

**GMB**

**UNION**

# **Joint union Advice on Medically Vulnerable & Higher Risk Groups**

Updated 2<sup>nd</sup> December 2020

### Contents

|  |    |
|--|----|
| <b>School and college opening</b> .....  | 3  |
| <b>Legal Requirements &amp; DFE Advice</b> .....   | 4  |
| <b>Protecting school and college employees</b> .....                                     | 4  |
| <b>Legal obligations on risk assessment for individuals</b> .....                        | 5  |
| <b>DfE advice regarding medically vulnerable or higher risk groups</b> .....             | 5  |
| <b>The Joint Unions' Advice</b> .....  | 6  |
| <b>Joint unions' expectations with regard to individual risk assessments</b> .....       | 6  |
| <b>Staff in the clinically extremely vulnerable group</b> .....                          | 8  |
| <b>Staff in the clinically vulnerable group including pregnant women</b> .....           | 10 |
| <b>Pregnant women and new mothers</b> .....  | 11 |
| <b>Staff in other higher risk groups</b> .....   | 12 |
| <b>Older staff and male staff</b> .....  | 13 |
| <b>Risks from being overweight</b> .....   | 13 |
| <b>Black staff</b> .....   | 13 |
| <b>Disabled staff</b> .....  | 14 |
| <b>Staff with family members who are medically vulnerable or at higher risk</b><br>..... | 15 |
| <b>Staff who are otherwise anxious about returning to work</b> .....                     | 15 |
| <b>Staff in early years settings</b> .....   | 16 |
| <b>Supply, agency and peripatetic staff</b> .....  | 16 |

|  |           |
|--|-----------|
| <b>Planning for the implications of staff absence.....</b> | <b>17</b> |
| <b>Advice to members on contacting their employer.....</b> | <b>17</b> |
| <b>Contacting your union.....</b>                          | <b>18</b> |
| <b>Appendix.....</b>                                       | <b>19</b> |
| <b>Contacting your employer.....</b>                       | <b>19</b> |

### **School and college opening**

This joint unions' advice is for staff working in schools and colleges who are medically vulnerable or otherwise at higher risk from Covid-19, or who live with or care for such people.

It is intended to ensure that medical conditions, pregnancy, other personal characteristics (in particular age, sex and ethnicity), as well as the impact of economic disadvantage (which increases risk of underlying health conditions) are all taken into account in determining whether it is safe for employees to attend the workplace and what safety measures are required for them.

The advice can also be used by school and college leaders when conducting individual risk assessments, and by union workplace reps in ensuring that such risk assessments are conducted properly. We would also want school and college leaders to require any contractors – catering cleaning etc. operating on site – to follow this guidance.

**This advice applies from 3 December, following the end of the period of national restrictions 5 November – 3 December. Please check for updates if you are reading this during any subsequent period of further national restrictions.**

## Legal Requirements & DFE Advice

### Protecting school and college employees

The Department for Education (DfE)'s advice documents for [schools](#), [special education settings](#), [FE colleges](#) and [early years settings](#) expect that most staff will go to work at their workplace. The joint unions continue to believe that staff should only attend the workplace when it is sufficiently safe for them as individuals to do so.

The impact of the pandemic upon schools and college has become far greater since September. The Joint Unions (GMB, NEU, UNISON and UNITE) continue to wish to support schools and colleges in remaining safely open, but do not have confidence that the Government's measures and advice are sufficient on their own to achieve this.

Developments since schools and colleges fully re-opened in September include:

- Hugely increased case rates nationally with additional restrictions imposed in many areas and a national lockdown;
- Evidence that case rates are much higher among young people of school and college age than was previously realised;
- Continuing failures with Government's test and trace system; and
- Official acceptance by Government and Public Health England of the role of airborne transmission, particularly in poorly ventilated places where groups of people spend long periods of time together (this crucial new information is particularly important for schools).

Under the DfE guidance, little PPE is being provided and social distancing is very difficult. As a result, schools and colleges will have fewer protective measures in place to reduce the spread of Covid-19 than most other workplaces.

Staff who are medically vulnerable or otherwise at higher risk will still therefore be at a greater risk of an adverse outcome if they contract the virus. Protective measures will remain more important for them and, in some cases, may mean working at home. The joint unions will fully support members who require protection and we will continue to challenge the Government's inadequate guidance for schools and colleges.

### **Legal obligations on risk assessment for individuals**

The DfE guidance documents emphasise that employers must comply with health and safety law, which requires them to undertake risk assessments and put in place proportionate control measures and keep them under review. This includes assessing the individual circumstances for each employee before requiring them to attend the workplace.

These circumstances include the individual's own health conditions, alongside any other circumstances which place them at higher risk for other reasons. The degree to which individuals are at risk is affected by their underlying health and also very significantly by age, ethnicity, sex, and other circumstances described in this guidance.

### **DfE advice regarding medically vulnerable or higher risk groups**

The DfE advice for schools and for colleges on this matter for December onwards is largely identical to its previous advice (with shorter advice published for other

settings). The DfE continues to argue that schools are not high risk workplaces and that implementation of and compliance with protective measures will make workplaces safe for employees.

The joint unions continue to take the view that the DfE advice does not offer sufficient safeguards to employees. We therefore advise all employers that, in order to ensure compliance with their legal obligations with regard to staff safety, the joint unions' advice set out in this document should be followed instead.

## **The Joint Unions' Advice**

### **Joint unions' expectations with regard to individual risk assessments**

The joint unions expect all employers to have carried out individual risk assessments for employees before directing them to attend the workplace. The assessment must take account of their personal and household circumstances and, where necessary, medical advice. Employers should seek information proactively from each employee. The assessment must also take account of local prevalence of Covid-19.

Given the developments outlined above, the joint unions have called on employers to review and update all such assessments which were conducted for September. Individual risk assessments should continue to be reviewed on a regular basis, with particular reference to any changes in local circumstances, before any direction to attend the workplace. Risk assessments should also be kept under regular review to account for any change, for example an increase in local infection rates and the risk posed to employees. Schools and colleges which have not conducted individual risk assessments for vulnerable and higher-risk staff should do so urgently.

Assessments for all employees who are identified as being in medically vulnerable or higher risk groups should also include home working as an option for protective measures, which should be applied to employees as set out below.

Depending on local, domestic and workplace circumstances, working at home may also be the safest measure to adopt for staff who have vulnerable household members.

When employees are working from home, they should receive full pay and this time should not be treated as paid or unpaid leave.

For some staff whose usual role cannot be undertaken from home, a mutually agreed temporary change to duties/redeployment may be required to facilitate home working. However, employers should accept that in a small number of cases they will have staff at home on normal pay without work to fulfil.

Assessments should consider what protective measures would be required for employees who attend the workplace. This may include measures specific to the individual, in addition to those adopted for employees and students generally. Appropriate measures might include allowing the employee to work in roles where it is possible to maintain strict social distancing, allowing the employee to work in a location where risk is lower, or where necessary providing personal protective equipment (PPE).

Risk assessments should have the support of the employee concerned. Measures which are implemented should be kept under constant review.



The joint unions are reminding employers that the onus is on the employer to demonstrate that a safe work environment is in place for each worker.

Employers should not just decide that, because the DfE advice considers it generally safe for such employees to return to work, any protective measures being put in place for employees generally are sufficient. Each employee should have an individual assessment which considers their personal and local circumstances and the protection they require and which should be reviewed if circumstances change.

The joint unions are asking employers to accept that not all employees are able to go in to work and reflect this in their planning, as outlined below.

Reps and members are strongly encouraged to seek their own union's advice on these issues whenever disagreement arises in relation to working at home for staff who are CV or in known higher risk groups. Please refer to your union's specific information (as detailed at the bottom of this document) or contact your branch for more information.

If members need support to raise their personal circumstances with their employer, they can talk to their union locally.

### **Staff in the clinically extremely vulnerable group**

The Government has ended its shielding advice to individuals who were previously classed as [clinically extremely vulnerable](#) (CEV), citing the reduced prevalence of Covid-19 in the community. Rates of transmission during the second wave of Covid-19, however, have become higher than when strict shielding requirements were still in place.

**The Government instructed CEV individuals that they must not attend work during the lockdown period from 5 November to 3 December. The DfE's advice to employers is now that CEV individuals may return to work provided that the workplace is COVID-safe. The joint unions' advice is that CEV individuals should in all cases be permitted to continue to work at home. If employees are in roles that cannot be done from home, then they will need to be at home on full pay.**

CEV individuals continue to be most at risk if they contract Covid-19. The joint unions are advising employers that, as part of their revised risk assessments for staff, they should therefore allow all CEV employees to continue to work from home if they wish to do so. (This advice also applies to all staff over 60 and all women in the third trimester of pregnancy - see below).

The joint unions do not accept the DfE's guidance that it is safe for such staff to travel to and from school/college and to work in school/college, whatever other safety measures are adopted.

Where such staff decide that they do wish to return to work if possible, the joint unions expect the individual risk assessment to consider appropriate protective measures on the same basis as for other staff in medically vulnerable or known higher risk groups (below). Schools should follow WHO advice and provide medical masks to all such staff who choose to come into the workplace and encourage their use in communal areas and classrooms.

Please read the advice below about contacting your employer with regard to your risk assessment. If you are concerned about an instruction or possible instruction to attend the workplace, please contact your union rep or branch locally for advice and assistance.

## **Staff in the clinically vulnerable group including pregnant women**

The Government recognises that a wider group of people continues to be more [clinically vulnerable](#) (CV) to Covid-19 than the general population due to their medical circumstances. Government guidance on clinically vulnerable people includes pregnant women in this category.

Many of these individuals are also at higher risk for other reasons, with age, sex, ethnicity, pregnancy and factors linked with economic disadvantage being very significant. A combination of factors relating to medical vulnerability and known higher risk characteristics can compound and significantly increase the risk to individuals.

The current situation poses a substantial level of risk for CV staff, particularly in areas of higher infection rates. For all CV employees, the joint unions again expect employers to conduct individual risk assessments in relation to working at home. We are calling on employers to prioritise home working options for CV employees until infection rates fall locally. This measure will be particularly important where staff have even greater increased vulnerability due to a combination of factors or work in roles involving greater risk.

As noted above, where the usual role cannot be undertaken from home, employers should consider temporary changes to duties and should accept that in a small number of cases, employees may be at home on full pay without duties to fulfil. Where CV employees do not believe that the measures identified by the employer are enough to keep them safe in the workplace, they should inform their local union rep and immediately seek supporting evidence from their doctor and a referral to occupational health. Whilst this process is underway, we would support CV

employees being permitted to work at home until a decision can be made based on all the relevant medical information.

Where staff choose to continue to work in school/college, risk assessments should consider what protective measures such as social distancing and personal protection should be adopted for them.

### **Pregnant women and new mothers**

The law requires employers to consider, when conducting risk assessments, the risks to employees who are pregnant or new mothers (those who have given birth in the previous six months) and to suspend them on full pay if it is impossible to avoid risks to their health & safety.

Pregnant women continue to be included in the Government's list of those who are clinically vulnerable. The DfE has referred schools to [advice and guidance from the Royal College of Obstetricians & Gynaecologists](#) which notes that, while pregnant women may not be more likely to become infected by Covid-19, those who contract any respiratory illnesses in the third trimester of pregnancy (ie the 28th week and beyond) can become seriously unwell. It also notes that absolute assurance cannot be given that contracting Covid-19 carries no greater risk to women at an earlier stage of their pregnancy and carries no risk to the unborn baby. Finally, it notes that some pregnant women and new mothers may be at increased risk due to other factors. The DfE advice says in relation to the RCOG guidance that "we advise employers and pregnant women to follow this advice".

The RCOG has previously recommended, in relation to healthcare workers, that for women in the first two trimesters of pregnancy, employers should "remove any

risks that are greater in the workplace than to what they would be exposed to outside of the workplace”, and that women in the third trimester should be allowed to work at home. The joint unions believe that education employers should consider this in their individual risk assessments for pregnant women and new mothers.

Given the known greater risks to women in their third trimester of pregnancy, the joint unions’ advice is that they should be permitted to work from home until their chosen date for starting maternity leave or, if this is not possible, suspended on full pay. This should also be considered as an appropriate measure to remove risks to other pregnant women, in particular those who may be at increased risk due to other factors. We advise pregnant women who are seeking to work at home or are suspended on maternity grounds to write to the employer to confirm they intend their maternity leave to start at the Expected Week of Childbirth (EWC).

### **Staff in other higher risk groups**

The following sections consider the position of staff in specific groups: older and male staff, obese staff, Black staff, and disabled staff. They should be read in conjunction with the advice set out above.

The joint unions expect employers to conduct individual risk assessments for employees who are in known higher risk groups. In some circumstances, working at home may be an appropriate protective measure. Where staff continue to work in school/college, risk assessments should consider what protective measures such as social distancing and personal protection should be adopted for them.

Again, the joint unions are reminding employers that the onus is on the employer to demonstrate that a safe work environment is in place for each worker.

The joint unions believe that not only should age, sex, ethnicity and disability form part of every employer's risk assessment for individual staff members, but that the process should recognise the anxiety that particular staff may feel about their circumstances. Employers must take proactive, sensitive and supportive steps to build up a full picture of the ethnicity and health status of their workforce as part of the planning to make work safe.

### **Older staff and male staff**

Age is the biggest single factor in increasing risk to individuals other than specific health conditions. It is also known that men are at greater risk of adverse outcomes than women should they contract the virus. Both these characteristics should be taken into account in risk assessments.

### **Risks from being overweight**

Science also [suggests](#) staff with weight issues as per the [NHS BMI calculator](#) might be at extra risk, especially staff over 50.

### **Black staff**

Black\* people are known to have suffered a disproportionate impact in both the first and second waves of the pandemic. Why is not yet fully understood, but the latest research points to structural inequalities. A [report by the Runnymede Trust](#), a race equality think-tank, has found that people from ethnic minority

backgrounds in the UK are more likely to be exposed to Covid-19. A [further review led by Doreen Lawrence](#) has concluded that structural racism led to the disproportionate impact of Covid-19 on Black communities. This issue remains a considerable cause of concern to Black employees.

Black staff often feel less able to raise their concerns within workplaces because of stereotypes and prejudice. This is an important context to understand and acknowledge. The DfE has previously confirmed to the Joint Unions that it believes that "schools should be especially sensitive" to the needs and concerns of Black staff.

FOOTNOTE [\*] 'Black' is used in a political context to encompass all members who self-identify as Black, Asian and any other minority ethnic groups who do not identify themselves as white.

### **Disabled staff**

Risk to disabled employees also requires careful consideration even if their particular health condition does not itself place them in the medically vulnerable category. Disabled staff often experience stereotypes at work and may be worried about the impact of the current crisis on their health and job security. It is important to remember that employers are under a legal obligation to make reasonable adjustments, which may in some cases include working at home, for disabled staff to ensure they can continue to do their jobs.

## **Staff with family members who are medically vulnerable or at higher risk**

The joint unions do not accept the DfE position that all such staff can simply return to the workplace. Individual risk assessments must be conducted which consider the employee's domestic circumstances and local prevalence of Covid-19.

Where an employee's domestic circumstances are such that there is a significant risk of passing on the virus to family members who are themselves at greater risk, the joint unions expect employers to consider allowing the employee to work at home until that risk can be reduced, either by changing their working arrangements or by changes in the local situation.

## **Staff who are otherwise anxious about returning to work**

In relation to such staff, the DfE advises that employers should have regard to staff wellbeing, reminds them that their duty of care extends to mental health, and notes that mechanisms to support well-being will be important where staff are anxious about returning to work.

Employers should consider the mental health of employees when undertaking risk assessments, particularly where staff have previously experienced mental health conditions.

Even where there is no specific risk-based reason for adjustments greater than those for other employees, the joint unions call on employers to consider what measures can be taken to address such employees' concerns, including adjustments to working arrangements as well as counselling support.



The joint unions advise members who are anxious about returning to work to contact the employer (see below). Members should also speak to their GP if they are experiencing mental health concerns or other work-related health issues. Members should not simply stay away from work as your employer may treat your absence as unauthorised.

The DfE advice does not discuss the position of employees with other personal circumstances such as travel or childcare difficulties.

### **Staff in early years settings**

The DfE advice for early years settings is much less detailed than for schools and colleges. It does not refer specifically to CEV or CV people but advises that, for people at increased risk, settings should "try as far as practically possible to accommodate additional measures".

The joint unions advise employers that employees in early years settings should be treated in the same way as set out earlier for employees in all other education settings.

### **Supply, agency and peripatetic staff**

Supply staff working on a regular or ad hoc basis, peripatetic subject staff, school improvement advisers, educational psychologists, home tutors and others who do not work consistently in the same workplace are all entitled to support, both from their own employer and the employer at the particular workplace they are visiting.

Employers should adopt a similar approach to risk assessment which takes into account the full range of likely working circumstances and individual workplaces as well as individual and local circumstances. Employers should not just assume that all workplaces will be safe – steps should be taken to obtain the necessary information from other employers in order to validate any risk assessment. Supply staff working for agencies are covered by specific legal provisions which impose obligations upon agencies before placing workers even though the agency is not legally the employer.

Employers in schools and colleges should ensure that safety measures take visiting professionals into account and offer protection to them, as well as their own employees. These safety measures should be communicated on (or even better before) arrival, in particular where engagements or visits will last for a whole day or longer.

### **Planning for the implications of staff absence**

Employers' planning should include consideration of how the workplace will operate if a significant proportion of staff are unable to return to work, or if significant numbers of staff have to self-isolate or take sick leave as the term progresses. Planning should not assume that all staff will be able to go in to work.

Pressure should not be put on staff to return to work simply because planning has not been done to accommodate the possible need for some staff to work at home.

### **Advice to members on contacting their employer**

Employers should already have conducted a risk assessment which considered your personal circumstances. The joint unions have called on employers to review

and update assessments conducted for September. You can download and use our template letter (see appendix below) to write to your employer if you want to ensure the employer is aware of your health and other personal circumstances, in particular any recent changes of which it may not be aware.

You could also contact your GP beforehand and discuss risk factors and possible protective measures in order to help you to explain matters to your employer. If you are unhappy with your employer's response, you should contact your GP to discuss it and seek further evidence to support you in trying to reach agreement.

Contact your local union for further advice about what is reasonable to say to your employer, or if you are being asked to work at school when you do not feel it is safe to do so.

### **Contacting your union**

Please ensure that you tell your local union if you have sent a letter to the head – they will need this information to keep up to date on the position of staff who require protective measures or feel unable to work at school/college and represent members. If there is no rep in your school, please volunteer.

Details on how to contact GMB guidance can be found [here](#) and [here](#).

### **Further advice**

GMB guidance can be found [here](#).

Risks for ethnic minorities – The GMB has published a COVID19 risk indicator [here](#)

Joint unions – NEU, UNISON, GMB & UNITE

Updated December 2020

## **Appendix**

### **Contacting your employer**

Use the template letter below to write to your employer if you need to.

Dear [add name]

I am writing regarding your planning for staffing levels your risk assessment for staff, and my own position. I would like to draw your attention to the following matters, which I would like you to consider when you are looking at staff availability and my role following wider opening:

- insert information regarding your personal position as discussed above

I would like you to agree that, given these circumstances, I will be able to continue to work from home and confirm to me that that will be the case.

If you propose to require me to return to the workplace, I would be grateful if you would let me know the reasons (including a copy of the risk assessment and where appropriate the equality impact assessment relating to my position) for that request.

With best wishes.

[Your name]