



# School and college opening from September 2020

## Joint unions advice on medically vulnerable and higher risk groups

This Joint Unions advice is for staff working in school 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.

## Contents

Protecting school and college employees from September	3
Legal obligations on risk assessment for individuals	3
Joint Unions' expectations with regard to individual risk assessments	4
Summary of DFE advice regarding medically vulnerable or higher risk groups	5
The Joint Unions' advice	6
Staff in the extremely clinically vulnerable group	6
Staff in the clinically vulnerable group or in other higher risk groups	7
Pregnant women and new mothers	8
Older staff and male staff	9
Risks from being overweight	9
Black staff	9
Disabled staff	9
Staff with family members who are medically vulnerable or at higher risk	10
Staff who are otherwise anxious about returning to work	10
Staff in early years settings	11
Supply, agency and peripatetic staff	11
Planning for the implications of staff absence	11
Advice to members on contacting their employer	12
Contacting your union	12

## **Protecting school and college employees from September**

The Department for Education (DFE) has issued advice documents for schools, special education settings, FE colleges and early years settings. The DFE expects that most staff will go to work at their workplace from September. 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 situation in September and beyond cannot be predicted as confidently as the DFE assumes it can, as demonstrated by new local lockdowns. The Joint Unions are also concerned by the serious failings with the Government's outsourced test and trace system. Under the DFE guidance, little PPE would be provided and social distancing would be 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.

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

The Joint Unions expect all employers to carry 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.

Previous individual risk assessments should be reviewed prior to the start of the new academic year, 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 eg increase in local infection rates and the risk posed to employees.

Assessments for employees who are identified as being in medically vulnerable or higher risk groups should consider whether it is possible to allow them to work at home as a protective measure and what other measures are needed to ensure it is safe for them personally to attend the workplace.

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

Assessments should then consider what other protective measures would be required for that employee, should they 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 and wearing personal protective equipment (PPE).

The NEU's advice on PPE, including wearing of medical masks, can be found [here](#). UNISON's advice can be found [here](#) for school staff and [here](#) for college staff. GMB guidance can be found [here](#).

The Joint Unions advise that PPE must be provided to staff in certain situations, including but not exclusively:

- when providing intimate social care/medical procedures;
- working with pupils who cannot control behaviour which creates a greater risk of transmission of COVID-19;
- supervising students with symptoms who are awaiting collection; and
- for catering and cleaning roles.

It should be available in all workplaces for use whenever risk assessments deem it necessary.

Employees should be permitted to wear face coverings where they wish to do so. The DFE advice states that face coverings are "not recommended" in schools and

colleges (and notes that face coverings are largely intended to protect others, not the wearer) but the DFE has confirmed that this is not intended to prohibit face coverings and that school leaders may agree that individuals may wear them if they wish. Further, the Health and Safety Executive is calling on employers to support employees who wish to wear face coverings. It is not reasonable, therefore, to seek to prevent employees or students from wearing face coverings if it makes them feel less anxious. Allowing the wearing of face coverings will not remove or reduce the need for full consideration of all necessary protective measures for staff who are medically vulnerable or at greater risk.

## **Summary of DFE advice regarding medically vulnerable or higher risk groups**

The DFE advice for schools and for colleges is largely identical and is fuller than for other settings. The quotations below are taken from the DFE advice for schools.

The DFE advice notes that, from August 2020 onwards, wider Government policy on going to work changes; that Public Health England (now the National Institute for Health Protection) does not currently consider schools and colleges to be high risk settings compared to other workplaces; and that *“it is therefore appropriate for teachers and other school staff to return to their workplace”*. The DFE also argues that most education roles are not suited to home working.

The DFE advises that employees in the clinically extremely vulnerable (CEV) group, in other clinically vulnerable (CV) groups (including pregnant women), and in other higher risk groups can all return to school safely, provided that their school has implemented and explained the system of protective measures and controls set out in the DFE advice (in particular on hygiene, contact and social distancing) and that those employees follow those measures.

The DFE advises that, where any such staff are concerned about their position, employers should *“discuss any concerns individuals may have around their particular circumstances and reassure staff about the protective measures in place”*.

The DFE advice with regard to employees living with people who are CEV or CV or who are in higher risk groups simply says that they *“can attend the workplace”*.

## **The Joint Unions' advice**

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

The Government has ended its shielding advice to individuals who were previously classed as clinically extremely vulnerable, citing the reduced prevalence of COVID-19 in the community. Nonetheless, those individuals continue to be most at risk if they contract COVID-19. Many scientific and medical experts warn of the risk of further spikes in the virus as winter approaches.

The Joint Unions are asking employers to agree, as part of their risk assessments for staff, that all CEV employees be permitted to work from home from September if they wish to do so. The Joint Unions do not accept the DfE's guidance that it will be sufficiently safe for such staff to travel to and from school/college and to work in school/college, whatever other safety measures are adopted. For some staff whose role cannot be undertaken from home, this may involve a mutually- agreed temporary change to duties/redeployment to facilitate home working

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).

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 or in other higher risk groups**

The Government recognises that a wider group of people continues to be more clinically vulnerable to COVID-19 than the general population due to their medical circumstances. Many individuals are 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 will compound and could significantly increase the risk to individuals.

For all employees who are in clinically vulnerable or known higher risk groups, the Joint Unions expect employers to conduct individual risk assessments which consider whether the employee should be permitted to work at home and, if working in school/college, what protective measures such as social distancing and personal protection should be adopted for them.

Employers should not just decide that as the DFE advice considers it generally safe for such employees to return to work that 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 it is likely that not all employees will be able to go in to work from September and reflect this in their planning for September opening, and beyond, as outlined below.

If you are concerned about an instruction or possible instruction to attend the workplace, please contact your union locally for advice and assistance.

If members need support to raise their personal circumstances with their employer, they can talk to their union locally. NEU members can read [this advice](#) about seeking support with mental health and wellbeing. UNISON members can seek confidential advice and support from UNISON's own welfare charity, [There for You](#). GMB guidance can be found [here](#).

**The following sections consider the position of staff in specific groups – pregnant women, 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 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.

## **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 Royal College of Obstetricians & Gynaecologists (RCOG) has [issued advice](#) 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 they should be permitted to work from home until their chosen date for starting maternity leave or, if this is not possible, medical suspension on full pay. It will be unlawful for employers to seek to trigger maternity leave in these circumstances. 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.

## **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 from COVID19. Why is not yet fully understood and remains a considerable cause of concern to Black employees. A report from the Runnymede Trust race equality think-tank has found that people from ethnic minority backgrounds in the UK are more exposed to COVID-19 and “face greater barriers” when trying to protect themselves from the virus. The GMB has published a COVID19 risk indicator here.

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.

## **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 COVID19.

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. The NEU's advice in relation to childcare is available [here](#). UNISON's advice can be found [here](#) for school staff and [here](#) for college staff. GMB guidance can be found [here](#).

## **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. Specific and fuller NEU advice is available for [supply staff](#) and for [peripatetic staff](#). UNISON's advice can be found [here](#) for school staff and [here](#) for college staff. GMB guidance can be found [here](#).

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 for September opening 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 from September.

Pressure should not be put on staff to return to work from September 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 when preparing for wider opening in June. You can download and use our [template letter](#) 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 your union locally can be found [here](#) for NEU members and [here](#) for UNISON members. GMB guidance can be found [here](#) and [here](#). Unite guidance is [here](#).

### **Joint Unions**

**August 2020**