect the taxable nature of some travel expenses. As mentioned already, HMRC considers that a genuine home worker is someone who cannot perform their substantive duties anywhere other than their home, regardless of what may be stated in the contract of employment.

So the worker’s permanent work-base would remain the employer’s workplace where the worker is able to work from the employer’s workplace on some days of the week under hybrid or blended working arrangements. This will also be likely to be the case for those workers who choose to work from home full-time as part of a flexible working option.

This means that any commuting from home to the employer’s workplace would not be counted as business travel and not be eligible for tax relief or be treated as a non-taxable expense if reimbursed by the employer.

As far as HMRC is concerned, travel between an employee’s home and designated work-base is considered a taxable benefit.

However, journeys to other work appointments such as to clients or customers, from either the worker’s home or from the employer’s workplace can be regarded as business
journeys and not part of the regular commute, and so should be eligible for tax relief. HMRC would expect these journeys to meet the rules for travel to a temporary workplace.

“A workplace is a temporary workplace if an employee goes there only to perform a task of limited duration or for a temporary purpose... The test is whether the employee has spent, or is likely to spend, 40% or more of his or her working time at that particular workplace over a period that lasts, or is likely to last, more than 24 months.”


Other expenses

Home workers may also need to check with their home insurers, mortgage providers or landlords if there are any issues with them working from home.

In most cases, there should be minimal changes to insurance if the work at home is largely confined to clerical work – generally defined as working on a computer and making phone calls – as long as there are no work visitors to the home nor stock stored there.

Home workers should advise anyone with an interest in their property (such as a mortgage lender or landlord) of their home working arrangement to ensure that they are not subject to terms and conditions or covenants which prevent them from working from home. If they are a home owner, they should also check their title deeds to ensure that it does not prohibit home working.

It is extremely unlikely that there would be any liability for business rates for the home worker unless they are lucky enough to have an area of their home dedicated exclusively to their work and not for domestic use at all.

Locational allowances

There is considerable concern from workers, that any introduction of home working or hybrid working could lead employers to consider cutting locational allowances such as London weighting.

Whilst locational supplements are not a substitute for proper basic pay rises, an employer who proposes to cut such an allowance will, in practice, be cutting salaries for workers. Such a proposal is bound to be met with opposition from workers, particularly as there is a clear increase in personal costs when working from home.

Savings on commuting costs might be limited for hybrid workers where, even with some flexibility in public transport costs, the biggest savings in travel costs are for those who are able to buy season tickets.

More information:

Bargaining on locational and occupational pay supplements
www.unison.org.uk/locational-and-occupational-pay-supplements/
Quick checklist

☐ Is all workstation and IT equipment and stationery provided by the employer for home workers or directly reimbursed to the employee?

☐ Will the employer agree a principle of no-one losing out financially by shifting to a working from home policy?

☐ Will the employer agree to pay a home working allowance, even if it is regarded as a taxable benefit by HMRC? This is particularly important should the employer argue that other living allowances (such as travel and mileage costs or location allowances) should be reduced to those who predominantly work from home. Although HMRC regards it as taxable, it does not mean it is legitimate and that additional expenses are incurred. The issue is that it can be very hard for workers to find ways of proving these additional costs.

☐ If a regular allowance is not agreed by the employer, will they agree to a transition lump sum payment?

☐ Check the contract of employment. Are any existing allowances and expenses contractual? Are relevant existing policies related to expenses incorporated into the contract of employment or part of collective agreements? If so, is the employer proposing a variation in the contract? There must be consultation and agreement with individual employees or through a collective agreement to make the change.

☐ Will the employer agree to pay all work-related travel costs including to the office, for those workers who work from home throughout their working week?

☐ If there are any additional costs involved for home insurance (such as higher insurance premiums) try to negotiate with the employer to cover them.

☐ Has the employer ensured staff that their own insurance covers employees and the organisation’s equipment whilst working from home or travelling and working remotely?

More information:

Working from home and hybrid working – a bargaining guide and model policy

Flexible working: making it work

Health and safety
www.unison.org.uk/get-help/knowledge/health-and-safety/

Risk assessments

Return to Work Q&A prepared by UNISON’s legal team
From Acas:
Working from home
www.acas.org.uk/working-from-home
Changing an employment contract
www.acas.org.uk/changing-an-employment-contract

From the Health and Safety Executive:
Protect home workers
www.hse.gov.uk/toolbox/workers/home.htm
Display screen equipment (DSE) workstation checklist
www.hse.gov.uk/pubns/ck1.pdf

From HMRC:
Expenses and benefits: home working
www.gov.uk/expenses-and-benefits-home-working
Working safely in the normal workplace

The first thing employers should do is make every reasonable effort to make it possible for staff to work from home. If this is not possible, then before workers can return to their normal workplace, employers should undertake a risk assessment to make it ‘COVID–secure’ including taking account of any new government and health guidance, and additional risks identified from new variants of the virus.

A risk assessment is the process of identifying the hazards that exist or may appear in the workplace. It defines the workplace hazards that are likely to cause harm to employees and visitors. Employers must identify all those for whom they have a duty of care, whether they are staff or service-users etc and should consider all groups at particular risk such as Black employees (referred to by government as BAME), clinically extremely vulnerable employees or clinically vulnerable employees.


How to work safely: Guidance for UNISON members as more workplaces open and more staff return to their workplaces


In staging any return to working in the normal workplace, 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. A key bargaining objective for the union is to ensure that those most vulnerable to the virus or those self-isolating receive extended salary protection.

In some instances, employees may not have been receiving full pay during their absence from the workplace whilst on furlough or during self-isolation. 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 could put the health of all their staff at risk.

The UK government has stress in its updated guidance on “working safely during coronavirus” that employers still have a legal duty to manage risks to those affected by their business. The way to do this is to carry out a health and safety risk assessment, including the risk of COVID-19, and to take reasonable steps to mitigate the risks you identify… You should discuss a return to the workplace with workers, and trade unions to make working arrangements that meet both business and individual needs.”
Northern Ireland https://www.nibusinessinfo.co.uk/content/coronavirus-guide-making-workplaces-safer-and-priority-sector-list

A need to consult with workers is reiterated in the Health and Safety Executive guidance: ‘Talking with your workers about preventing coronavirus’
www.hse.gov.uk/coronavirus/working-safely/talking-to-your-workers/index.htm

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 manage transmission risk (including any social distancing rules that may be in place) as part of minimising face-to-face contact;
- The ability to maintain a hygienic environment through provision of cleaning facilities, an appropriate building cleaning regime and effective ventilation;
- The ability to provide protective equipment where there is heightened risk of exposure to the virus.

The risk assessment will then identify the practical steps that are be taken to reduce the risks of infection spreading through the workforce via respiratory secretions or contaminated surfaces. Employers should also consult with UNISON’s Safety Reps on anything affecting their members’ safety, which includes the outcomes of any risk assessments.

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. Until that time working from home should remain the norm.

The TUC’s 2020/21 survey of more than 2100 workplace safety representatives, published at the end of March 2021, revealed that many employers are failing to follow Covid-secure rules and keep workers safe. Safety reps reported failures on risk assessments, social distancing and PPE during the pandemic.

More than a quarter of safety reps were not aware of a risk assessment in their workplace in the last two years - despite a legal requirement to consult them. Of those who said their employers had carried out a risk assessment, more than a fifth (23%) said they felt the risk assessments were inadequate.

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.

The list 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 free of charge to staff.

- 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 or disability (for example, if a disabled worker has a hearing impairment).

- If wearing PPE for long periods, particularly in hot weather, employers must assess the risk of heat, stress and fatigue and put in place measures such as additional breaks or access to drinking water or cooler places to rest.

- Cleaning staff may need additional training, such as in the use of PPE, and avoiding splashing when using sprays.

- The UK government has reintroduced the requirement for people to wear masks, covering the mouth and nose when visiting shops and using public transport (which had remained in Scotland, Wales and Northern Ireland) and in other confined public 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 coverings 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.

**Ventilation**

As more evidence emerges on the nature of transmission of the virus, effective ventilation is as important as hygiene measures in keeping a workplace COVID-secure.

The Workplace (Health, Safety and Welfare) Regulations 1992 requires employers to make sure that there is an adequate supply of fresh air in the workplace. Fresh air can be natural or mechanical.

Employers must include an assessment on the adequacy of ventilation systems as part of their COVID risk assessment. Employers should identify poorly ventilated areas including areas where windows and doors cannot be opened and mechanical ventilations systems that recirculate air. Areas where the air feels stuffy or smells bad indicate ineffective ventilation.

Where there are concerns about the effectiveness of ventilation, carbon dioxide monitors can be used to help assess fresh air.

Employers must take measures to improve both natural and mechanical ventilation. This may include decommissioning poorly ventilated areas or reducing room occupancy.

More information on measures that can be taken and use of carbon dioxide monitors can be found at:

- Ventilation and air conditioning during the coronavirus (COVID-19) pandemic (hse.gov.uk)
- CIBSE - Emerging from Lockdown

Employers must also consider thermal comfort e.g. decrease in temperature due to windows being open, and take measures to ensure temperatures remain comfortable and in line with the Workplace Regulations 1992.

Where workers visit domestic premises employers should communicate with residents and encourage them to ventilate the premises e.g. open windows just before and during the visit.

- Ventilation of indoor spaces to stop the spread of coronavirus (COVID-19) - GOV.UK (www.gov.uk)

Ventilation in vehicles used for work should also be assessed and systems set to draw in fresh air and not recirculate.
Ventilation in vehicles (hse.gov.uk)

Additional requirements on ventilation systems may be needed in healthcare premises

CIBSE - CIBSE Healthcare Group Information note on Coronavirus

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 any social distancing rule is maintained between workspaces, such as desk seating, (no longer required in England from 19 July although 2 metre social distancing will remain in Wales, with a reduction to 1 metre in Scotland from 19 July and in Northern Ireland from 26 July) and to additionally manage transmission risk) and all ‘hot-desking’ arrangements are to be put on hold.
- Where seating cannot observe any social distancing rule in place, 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 any social distancing rules in place.
- 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 any social distancing rule in place and to additionally manage transmission risk.
• Considering whether staff need to be deployed to supervise any social distancing rules in place.
• 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 1)

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.

• **Regular rapid lateral flow tests** are also available to anyone who does not have symptoms and may be provided by the employer at the workplace.

• 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.

• 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. Further information available below in the section headed ‘Testing, 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.

What should the employer do if any staff test positive for COVID-19

Employers must ensure their staff self-isolate if they have:

• have tested positive for coronavirus

• have been in close recent contact with someone who has tested positive and received a notification to self-isolate from NHS Test and Trace (Test and Protect in Scotland, Test, Trace and Protect in Cymru/Wales, HSCtracing in Northern Ireland).

Employers are also advised by the government that they may need to keep staff informed about COVID-19 cases in their workplace but should not name the individual. Employers are also required to take all reasonable steps to prevent other staff being infected through regular, thorough cleaning and encouraging good hygiene practice.

If there is more than one case of COVID-19 in a workplace, employers in England should contact their local health protection team to report the suspected outbreak who will then undertake their own risk assessment, advise the employer on what further steps may be required, and where necessary, establish a multi-agency incident management team to manage the outbreak.

Some cases of COVID in staff need to be reported to the Health and Safety Executive (HSE) under the Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 2013 (RIDDOR), although these are likely to be limited circumstances when occupational exposure occurs as a result of someone’s work.
More details: **RIDDOR reporting of COVID-19 - HSE news**

However the TUC are particularly concerned about how HSE advice on COVID and RIDDOR is being interpreted with extremely widespread under-reporting. It is likely that the official figures – 216 occupational COVID deaths worthy of investigation - is falling well short of the true number of fatalities following work-related Covid transmission.


Further advice on what employers should do, including the support they should provide for staff who are required to self-isolate is available on the government website [www.gov.uk/guidance/nhs-test-and-trace-workplace-guidance](http://www.gov.uk/guidance/nhs-test-and-trace-workplace-guidance). There may be additional steps your employer is required to take depending on the sector you work in.


The TUC have set up the website **COVID Secure Check** that collects the COVID-19 risk assessments published by employers and monitors good and bad practices. [https://COVIDsecurecheck.uk/](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 (further information in the section headed ‘Redeployment of staff’ below).

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.

The risk assessment should be regularly reviewed and updated. In the current situation you would expect your employer to review it more regularly taking account of:

- Changes to government guidance;
- Improved understanding of how COVID-19 is transmitted (including new variants, aerosol transmission), health outcomes (e.g. Long Covid), and how the disease affects vulnerable groups;
- Technological developments such as testing and tracing and vaccines.

How to work safely: Guidance for UNISON members as more workplaces open and more staff return to their workplaces [www.unison.org.uk/content/uploads/2021/06/26453_jun21.pdf](www.unison.org.uk/content/uploads/2021/06/26453_jun21.pdf)

**Testing, track and trace in the workplace**

During the continuing spread of coronavirus, employers may propose that staff are tested for the virus or its antibodies under a workplace testing scheme.

Lateral flow tests are available free to individuals who have no symptoms, alongside the standard COVID-19 (PCR) tests for people who do have coronavirus symptoms – more information [www.gov.uk/get-coronavirus-test](www.gov.uk/get-coronavirus-test)

Lateral flow tests give results rapidly and are used to identify asymptomatic people (who have the virus and so could spread the disease but do not have any of the symptoms so would not normally be eligible for a test.) Around 1 in 3 individuals with COVID-19 do not display symptoms.

However, any mass testing should not be used by the employer to require employees to come into the workplace. Current advice is that mass testing does not eliminate risk, and there is still uncertainty regarding the accuracy of the methods currently in use.

Where it is necessary for employees to go to work, any mass testing (such as the lateral flow tests) must be used along with infection prevention and control measures, as required by Covid-secure workplace risk assessments. Government guidance is clear that it is important to follow the working safely measures, even if employees have:

- received a recent negative test result
- had the vaccine (either 1 or 2 doses).

**Surge testing for new COVID-19 variants** may also take place in parts of the UK. If members need to take part in surge testing they will be informed by their local council. Government guidance is to continue to follow national restrictions including working from home if people are able to do so and employers should facilitate this.

**Acas guidance** states:

“If an employer plans to test employees or workers for coronavirus, it should be agreed with staff, the workplace’s recognised trade union, or other employee representatives…”

…”If staff are worried about testing, it might be because their pay or treatment at work will be affected if they test positive. In this situation, it might help for employers to consider:

- paying staff their usual rate of pay if they need to take time off work after testing positive
- using the government's [furlough scheme](https://www.gov.uk/government/publications/coronavirus-furlough-scheme) [although now ended]
• not counting absences related to testing positive in absence records or towards HR ‘trigger’ points.”

The standard COVID-19 test (the PCR test) which is sent off to a lab, is used to confirm a suspected case of coronavirus, where the person is already self-isolating and is showing symptoms. Where an employer uses PCR testing this should remain in place. Most tests available for the virus including PCR and lateral flow tests, involve swab tests into the nose or throat.

Further information on testing is available from the UK government www.gov.uk/getting-tested-for-coronavirus


Under the General Data Protection Regulations (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 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 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 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

Some concern had also been expressed about the downloading of any test and trace or contact-tracing app onto smartphones, particularly as the UK government’s original contact-tracing app was believed to breach privacy and GDPR rights.

The UK government eventually released a revamped contact-tracing NHS COVID-19 app for England and Cymru/Wales in late September 2020. (Earlier, in Scotland, there was the launch of the Protect Scotland app. In Northern Ireland there is the Stop CovidNI contact tracing app.) This new app contained a number of improvements to protect individual users’ privacy and identity. The app collects very little information, most of which is recorded on the phone itself, and the app will be used exclusively for contact-tracing purposes with no centralised access to any data collected. The technology is similar to that already being used in countries that have released and used their app for some time, and there have been no major security issues yet.

UNISON recognises that every person who downloads the NHS COVID-19 app will be helping in the fight against coronavirus. The app helps the NHS understand where and how quickly the virus is spreading and respond effectively.

However, the individual’s consent to download and use such an app is essential. As the NHS’s website says, your employer cannot force you to download and use the NHS track and trace app. Consent must be willingly given so the employer should also make very clear all details in advance such as if the smartphone needs to be left on all the time.

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) 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."

Once again, if contact-tracing apps are to be introduced into the workplace, the key starting point for reps and branches 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

Workplace testing guidance for employers from ICO

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, implementation 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.
Conversely, some organisations have been reported as banning use of the app in the workplace. The guidance from the NHS is clear:

“It’s important you use the app at all times, including while at work, except if you:

- store your phone in a locker while you’re working or are involved in a leisure activity, like swimming
- are already protected by a Perspex (or equivalent) screen
- are a healthcare worker working in a healthcare building such as a hospital or GP surgery
- a worker in social care and are wearing medical grade PPE such as a surgical mask.

If your phone is not with you, use the ‘pause’ function on the app so that the contact tracing part doesn’t work. If you forget, you might get an alert because an infected person was near your phone when your phone wasn’t with you.”

Depending on the workplace, it may be worth drawing the attention of the employer to the NHS guidance.

UNISON Scotland has given specific advice that, where normal rules at work allow you to have your phone on your person, and you are not in a clinical setting, then the app should remain on.

UNISON has also provided the following advice to members working in school:

“A small number of schools have told staff to turn the NHS app off the whole time when they are in schools. This is wrong – Department for Education guidance is clear: pausing contact tracing in schools is only recommended in 3 situations:

- when an individual is not able to have their phone with them, for example because it is stored in a locker or communal area – this is to avoid the app picking up contacts when the individual is not with their phone
- when an individual is working behind a Perspex (or equivalent) screen, fully protected from other colleagues and members of the public, as the individual is considered to be adequately protected from contracting coronavirus (COVID-19)
- in a health or care setting where staff are wearing medical grade PPE (for example, a surgical mask) as these individuals are also considered to be adequately protected.”

Where mobile phones are allowed to be on and with the student at all times, it is recommended that contact tracing is left on by students, to be consistent with general guidance on the use of the app. There are still likely to be times when students and staff are not near their phones, such as during physical education or in some work placements in FE. In these situations, contact tracing should be switched off, and settings might want to issue reminders to pause contact tracing for these sessions and turn it back on afterwards.

Where mobile phones are required to be left in lockers or bags in communal areas at all
times, it is recommended that settings advise or require students to pause contact tracing whilst on the premises under these circumstances, to avoid the app misidentifying close contacts. When someone switches it off, the app will give the user the option to set a reminder for 4, 8 or 12 hours, after which they will receive a notification to remind them to switch contact tracing back.”

**Quick checklist**

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

- Employers who propose to use a workplace testing scheme should explain their reasons for collecting the information and produce a Data Protection Impact Assessment (DPIA)
- They should clarify how test data is to be categorised, documented and safely stored, for how long and for what purpose
- 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
- If instigated by the employer and it is a requirement of the role, 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 be consulted before an employer starts to collect data from testing or contact-tracing apps and make data-driven decisions in the workplace
- Employers should allow employees to keep any voluntary state-run app on, where normal rules at work allow them to have their phone on their person, and they are not in a clinical setting.

**Vaccination in the workplace**

UNISON supports the COVID-19 vaccination programme. The different COVID-19 vaccines are safe, having met the Medicines and Healthcare Products Regulatory Agency strict standards of safety, quality and effectiveness.

The management of the vaccination programme for staff is handled separately by each administration in England, Scotland, Cymru/Wales and Northern Ireland.

UNISON reps and branches should **not** advise any member to be vaccinated against their will.

UNISON reps and branches should **not** advise members to refuse a vaccination.

This is an individual decision for the staff member alone to make.
Acas guidance states: “To encourage staff to get the vaccine, employers might consider:

- paid time off to attend vaccination appointments
- paying staff their usual rate of pay if they’re off sick with vaccine side effects, instead of Statutory Sick Pay (SSP)
- not counting vaccine-related absences in absence records or towards HR ‘trigger’ points...

In most circumstances, it’s best to support staff to get the vaccine without making it a requirement.

If an employer feels it’s important for staff to be vaccinated, they should work with staff or the organisation’s recognised trade union to discuss what steps to take.

Any decision after that discussion should be put in writing, for example in a workplace policy. It must also be in line with the organisation’s existing disciplinary and grievance policy.”

Acas guidance on getting the coronavirus vaccine for work
www.acas.org.uk/working-safely-coronavirus/getting-the-coronavirus-vaccine-for-work

However, research by Acas published in August 2021, has found that a quarter of British employers have not been giving their staff paid time off for coronavirus vaccinations and have no plans to allow it. Acas advice is that employers should have vaccine policies that support staff to take time off.

UNISON’s view on mandatory vaccinations

UNISON supports vaccination in health and social care. The vaccine is safe, and we have encouraged all members who do not have a medical exemption to get the jab. But vaccination should be an individual’s decision and the UK government should promote persuasion and reassurance. We have made arguments that this will result in people leaving health and care jobs, putting pressure on already stretched services.

However, regulations were passed by Parliament in late July 2021 making it a requirement for workers to have completed their vaccination course before entering Care Quality Commission (CQC) registered care homes in England.

The government has also now finished a further consultation about making Covid vaccines compulsory for health and care staff in England. They intend to bring in a new law to make Covid vaccination mandatory for anyone deployed to deliver Care Quality Commission (CQC) regulated activities in England who has direct, face-to-face contact with service users. This includes health and care staff with clinical and non-clinical roles. For example, care workers, health care assistants, nurses, paramedics, ODPs, receptionists, ward clerks, porters and cleaners.

Students who are over 18 and on a placement which involves face-to-face contact with patients and/or service users will need to be vaccinated unless they have one of the accepted exemptions. Supporting students and increasing vaccination is a joint
responsibility between the educational provider and the placement provider. Anyone likely to interact with vulnerable people receiving care in health and social care settings including, but not limited to, hospitals, GP practices and also in a person’s home are in scope. There is an exemption for Shared Lives carers, where the carer lives with the care recipient.

The new regulations are expected to come into force by 1 April 2022.

In Scotland, Wales and Northern Ireland the governments and executive have stated that staff in those nations will not be legally required to have the vaccine.

**Vaccination and care homes in England**

The new legislation – the Health and Social Care Act 2008 (Regulated Activities) (Amendment) (Coronavirus) Regulations 2021 – means that everyone who enters the premises of a **CQC-registered care home in England** for residents requiring nursing or personal care, must have completed a course of authorised COVID-19 vaccine doses unless they have an exemption. A complete course may refer to one or two doses of the vaccine, depending on the type of vaccine. It does not cover booster doses.

**“Anyone who enters a care home as part of their professional responsibilities will need to show proof of vaccination unless they are exempt.”**

This means that all CQC-regulated care home workers (including agency staff) and all other professionals such as social workers, occupational therapists and CQC inspectors, NHS workers who treat patients in care homes (except members of the emergency services, see below), and those delivering non-care-related services, such as hairdressing, maintenance or leisure activities, as well as volunteers who enter these settings, will need to show proof of vaccination unless exempt.

People who live in Scotland or Wales and work in England must also show proof of vaccination or exemption in English care homes.

UNISON staff and activists who visit care homes for recruitment purposes or to meet with members or management will also be required to demonstrate proof of vaccination.

Full details on the policy, exemptions and requirements can be found in the UK government guidance on vaccination of people working or deployed in care homes


UNISON has produced **guidance** on how to support members and protect jobs in relation to **Mandatory Vaccination in Social Care**.


**Vaccination and health and wider social care settings in England**

The UK government will need to bring in new legislation that we haven’t seen yet.
However, the proposed date for this to come into force is 1 April 2022.

For everyone to be fully vaccinated (first two doses of an approved COVID-19 vaccine) by this date, unvaccinated people will need to have had their first dose by 3 February 2022.

When published, UNISON will examine the draft legislation and provide further advice to branches on how to support members with questions around the vaccines.

The new law will make it a condition of deployment. Whilst employers should make all efforts to persuade staff to have the vaccine and look at redeployment away from a direct face to face role, where this is not possible employers may have to dismiss people who continue to refuse the vaccine but do not have an allowable exemption.

There will be some limited exemptions. These include those under 18, those clinically exempt, those taking part in a Covid trial, those without face-to-face contact and those providing care as part of a shared lives agreement.

Full details can be found in the UK government’s response to the consultation on making vaccination a condition of deployment in health and wider social care sector [link](https://www.gov.uk/government/consultations/making-vaccination-a-condition-of-deployment-in-the-health-and-wider-social-care-sector)

Acas guidance on getting the coronavirus vaccine for work [link](https://www.acas.org.uk/working-safely-coronavirus/getting-the-coronavirus-vaccine-for-work)

NHS England has published ‘Vaccination as a Condition of Deployment (VCOD) for Healthcare Workers. Phase 1 – Planning and preparation’ guidance which UNISON has contributed to through the NHS Social Partnership Forum.


Further information on vaccination status requirements for non-care workers visiting CQC-registered care homes in England: [link](https://www.unison.org.uk/covid-19-vaccination-status-requirements-in-the-workplace)

Under both GDPR and the Data Protection Act, processing of personal data concerning health – and this would include making note of who or who hasn't been vaccinated in the workforce – constitutes a special category.

Collection of special category data is prohibited, unless “necessary for the purposes of carrying out the obligations and exercising specific rights of the controller or of the data subject in the field of employment” and “providing for appropriate safeguards for the fundamental rights and the interests of the data subject”. Therefore, there must be a good reason for the employer to collect this information.

The employer should have first undertaken a data protection impact assessment. If the employer has confirmed that it is necessary to collect the information, it must still be with
the worker’s consent and should be held securely, shared only with those specific people who need to access it and kept for no longer than necessary.

**Vaccination guidance for employers from the Information Commissioner’s Officer**

If branches have specific questions about the vaccination programme or the way employers are approaching this issue, the branch should contact their regional organiser ([www.unison.org.uk/regions](http://www.unison.org.uk/regions)).

If individual members are subjected to disciplinary action, detriment or dismissal because they refuse to be vaccinated, the branch and region should represent them. Where necessary, legal advice should be sought from Thompsons for those members.


**Quick checklist**

- How can reps and branches best work with employers to encourage workers to be vaccinated voluntarily? Employers do not have a right to force workers to be vaccinated. Employees will need to give consent for the vaccination to take place.

- Has the employers made getting vaccinated easily accessible to all staff who are eligible and provided them with the full information they need to make an informed decision?

- Is all information on vaccination open and honest and in formats accessible and understandable to all?

- Will the employer continue to pay staff at their normal rate during time spent travelling to the place where the vaccine is delivered and receiving the vaccine? Not agreeing to this will create a disincentive for workers to be vaccinated.

- Will the employer also reimburse to staff any associated travel expenses?

- Employers should not rely solely on the vaccination programme for preventing risk of exposure to COVID-19. It is important that safe working practices and COVID-secure workplaces should continue.

- If vaccination is a requirement of the role, employers should clearly explain why it is essential. There may be workplace-specific arguments to support vaccination as a precondition of work on health and safety grounds, but this should be clearly recorded in the risk assessment.
Employers should clarify what type of vaccination data will be collected, and how long the data will be kept and produce a relevant Data Protection Impact Assessment (DPIA).

Employers will need to clarify what will happen to workers who cannot be vaccinated for legitimate reasons such as not being in one of the groups currently eligible to be vaccinated or unable to be vaccinated as a result of illness, mental health problems, religion or philosophical belief, or other genuine reasons. They could be allowed to work from home, redeployed or medically excluded on full pay. Alternatively, regular testing of such individuals may reduce health and safety risks sufficiently in some workplace situations.

It is important to get the employer’s commitment that there will be no negative implications for staff who refuse the vaccine, unless a legal requirement.
Health and safety risk assessment checklist

Safety reps have an important role in examining employers’ risk assessments and deciding whether they are suitable and sufficient.

What is essential to remember as a safety rep is that risk assessments should be systematic and thorough, looking at what happens in real workplaces, not what employers believe should happen.

These are some of the usual actions you can take to make sure that the risk assessment in your workplace is adequate:

- talk to people who do the jobs and have practical understanding of the hazards and risks involved;
- observe what happens by inspecting the premises;
- check the written assessment and plans and make sure that all the risks are being covered. A clear strategy to improve health and safety in the workplace should be represented;
- check that it’s clear who is responsible for implementing the action;
- challenge shortcomings;
- agree priorities for action with your employer.

As a safety rep, you have extensive rights under the Safety Representatives and Safety Committees Regulations (SRSC). These rights are set out in full under Regulations 4, 5, 6 and 7 of the SRSC and include the following:

- the right to investigate health and safety matters;
- the right to be consulted;
- the right to inspect the workplace, at least four times each year;
- the right to receive information, including risk assessments;
- the right to take paid time off to perform your functions and undergo training.

Employers must keep their COVID assessments under constant review, taking into account changes to government guidance, technological developments such as vaccines, and our improved understanding of how the disease is transmitted (including the emergence of new variants).

Employers must identify all those for whom they have a duty of care, whether they are staff or service-users who are classed as being either at most or moderate risk from COVID-19.

The TUC warns that employers who do not update their risk assessments, in light of the new strains and the new knowledge about how the virus is transmitted, may be breaking the law.

They are calling on the government to urgently update workplace safety guidance to:

- Reduce the number of people permitted in a space at any one time, to aid ventilation and social distancing [if required]
- Require the wearing of face coverings in all indoor workplaces, except for those workers who are exempt
- Return to the “gold standard” of 2m social distancing wherever possible
- Require any work activity that can be completed safely outside to be conducted outside
- Set a safety threshold for ventilation of indoor workplaces with outside air – CIBSE recommends at least 10 litres of outside air in offices per second per person
- Update guidance on workplace face coverings to the WHO standard of three protective layers
- Expand the number of jobs where workers should use FFP3 face masks, removing 99 per cent of particles, and ensure enough are available.

☐ Has the employer considered all the potential hazards for the way the work is actually done? Are they assessing how the work is ‘supposed’ to be done rather than how it is actually carried out?

☐ Have they identified all the possible ways COVID-19 could be spread in the workplace including aerosol transmission?

☐ Has the risk assessment included the risks of infection through contact with service users?

☐ Has the risk assessment taken account of any local or national restrictions imposed by central or local government?

☐ Has the risk assessment been reviewed and updated in relation to new government and medical advice, government restrictions and in response to the increased risks identified by the new variant of the virus?

☐ Has the employer considered other hazards (such as stress and anxiety) that have resulted from the current pandemic?

☐ Have they considered all those who might be harmed (including contractors, service users etc)?

☐ Has the employer considered all the ways in which their staff or others may be harmed/infected?

☐ Have they identified all those to whom they owe a duty of care, whether they be staff or service users, including those classed as being either at most or moderate risk from COVID-19 due to an underlying health condition?

☐ Has the employer identified all other groups at increased risk through COVID-19 (such as Black workers, pregnant workers, disabled workers, older workers)?

☐ Have they considered the risk to workers who live with an extremely clinically vulnerable person, for whom government guidance says they should pay “particular attention” to?

☐ Have they considered the risk of infection in workers travelling to work and between workplaces?
Has the employer made a suitable and sufficient assessment of the risks?

Have the principles of prevention been applied? Are there any other measures that you or the other employees can think of that could further reduce the risks faced?

Is health surveillance being provided (through testing and contact tracing). If so, is it adequate?

Has the employer recorded the key findings of the risk assessment?

Does the risk assessment state who has the responsibility of ensuring that it is implemented or at least followed up?

Have workplace safety reps been consulted on the risk assessment?

Have the employees been informed of what they need to know to remain safe?

Has the employer implemented all the measures of prevention and control?

Is there a date given for when the risk assessment should be reviewed?

Have there been any changes which indicate that the risk assessments should be reviewed (such as increasing numbers working in the normal workplace or a local lockdown in place)?

Is it time for the periodic review of risk assessments? Are safety reps consulted on the appointment of competent persons? Are risk assessments carried out by competent persons? Are safety reps and workers meaningfully consulted on the risk assessments?

Have any specific regulations been considered and complied with, for example those covering hazardous substances, asbestos, or fire?

Are there effective mechanisms in place to respond promptly to concerns raised by the trade union safety rep on matters relating to COVID safety? For example, in the Further Education sector, safety leads have worked with trade unions to develop a process for raising and responding to concerns: Raising-a-Concern-What-to-do-if-a-health-and-safety-concern-is-identified.pdf (unison.org.uk)

More information

UNISON’s Health and Safety Risk Assessment tool for branches can be used to check whether the employer has identified and is managing all the risks Workplace Health and Safety Review | UNISON Branch Service


UNISON guidance on risk assessments for Black, disabled and other vulnerable workers
www.unison.org.uk/content/uploads/2020/10/26104.pdf

How to work safely: Guidance for UNISON members as more workplaces open and more staff return to their workplaces

Caught COVID-19 at work? Or if you’re the relative of a UNISON member who has tragically died from contracting the disease at work, call UNISON’s free legal helpline for advice: 0808 252 2783 www.unison.org.uk/get-help/services-support/legal-services/
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. In some circumstances it may also amount to unlawful discrimination.

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, or live in the same household as someone who is vulnerable.

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) and seek legal advice if appropriate. Branches should only write to employers about these concerns in response to direct requests from individual members who feel they are in serious and imminent danger.

The UK government continues to stress that everyone “should continue to work from home where you can.”

It could be argued that refusal to allow working from home for disabled workers may be a breach of the Equality Act 2010 duty to provide reasonable adjustments if the
employer cannot ensure a COVID-secure workplace or not properly address the specific concerns of the worker through their risk assessment. The pausing of the shielding system should not automatically mean that vulnerable workers should 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 limit face-to-face contact with others. If they do need face-to-face contact with others, the employer should carefully assess whether this involves an acceptable level of risk.

Further information in the Return to Work Q&A prepared by UNISON’s legal team

Establishing measures to deal with increased workload and 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, as well as increased sickness absence.

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, long COVID symptoms, work-related stress and ‘burn out’ or intensified caring responsibilities.

Employers cannot force staff members to work extra hours unless their contract of employment allows for this. Even so, any such contract clause would still need to be operated fairly and reasonably. Many employees may not be able to work additional hours for example due to their own caring responsibilities, so employers would need to take these issues into account.

Employers will also need to follow the Working Time Regulations. The core rights are:

- 48-hour limit on the average working week
- uninterrupted 11 hours continuous rest in every 24-hour period worked for the employer
- uninterrupted 24 hours rest in every seven-day period
- 20-minute rest break, away from the workstation, in every work period over six hours
- 8-hour limit on average working hours in a 24-hour period for night workers
- 5.6 weeks paid annual leave each year for each full-time worker.

Employers must keep and maintain suitable records to show compliance. If members have chosen to sign an opt-out of the WTR form, negotiators should ensure that members are made aware of their right to terminate the opt-out by giving seven days' notice. The TUC model letter for opting back in is available www.tuc.org.uk/sites/default/files/tuc/optout.pdf.

Working long hours with reduced rest breaks, particularly during this period of uncertainty and anxiety, will inevitably impact on the mental and physical health of workers.

For example, the Health and Safety Executive found that sleep deprivation causes a range of problems and most shift workers find it difficult to catch up on sleep, particularly if they have family responsibilities. Tiredness is worse on night and early morning shifts, accidents are more likely to occur during night shifts and people are least alert in the early hours of the morning.

Such risks need to be highlighted to employers and action should be taken to protect staff, not only on the basis of the Working Time Regulations, but also the following core elements of health and safety legislation:
• All employers have a general duty under Health and Safety at Work legislation to ensure, so far as is reasonably practicable, the health, safety and welfare at work of all their employees. This can offer protection if evidence is established that arrangements are leading to ill health or accidents caused by fatigue.

• Under the Management of Health and Safety at Work Regulations employers must carry out a suitable and sufficient risk assessment in the workplace to identify potential hazards and take measures to eliminate or control them. This would include any risks associated with increased workload.

In dealing with the impact of any staff shortages on remaining staff, negotiators may want to also 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 www.unison.org.uk/content/uploads/2016/02/NEGOTIATING-A-WORKLOAD-AGREEMENT-WITH-THE-EMPLOYER.pdf

• 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 the section headed ‘Redeployment of staff’ below.

• 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, (see section on ‘Annual leave issues’ below) 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.
Redeployment of staff

Many employers will have existing redeployment policies in place. Policies can be used as part of organisational change agreements where staff put ‘at-risk’ of redundancy are offered permanent redeployment to avoid the possible loss of their job.

In the context of the COVID-19 pandemic, redeployment is more likely to be driven by temporary surges in demand for particular services, a temporary decline in demand for others or the setting aside of non-essential work.

Where staff are carrying out roles that are very difficult to fulfil by working from home, an option can also be to consider temporary re-deployment that allows home working for the duration of the pandemic restrictions.

Ensuring fair staff selection for redeployment

Once the roles to be filled through redeployment have been established, the job specification for those roles should enable identification of the following important criteria:

- Job grade / banding
- Level of qualification, knowledge, skills and experience required
- Working hours
- Type of work
- Location.

In the first instance, any member of staff whose skills can reasonably meet the qualification, knowledge, skills and experience required should be eligible to volunteer, subject to Disclosure and Barring Service checks if relevant for the post.

However, if the number of volunteers exceeds or falls short of the scale of redeployment required, it is reasonable for any redeployment process to assess staff against the full range of criteria to determine the most suitable staff. The employer is under a duty to act reasonably in the process of allocating staff under redeployment and ensure the process is non-discriminatory.

Where different line managers are making choices about redeployment, care should be taken that consistent decisions are made across the organisation and therefore reps should press for clear and fair rules to be communicated across management, with a review process that checks that the rules are applied as intended.

In some cases, redeployment may actually take staff into a working environment that is more exposed to COVID-19 risks. As with all roles during the COVID-19 pandemic, the redeployed role should be subject to a risk assessment that establishes what mitigating steps can be taken, including measures for managing transmission and reducing contact with others, stricter hygiene and provision of Personal Protective Equipment (PPE) if appropriate.

However, temporary redeployment for especially vulnerable workers may offer a way for them to reduce the risks they face, particularly if they are redeployed to a role that is more suitable for home working. In these circumstances, redeployment is also a way for
the employer to fulfil their duties under the Health and Safety at Work etc Act 1974 (Health and Safety Order 1978 in Northern Ireland) to protect the health of their staff.

In the case of pregnant women or breastfeeding mothers, consideration of temporary redeployment is also a step demanded by the Management of Health and Safety at Work Regulations 1999 if any identified risk cannot be removed.

For disabled staff, it will be important to ensure that any reasonable adjustments required are assessed and provided, as failure to provide reasonable adjustments may constitute a breach of the Equality Act 2010.

Other options for ensuring a fair redeployment process could be to rotate staff in and out of the redeployed workforce so that each member of staff serves an approximately equal period on redeployment.

Ensuring that staff have a right to appeal against their allocation for redeployment can also act as a safeguard for allowing the particular circumstances of individual workers to be considered. As would be usual for appeals, the hearing should bypass the line manager and go to more senior figures within the organisation.

**Protecting staff pay, terms and conditions**

The basic principle during redeployment should be that staff suffer no financial detriment and continue to receive payment at their usual contracted rate as a minimum. This would normally be in line with existing redeployment policies which tend to offer a period of pay protection under redeployment.

However, the following further points should supplement that general policy:

- Where employees are temporarily undertaking roles that are at a higher grade than their usual role, they should receive the higher rate of pay for the duration of the redeployment.
- Where redeployment leads to increased working during unsocial hours, overtime, shift work, standby or on-call arrangements, care should of course be taken that staff receive the appropriate compensation.
- Where redeployment leads to a change of working location, compensation should be provided for all reasonable additional costs incurred, such as additional travel, meal allowances and accommodation.
- All other terms and conditions of employment that applied in the usual role should continue to apply while performing the redeployed role.

**Assisting staff through the redeployment**

In order to enable staff to fulfil their temporary role and effectively defend their conditions during the redeployment, the following steps should be considered:

- An induction programme that includes any required process of training (including health and safety training and correct use of personal protective equipment if required), supervision or shadowing existing staff before a member of staff can be expected to conduct the role unassisted
- Putting in place clarity about line management arrangements. This may mean
providing a clear steer about the manager who is the point of contact for their new day-to-day activity, while also retaining the former line manager as the point of contact for any wider issues

- Highlighting actions staff must take as a result of a risk assessment that identifies practices to be observed for social distancing (if required), managing transmission, hygiene and wearing of personal protective equipment
- Providing UNISON members with contact details for reps in their new area of work through whom issues can be raised
- An agreement with the employer to hold regular meetings with appropriate union reps to consider issues raised by staff about the operation of redeployment, particularly in relation to measures to address health risks
- An assurance from the employer that staff will return to their former roles when the effects of the COVID-19 pandemic end, with all their former pay, terms and conditions
- A commitment from the employer that they will indicate the date on which redeployment will end at the earliest opportunity
- Recognition that working outside of normal locations and activities can raise levels of stress among the workforce. This factor should be addressed through systematic risk assessment that puts in place any mitigating steps required. As stated earlier, clear line management and union contacts to raise concerns are also an important dimension, but it may be useful to press the employer on raising awareness of any support available such as through the organisation’s Employee Assistance Programme and external mental health advice lines (further details in section headed ‘Mental health problems’ above).

**Variation in the employment contract**

Any redeployment is likely to mean a variation in the employment contract unless there is a ‘flexibility clause’ that allows a change to the job and duties or work location. This would need to be specified and is different to ‘any other duties commensurate with the grade / role.’

It would be essential for the employer to get the individual agreement of the affected worker to any redeployment following a full discussion on the implications. The employer should confirm any changes made to the contract in writing, including the temporary nature of the redeployment during the COVID-19 pandemic. It is important to note that an employee can ‘agree’ to the change in contract just by performing the changed duties even for a short time.

There is always an expectation for the employer to act ‘reasonably’ including the consideration of appropriate alternative work within the particular circumstances of the worker.

If there is any concern about the use of redeployments, the branch should contact their regional organiser ([www.unison.org.uk/regions](http://www.unison.org.uk/regions)) and seek legal advice if appropriate.
**Secondment rather than redeployment**

Some employers may offer a secondment arrangement within their operations or to an external organisation, most probably to an employer operating within the same broad field, such as healthcare.

Much of the same approach taken above for redeployed staff can be applied to secondment. However, the following important differences should be noted:

- Assent for secondment is often conducted through a specific secondment agreement that sets out variations in working arrangements
- A key feature of any such agreement is to maintain the principle that seconded workers retain the same employer. The original employer is effectively ‘lending’ workers to the host organisation
- Therefore, agreements should specify that the secondee remains employed by the original employer and the terms and conditions set out in the written statement of employment particulars/contract of employment remain in force, except to the extent varied by an agreement
- Pay, terms and conditions should accordingly suffer no detriment. Any reimbursement of the organisation putting staff out to secondment by the organisation receiving the seconded staff should be an agreement between the organisations that leaves the status of the seconded workers unchanged.

Secondments can inadvertently result in a secondee becoming the employee of the host organisation unless agreements are constructed in a way that makes explicit that the secondee does not owe any duties to the host directly. Appraisals, disciplinary or grievance measures should be explicitly stated as the continued responsibility of the original employer to ensure staff status is protected.

Secondment can present added challenges to the maintenance of effective union representation. Consideration may be needed to the necessity for more active steps by reps to retaining regular contact with seconded UNISON members to enable their issues to be raised with the employer and / or effective co-operation with the existing union structure in the organisation receiving the secondees.

Secondment throws up added dangers regarding disclosure of confidential information used by the host organisation. Therefore, consider whether any reassurances are needed on the handling of workforce data in accordance with the data protection legislation, as set out in UNISON monitoring and surveillance guidance.

**Quick checklist**

- Seek selection for redeployment based on volunteers in the first instance and an objective assessment against clear, fair and non-discriminatory criteria where further staff are required.
- Make a case for prioritising staff who are particularly vulnerable to the health dangers of COVID-19 or staff who live in a household with a vulnerable person, should redeployment offer the opportunity to work from home or significantly reduce risks.
☐ Consider rotation of staff and an appeal option to improve the fairness of the redeployment process.

☐ Seek guarantees that redeployed staff will suffer no financial detriment and appropriate compensation will be provided for any extra costs imposed on staff.

☐ Ensure staff have clarity about any social distancing rules in place, hygiene and personal protective equipment procedures to be observed in any new working environment.

☐ Press for training and clarity over line management procedures during the redeployment.

☐ Ensure UNISON members are aware of their union rep contacts in any new workplace and seek regular meetings with the employer for highlighting issues raised by redeployed staff.

☐ Where secondment is used, ensure any secondment agreements prevent any cuts to pay rates or change in employer, and extra attention is paid to maintaining union contact with secondees.
Dealing with disciplinary, capability and grievance procedures during the pandemic

Acas has 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.”

In April 2020, LRD (Labour Research Department) launched a survey of trade union reps with 70% of respondents from the public sector, 27% from the private sector, 3% from the voluntary sector.

The survey’s first set of findings showed that, in many workplaces, disciplinaries and grievances are continuing as normal albeit under altered conditions. The consensus is that online grievance and disciplinary meetings do not work well.

Many reps said formal procedures have been suspended, with several taking a stand to ensure that they will not take place, even though this left some cases and appeals hanging. For others, meetings were moved online, sometimes despite protests from the union.

Many reps point out that the stress of members involved in cases has been exacerbated by not being able to meet face-to-face. The reduction in facility time for many reps during the COVID crisis has also been an issue in ensuring that disciplinary, capability and grievance procedures continue to be handled fairly.

It is important to remember, as Acas points out “Employment law and the Acas Code of Practice on disciplinary and grievance procedures still apply during the coronavirus (COVID-19) pandemic. This includes while social distancing and lockdown measures are in place.”

UNISON’s normal model policies for disciplinary, capability and grievance procedures, which form the basis on which amendments can be made during the pandemic, can be found at www.unison.org.uk/bargaining-guides.

Further details about handling online hearings during the pandemic can be found in appendix 3.

Where possible, 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.

An example where the postponement has been agreed is in the NHS, where it is stated that 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.”

Dealing with other types of virtual (online) meetings during the pandemic

Pre-pandemic work-life inevitably involved many different types of face-to-face meetings. And this was particularly the case for trade union reps and branches in their
negotiations with employers and while representing members.

The issues faced during the pandemic for more formal hearings may be the same for other meetings such as sickness reviews. Online meetings are far from ideal, so the advice is the same as for hearings – can the meeting be postponed until a face-to-face meeting can safely take place with adequate social distancing if required? If the employer does not agree to this or the employee is keen for the meeting to go ahead, then it’s important to ensure in advance of the online meeting that the employer agrees that:

- Everyone involved has access to the technology needed for video meetings, for example the necessary equipment and internet connection.

- Access means having a separate computer or laptop for each participant. It has been reported for example that a health worker had to share the laptop with their line manager whilst they were both in the workplace, when conducting a virtual meeting with HR and others. Clearly this situation may restrict dialogue and sharing of opinions, may limit the opportunity the rep and the member to break off and talk privately, and could therefore put the member and rep at a disadvantage. It may also break social distancing requirements.

- 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 evidence or information can be seen clearly by everyone involved during the meeting and can be considered in advance of the meeting.

- Both parties will have the opportunity to call adjournments. Processes will be agreed in advance of the hearing as to how practically any confidential discussions undertaken during an adjournment can be appropriately facilitated.
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 (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 (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, 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 and ‘staycations’ may provide an important break from work and worries, and boost to the health and wellbeing of workers.

With some easing of restrictions over time and in different parts of the UK, holidays away may become increasingly possible. It will be important that employees do not lose out on bookings made a long time ago that may be allowed to go ahead.

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 who had been on furlough?

Workers who were furloughed under the Job Retention Scheme (JRS) continued 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 was 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.

However the government also stated:

“Workers who are on furlough are unlikely to need to carry forward statutory annual leave, as they will be able to take it during the furlough period…If an employer requires a worker to take holiday while on furlough, the employer should consider whether any restrictions the worker is under, such as the need to socially distance or self-isolate, would prevent the worker from resting, relaxing and enjoying leisure time, which is the fundamental purpose of holiday.” The normal notification period if required.

UNISON would highlight the importance of the employer first getting the agreement of the employee rather than imposing any period of holiday.

A staff member on annual leave during furlough must have been paid at 100% of normal
wages. The employer would only be able to obtain a grant towards 80% of wages for holiday pay paid under the Job Retention Scheme. However, if the employee is flexibly furloughed and takes annual leave, the government guidance says that the hours of annual leave should be counted as furloughed hours and not working hours. In that way, the employer benefited from having most of the employee’s pay covered by the government.

Note also that as 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 52 weeks’ earnings, or for the total period employed where they have been employed less than 52 weeks. The 52 weeks is for each week where the worker received payment and the employer has to go back up to 104 weeks for these records. If 52 weeks of payment cannot be found during this period, the average is calculated on the basis of the paid weeks.

**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 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’ or self-isolation on return**

Foreign travel is currently permitted but there are still some restrictions and testing and quarantine requirements.

These requirements can change at short notice and can affect a person’s ability to return to the UK.

**Further details from the government on international travel advice** at [https://www.gov.uk/foreign-travel-advice](https://www.gov.uk/foreign-travel-advice) and on entering the UK from abroad at [www.gov.uk/uk-border-control](http://www.gov.uk/uk-border-control).

For Cymru/Wales, the guidance for travellers is at [https://gov.wales/coronavirus-travel](https://gov.wales/coronavirus-travel)


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, or booked when the status of the country and related restrictions were very different, 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
  [in England the standard quarantine requirement has since reduced to 10 days].

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.”
Appendix 1 – Car parking charges for staff

Parking was made free for all staff in the early part of the pandemic and remains free in Scotland and Northern Ireland. In Wales, parking has been free for staff since before the pandemic.

At the beginning of July 2020, the prime minister confirmed that parking would remain free until the end of the pandemic. In addition, NHS England People Plan, which was published at the beginning of August, stated that: “NHS organisations should continue to give their people free car parking at their place of work for the duration of the pandemic”.

However, UNISON is aware that some hospital trusts have already reinstated or are planning to reinstate parking charges for staff – even though the Coronavirus crisis is not over. Although people are being asked to avoid using public transport if possible, many who cannot afford the parking charges, will have no other way of getting to work.

In spite of government assurances that parking would remain free for staff, until the end of the pandemic, some trusts have reintroduced charges. In the West Midlands, for instance, four hospital trusts reinstated car parking charges to staff at the beginning of July, while another five trusts chose not to do so.

Thousands of NHS hospital staff at the University Hospitals Birmingham (UHB) NHS Foundation Trust will receive refunds for car parking charges while at work, after a successful campaign by UNISON.

UNISON West Midlands regional organiser Chanel Willis said: “These charges were unfair, inappropriate and essentially a tax on staff who have given their all during the pandemic.”

What is UNISON calling for?

- Car parking at work for NHS continues to be free for staff for as long as necessary to help keep them safe and healthy
- Employers work with us to persuade government, local authorities and private providers to make sure that NHS and social care staff don’t have to pay to park at work for the duration of the pandemic.

You can read more about UNISON’s hospital parking campaign at: www.unison.org.uk/at-work/health-care/big-issues/hospital-parking-charge-far/

UNISON wants to hear from members if they have to pay to park on a daily basis. Please drop an email about your experience to health@unison.co.uk
Appendix 2 – Dealing with online (virtual) hearings

Where possible, the employer and union representatives may need to consider the postponement of disciplinary and grievance procedures during the continuing COVID-19 pandemic, unless the workplace is able to operate in-person meetings, whilst sufficiently remaining COVID-secure and compliant with any government guidelines on social distancing if in place etc.

As the Acas guidance on ‘Disciplinary and grievance procedures during the coronavirus pandemic’ stresses, “employers should try to find a safe, fair and reasonable way to go ahead with procedures. If this is not possible, they should consider if it might be fair to suspend a procedure.”

However, it is important for the employer and union representatives to recognise that an employee may feel that a delay could cause them undue anxiety. Additionally, the issue may be sufficiently serious to need urgent resolution.

It is essential that any temporary changes to disciplinary or grievance procedures to accommodate COVID-19 restrictions are agreed in advance with union reps. Whatever changes are decided, the procedures should still always comply with employment law and the Acas Code of Practice on disciplinary and grievance procedures.

When deciding if a disciplinary or grievance procedure should go ahead, the employer and union representatives must carefully consider:

- the circumstances of each case
- if the workplace is open and safe to carry out the procedure in person
- if the procedure has to be carried out remotely, and whether it is fair and reasonable to do so, and can be clearly justified
- if video meetings should be recorded.

Employers and union representatives must also ensure that the following are maintained:

- the employee’s right to be accompanied
- the employee’s right of appeal

as well as considering the impact of a temporarily amended procedure on any claim made to an employment tribunal that the employee may subsequently wish to make.

Should procedures go ahead, Acas states that, if online 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 suggest that for most disciplinary or grievance meetings held by online video, there will be no reason to record the meeting. They emphasise 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 these principles.

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**Acas Code of Practice on Disciplinary and Grievance Procedures**
www.acas.org.uk/acas-code-of-practice-on-disciplinary-and-grievance-procedures

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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
Bargaining over workplace issues during the COVID-19 pandemic

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 ventilation and social distancing between participants if rules are in place, (no longer required in England from 19 July although 2 metre social distancing will remain in Wales, with a reduction to 1 metre in Scotland from 19 July and in Northern Ireland from 26 July), with hand sanitiser available etc, and that respect other organisational rules that may have been put in place to limit use of shared facilities and movement between staff in different departments. They should also take account of any travel involved by participants particularly by those who are reliant on public transport, the additional risks involved or government guidance on travel.

- Whatever method is planned for the hearing, if appropriate to the case, there may be some benefit in considering the preparation and sharing with the hearing panel a detailed written case well in advance of the hearing date. Providing a comprehensive range of evidence that anticipates likely hearing questions and statements will provide a clear audit trail and help guarantee an opportunity to fully present the case, regardless of any technical problems that may be experienced on the day of the hearing

- 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

- Although hearings and investigation meetings (in whatever format) should ideally take place promptly, because of potential difficulties with technology and IT equipment and reliance on possibly delayed postal services for the sharing of written evidence etc, there may need to be a slightly longer notice period agreed to take account of these issues.

- Additional time may also be necessary to prepare and to read online documentation.

- Negotiate that employers provide the IT equipment to be used by employees to ensure that they are using equipment of a reasonable standard that is virus-free, pre-loaded with the video conference software to be used.

- Because of potential problems with technology, it would benefit both the employer and employee for there to be a test of equipment before use of telephone or video conference for the hearing or meeting. There should also be an agreed protocol should any difficulties be experienced during the course of the actual hearing. Perhaps it may be agreed with employers that employees
can call on a family member or friend within their support bubbled to assist them with technical issues during the hearing, although not the business of the hearing itself.

The other key protocols when representing members online are the same as in face to face hearings:

- Data protection and the GDPR
- UNISON’s case management form
- UNISON’s rulebook
- Race discrimination protocol
- Employment tribunal protocol and time limits
- Referral of professional registration cases.

**UNISON case study**

The following example paragraphs resulted from negotiations with a local government employer over temporary changes to grievance and disciplinary procedures:

"The first consideration will be whether it is absolutely necessary for the particular procedure to be invoked and whether all necessary steps have been taken to resolve the matter informally or by mutual agreement by both parties.

The second consideration will be whether or not it is essential to proceed immediately with the actions required to complete the formal procedure. Among the points to consider will be the effects of a delay on the ability for [the employer] to deliver key services, on safety and also on the mental health and wellbeing of the individuals involved. A decision to delay should ideally be reached through mutual agreement by all parties involved. In situations where the employee has stated that they have trade union representation, the trade union representative should also be consulted.

The third consideration will be the form that the meeting or hearing takes. Options will include:

- Resolving the matter through written correspondence.
- Discussing the matter through video-conferencing technology
- Discussing the matter face-to-face in a COVID-secure fully risk assessed setting applying appropriate social distancing and other measures to reduce risk.

The employee and trade union will have the opportunity to raise any concerns they have over the form that the meeting takes. A deferral of the process will be considered if [the employer] or the trade union representative consider that justified objections have been provided such as when the employee is not conversant with the technology proposed to undertake their hearing.

Both parties will have the opportunity to call adjournments. Processes will be agreed in advance of the hearing as to how practically any confidential discussions undertaken during an adjournment can be appropriately facilitated."
Quick checklist

In preparation for an online hearing, reps, branches and regional organisers will need to carefully consider the following issues:

What steps do you need to take to ensure that this case is properly prepared before the hearing takes place?

☐ How will you meet in advance with the member? In the pre-meeting, check the member’s suitable access to technology and any welfare issues they may have, as well as using the time to go through their case.

☐ How will the investigator obtain all information and evidence and share and present it at the hearing? Ensure you get hard copies sent to the member and their rep of all case papers and have a clear understanding of how witnesses will be used at the hearing? How does the member and their rep plan to contact and use witnesses?

☐ How will all participants be given access to technology without disadvantage? Check whether the member has the digital skills needed to enable them to fully participate. Are they disabled or do they have any accessibility requirements? Do they have a safe, secure location to log in, concentrate and participate fully during the hearing?

☐ How will a fair hearing process be ensured by the employer? Will the hearing be recorded? All participants must agree. Who will be in the ‘virtual’ room? This must be clear in advance. How will breaks and adjournments be determined? What is the protocol for speaking during the meeting? What timescales have been agreed for the process?

☐ How will you be able to support the member during the hearing? Consider how you will be able to ‘replicate’ sitting alongside member. How will you communicate during the hearing – by email, ‘chat’, text? What support will there be for the member at home? Consider if any additional access requirements are needed for the member such as a BSL interpreter.

How do you plan to handle the actual hearing to ensure that it is fair and sticks to the employer’s policy?

☐ Have you communicated with the member at a pre-meet, confirmed and tested how you plan to keep contact during the hearing (such as having appropriate signals etc)? Are there any unexpected issues about the technology, the equipment, internet, or privacy? Are you able to ensure no distractions?

☐ If a collective issue is being heard, agree in advance with the members who will talk and when?

☐ Is any agreed protocol being followed for speaking and listening without interruption (use of chat and hands up functions, un/muting mics etc), as well as allowing private conversations and ‘breakout rooms’? Is the meeting set up to avoid any distractions (particularly important to remember if some participants are logging in from home)?

☐ Has the Chair outlined how the hearing will work and the process to follow should the technical side fail in some aspect? Or if there are any distractions, how to deal
with them (such as adjournment), and when the breaks are to be taken (particularly as the process can be so tiring)?

☐ Don’t be afraid to stop the meeting if necessary, to call for an adjournment, or to be allowed time to check papers etc.

☐ Make sure you have drinking water, a pen and paper etc to hand before the meeting goes ahead! Remind the member to charge their phone or laptop.

☐ Check that all outcomes are clear, timescales are highlighted, and the process for appeal outlined by the Chair – otherwise ask for clarification.

☐ If agreed in advance is the hearing being recorded, or notes being taken? How will the union rep and member access them and by when? Is it clear to everyone who is in the ‘virtual’ room?

Have you planned on what would you need to consider after the virtual hearing has taken place?

☐ Have you carried out a post hearing debrief with the member to check on their understanding of what happened, options for the way forward, as well as to check on their welfare? What support does the member have at home?

☐ Allow for a break for reflection and to check your notes. Are you clear on what happens next, the next steps the member can take, use of the appeal procedure if required and timelines?

☐ What has the member decided? Will you need to lodge an appeal?

☐ What is the employer going to do next? Are there any mitigating circumstances to be taken into account?

☐ If the member is to return to work, can they be assured they will be safe and that the workplace is COVID-secure? Are any additional risk assessments needed?

☐ If appropriate use the experience to feedback to the employer about the process of an online hearing.

There is a UNISON webinar on dealing with online hearings available at https://attendee.gotowebinar.com/recording/644791411452606987

For more information and courses please go to https://learning.unison.org.uk/