

Bargaining Support Group



**Bargaining guidance
on supporting members
with long COVID
or post-COVID-19
syndrome**

UNISON
the public service union

Guidance on supporting members with long COVID or post-COVID-19 syndrome

Why is long COVID a trade union issue?

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 \(ONS\) reports](#) that an estimated 2.2 million in the UK (3.4% of the population) were experiencing self-reported long COVID as of 6 November 2022 with fatigue, difficulty concentrating, shortness of breath and muscle ache being the most common symptoms reported.

Around half (55%) reported experiencing long COVID symptoms at least one year after first having (suspected) COVID-19.

Prevalence was greatest in people aged 35 to 69 years, women, disabled people, people living in more deprived areas, and those working in social care.

People with long COVID are also more likely to be out of the labour market.

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 or working with the long-term impacts of long COVID.

What is long COVID?

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.

The [NICE \(National Institute for Health and Care Excellence\) guideline](#) uses the following clinical definitions:

- **Acute COVID-19:** signs and symptoms of COVID-19 for up to 4 weeks.
- **Ongoing symptomatic COVID-19:** signs and symptoms of COVID-19 from 4 to 12 weeks.
- **Post-COVID-19 syndrome:** signs and symptoms that develop during or after an infection consistent with COVID-19, continue for more than 12 weeks and are not explained by an alternative diagnosis. It usually presents with clusters of symptoms, often overlapping, which can fluctuate and change over time and can affect any system in the body. Post-COVID-19 syndrome may be considered before 12 weeks while the possibility of an alternative underlying disease is also being assessed.

- **Long COVID** is commonly used to describe signs and symptoms that continue or develop after acute COVID-19. It includes both ongoing symptomatic COVID-19 and post-COVID-19 syndrome (defined above).

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

- Breathlessness and cough
- Chest tightness, chest pain and palpitations
- Fatigue
- Fever
- Pain
- Cognitive impairment ('brain fog', loss of concentration or memory issues)
- Headache
- Sleep disturbance
- Peripheral neuropathy symptoms (pins and needles and numbness)
- Dizziness
- Delirium (in older populations)
- Mobility impairment
- Visual disturbance
- Abdominal pain, nausea and vomiting
- Diarrhoea
- Weight loss and reduced appetite
- Joint pain and muscle pain
- Tinnitus and earache
- Sore throat
- Dizziness
- Loss of taste and/or smell
- Nasal congestion
- Skin rashes
- Hair loss
- Symptoms of depression and anxiety
- Symptoms of post-traumatic stress disorder

Some people can experience long-term organ damage including to the heart, lungs, kidneys, pancreas and liver. Post-COVID conditions can also 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).

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.

The TUC report '[Worker's experience of long COVID](#)' found that on average, respondents had nine symptoms that fluctuated. This makes it really difficult to make plans about returning to work, even with a phased return. Many respondents to the survey reported relapsing after they thought they were fit to return to work.

In a [UNISON survey of health workers](#) published in April 2022, 1,900 of the respondents including healthcare assistants, nurses, porters and clinical support staff, reported having had or were still experiencing long COVID symptoms. But many felt they had to return to work early because they were afraid of losing their jobs.

More than two in three (68%) were back in the workplace while suffering with symptoms including breathlessness, fatigue, brain fog and aching joints. 8% of those surveyed had been so poorly they were not able to go back to work at all.

More information from the NHS www.england.nhs.uk/coronavirus/post-covid-syndrome-long-covid

For Scotland, from NHS Inform www.nhsinform.scot/long-term-effects-of-covid-19-long-covid

For Wales, from Public Health Wales <https://phw.nhs.wales/services-and-teams/healthy-working-wales/covid-19/long-covid/>

For Northern Ireland, from NIDirect www.nidirect.gov.uk/articles/symptoms-respiratory-infections-including-covid-19#toc-5

Read about real-life experiences of UNISON members 'The limbo of long COVID' and of other workers in 'Worker's experience of long COVID: a TUC report'

Long COVID and sickness absence

In these unprecedented times, it is important for reps and branches to get the agreement of employers to continue to disregard COVID-19 related illness 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 operating sickness absence triggers, union reps should seek to ensure that any related meetings (including 'virtual' meetings) explore causes, at least in the first instance, 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 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
- a phased return to work
- what they want to tell others at work about their illness.

Other changes could be allowing the employee to work from home, paid leave for medical appointments, support with workload or temporary redeployment to a more suitable role.

[Acas](#) stresses that employers should "make sure they have done everything they can before considering a capability procedure" where a worker has long COVID.

Four in ten (43%) of the **health workers** who told [UNISON's survey](#) they have or had long Covid, say their employer went the extra mile when it came to giving them support to return to work. This included adjusting job roles, enabling a flexible return to work, or allowing time off without staff using up their sickness or leave entitlement.

But more than four in ten (46%) said that although their employer was initially supportive, this changed as time went on. Almost one in ten (9%) had been asked to attend a formal absence hearing, and 2% report being threatened with disciplinary action or even the sack.

UNISON and sister unions in England have produced a joint '**Long COVID Protocol**' that they are asking **school employers** to sign up to locally. It includes a list of steps that the employer will always consider to help facilitate a return to working as far as possible for staff with long COVID:

- a phased return to work on full pay
- amended duties
- suspending/reviewing performance management processes and objectives
- a different role/post
- disability leave for long Covid related absences
- a change to workplace location
- assistive equipment
- physical changes to the workplace
- support from occupational health, including regular welfare meetings and self-referral options
- working from home for agreed periods of time
- long- or short-term temporary flexible work arrangements (for example flexitime, staggered hours, compressed hours or annualised hours – see www.gov.uk/flexible-working/types-offlexible-working).

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.

Sick pay too may be an issue for many members experiencing long COVID. By law, employers only have to provide pay during sickness absence for the duration and level specified by Statutory Sick Pay (SSP).

For 2022-23, SSP is only £99.35 per week (increasing to £109.40 per week from April 2023), from the fourth day of sickness for up to 28 weeks. To qualify, a member of staff has to be classified as an employee and earn an average of at least £123 per week. Whilst agency workers qualify, any member of staff classified as a 'worker', such as many staff on zero hours contracts, are excluded. In effect, unfair employment practices such as zero hours contracts, hand the employer the power to simply stop offering hours when a member of staff is sick.

- Help ensure employers treat all absences related to COVID-19 fairly by raising awareness amongst members and actively supporting members with long COVID.**
- Negotiate the exclusion of COVID-19 and long COVID sickness absence from any sickness absence capability triggers. Check out bargaining support's guidance on [negotiating sickness absence agreements](#).**
- Negotiate an extension to the period of contractual enhanced sick pay available for those with long COVID sickness absence.**

- Make the case against the use of zero hours contracts and other insecure working practices on the basis that they can cheat workers of sick pay.**

Long COVID and health and safety

UNISON, alongside the TUC have been pressing for COVID-19 to be classed as an occupational disease in the UK so that frontline health, social care and other key workers living with its debilitating effects can be properly compensated. Some countries including Belgium, Denmark, France, Germany and Spain have formally recognised long COVID as an occupational disease.

There is a duty on employers to report occupational diseases and specified dangerous hazards at work, but some employers may still not be taking full account of all the risks to workers.

Unfortunately, although some progress has been made with greater reference to the risk of contracting COVID-19 within certain occupations, this has still not been formally confirmed.

“Long Covid must be recognised as an occupational disease. That would entitle employees to protection and compensation if they contracted the virus while working. It’s a scandal that more than two and a half years after the first lockdown, the workers who kept our country going through the pandemic have still been offered no support.”

[TUC General Secretary Frances O’Grady](#), December 2022

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.

Modifications may also be identified by the employee, their GP such as through a ‘Fit for Work’ statement or by an occupational health service provided by the employer.

- 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.**
- Reps and branches should encourage employers to follow [UNISON guidance](#) that employers should allow workers who are at the highest risk from COVID-19, to work from home or to be temporarily redeployed to a role that can be done at home. This advice is particularly important for workers who are immunosuppressed or immunocompromised.**

Is long COVID a disability?

In all cases of long term sickness absence, employers should follow the [Acas](#) advice to talk with the employee about any support they may need to return to work including making changes to the workplace or to how the employee works ('reasonable adjustments').

As long COVID is a new disease, [Acas](#) also 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 within the meaning of the Equality Act 2010 (and the Disability Discrimination Act 1995 in Northern Ireland).

More information from Acas www.acas.org.uk/long-covid/whether-long-covid-is-treated-as-a-disability

In cases where employers are unwilling to take this advice, it will be important to understand the relevant legislation.

The Equality Act 2010 defines a disabled person as someone who has a mental or physical impairment that has lasted or is likely to last 12 months or more, and this has a substantial (more than trivial) adverse effect on their ability to carry out normal day-to-day activities.

Almost three in ten respondents to a [TUC survey](#) reported that they had been experiencing long COVID symptoms for 12 months or more. In December 2022, more than half (55%) of those who reported experiencing long COVID symptoms [to the ONS](#), had experienced them at least one year after first having (suspected) COVID-19.

Case law

Mr T Burke v Turning Point Scotland (2021)

This employment tribunal case found that, in these specific circumstances, an employee with long COVID was disabled under the Equality Act 2010.

Mr Burke, a caretaker, tested positive for COVID-19 in November 2020. Subsequently he developed unpredictable, fluctuating long COVID symptoms including severe headaches, joint pain and fatigue.

But two occupational health reports said that Mr Burke was fit to return to work with a phased return, and that he was unlikely to be regarded as disabled under the Equality Act 2010. However, Mr Burke's symptoms worsened and he remained off sick. Eventually he was dismissed by his employer in August 2021 because of ill health.

However, the employment tribunal concluded that Mr Burke did have a physical impairment (post-viral fatigue syndrome caused by COVID-19) and that it had a substantial long-term adverse effect on his ability to carry out normal day-to-day activities. Even though it had not been a full 12 months when he was dismissed, it was felt that the condition could continue to November 2021, one year after his initial illness. They also noted that Mr Burke had no incentive to remain off work when he had exhausted sick pay.

Mr Burke is now able to make a claim for disability discrimination.

Nonetheless, reps and branches may sometimes find it difficult to argue that having long COVID means that the member is disabled as some employers may consider that a particular individual has not had the symptoms for long enough to be covered by the Equality Act.

It will be important to ask the following questions:

1. Does the member have a physical or mental impairment?

Many of the symptoms of long COVID that are recognised by [NICE](#) relate to a physical or mental impairment. It will be important to point this out to the employer.

2. Has the impairment lasted 12 months or more, or is it likely to do so?

Many members may not have had symptoms for 12 months as yet, but a medical report might be helpful in establishing if this is the case or is likely. It is also important to remember that an impairment may come and go over this period. A recurring impairment may still amount to the member being disabled.

3. Does the impairment have a substantial impact on the member's normal day-to-day activities?

Case law has interpreted 'substantial' to mean more than a trivial impact. Normal day-to-day activities could include making a meal or going shopping, for example. Occupational health may be able to assist in advising on this, based on the member's experience.

If the above are satisfied, then the member should be treated as a disabled person. The next step is to assess whether they face a disadvantage at work as a result of this. If this is the case, then they are likely to be entitled to '**reasonable adjustments**'.

A reasonable adjustment is a change to the work environment or to a workplace policy, criteria or practice that aims to remove or minimise disadvantages experienced by disabled employees and job applicants.

The Equality Act 2010 (and the Disability Discrimination Act 1995 in Northern Ireland) gives disabled workers the right to reasonable adjustments where they experience substantial disadvantage. Employers have a duty to provide reasonable adjustments where they know or should have known the employee was disabled.

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

- Reduced hours, phased return or working a more flexible day with longer or more frequent breaks
- Paid leave for medical appointments
- Support with workload
- A change to duties so that a member who has trouble speaking due to breathlessness or persistent cough does not have to talk to service users or other staff
- Temporary redeployment from a physically demanding role to an office or home-based role 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
- Changes to performance targets so that a member with 'brain fog' has more time to complete tasks.

Some employers might refer to a tweet sent out by the Equality and Human Rights Commission (EHRC) earlier in 2022 suggesting that long COVID is not a disability.

However, the EHRC has since issued [a statement](#) correcting this and which makes clear that long COVID *can* fit the Equality Act definition of a disabled person.

[Their statement](#) says "to support workers affected by 'long Covid' and avoid the risk of inadvertent discrimination, we would recommend that employers continue to follow existing guidance when considering reasonable adjustments for disabled people and access to flexible working, based on the circumstances of individual cases."

- Request reasonable adjustments for members who are likely to be disabled workers under the Equality Act (and the Disability Discrimination Act 1995 in Northern Ireland).**
- Ask the employer to consider workplace modifications including flexible working while it is still unclear if the member is a disabled person.**

Raise awareness of external support available to our members

People who think they may be experiencing persistent or long-term effects of COVID-19 infection are advised by the NHS to contact their GP, who will determine the appropriate course of action. This may include referral to a post-COVID assessment centre.

www.england.nhs.uk/coronavirus/post-covid-syndrome-long-covid

NHS England has extensive information for those recovering from COVID-19

www.yourcovidrecovery.nhs.uk

NHS Inform in Scotland www.nhsinform.scot/illnesses-and-conditions/infections-and-poisoning/coronavirus-covid-19/coronavirus-covid-19-longer-term-effects-long-covid

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

Long COVID support group www.longcovid.org

Workplace Exposure COVID-19 Questionnaire

Complete the survey on the Thompsons website if you or your colleagues contracted COVID-19 as a result of your work. Your information is crucial. It will help us to campaign, improve health and safety, and give the best support and legal advice we can to our members.

[Complete the survey](#)

Quick checklist when supporting a member with long COVID

- Has the member been diagnosed by their GP or another medical practitioner as having long COVID?
- Will the employer disregard any trigger within the sickness absence policy in relation to the member with long COVID?
- How is the sickness absence policy and sick pay operating for the member? Is there flexibility on sick leave periods and provision of contractual sick pay?
- Has the employer kept in contact with the member whilst on sick leave in order to provide support and help them return to the workplace when they feel ready?
- Has the employer provided reassurance that anything the member shares about their health will be kept confidential? Is this confidentiality also being followed by the workplace rep?
- Has the employer arranged for an occupational health assessment and are they acting on its report? Does the assessment take account of possible fluctuating, unpredictable symptoms?
- Is the employer providing temporary modifications to support the member in their return to work such as temporary redeployment, temporary change to duties, working from home or a phased return to work?
- On return to work, has the employer undertaken a risk assessment and acted upon the recommendations to reduce risks for the member?
- Is the member's circumstances reviewed in case of any recurrence or continuation of the debilitating symptoms?
- If the member is affected long-term by long COVID, is the employer providing reasonable adjustments?