

Disabled workers returning to work

The current Covid-19 pandemic has raised a number of equality issues and concerns. We have put together some information that you may find useful as you navigate through understanding your rights and responsibilities and in seeking support.

The Office for National Statistics (ONS) recently published 'Coronavirus (COVID-19) related deaths by disability status, England and Wales: 2 March to 14 July 2020'

<https://www.ons.gov.uk/peoplepopulationandcommunity/birthsdeathsandmarriages/deaths/articles/coronaviruscovid19relateddeathsbydisabilitystatusenglandandwales/2marchto14july2020> which found that 59% of all deaths involving COVID-19 in this period were disabled people and yet disabled people made up around 16% of the population in the 2011 Census. Disabled members are, quite rightly, concerned about their health and wellbeing and what the impact will be for them returning to onsite work. UCU also recognises that the situation facing disabled workers differs immensely in that some may want to continue working from home so as to protect themselves and their families from contracting the virus. Employers should maximise online delivery and minimise face-to-face teaching to as low a level as possible until UCU 5 tests can be met https://www.ucu.org.uk/media/11101/covid-19-branch-bargaining-advice-Sep-20/pdf/ucu_covid19_branch_guidance_sep20.pdf.

Legitimate concerns have been raised by disabled workers during the pandemic, including the impact of living and working in isolation, not having the necessary equipment, support from personal assistants (for some), the increase in stress and anxiety and exacerbation of existing health and mental health issues impacted by the virus. With the easing of the lockdown and plans being made for the return to the workplace, other issues are surfacing in relation to disabled people using public transport to get to and from work, how

risk assessments will be conducted and implemented, social distancing measures for getting in and around the workplace, how flexible employers will be as universities and the ways colleges adapt to how work is delivered in this new emerging landscape.

The end of the shielding phase for people who have been listed as 'clinically extremely vulnerable' or 'clinically vulnerable' has brought further urgent concerns, including for those who were not in these categories but nevertheless were shielding as they too were at greater risk of getting the virus.

It is equally important that when supporting disabled workers, this is done through the lens of intersectionality. Disabled people span all protected characteristics, and the virus has presented additional concerns for example, disabled women who have caring responsibilities and disabled black workers.

In negotiations, UCU would expect branches to negotiate flexible options for disabled workers in respect of their working arrangements. These might include, but should not be limited to:

- continuing to work at home if requested, with the necessary reasonable adjustments
- provision of reasonable adjustments in the workplace
- other flexible working alternatives
- offer of alternative duties where appropriate
- work on a rota basis to minimise contacts
- staggered start times to avoid rush hour traffic and minimise contacts
- provision of the necessary PPE to reduce infection and transmission of the disease
- UCU believes face masks should be used in all indoor settings with appropriate exemptions. The employer should take responsibility for the safe usage and disposal of face masks and see face masks as an *additional* safety measure, not the primary safety measure to be utilised. Monitoring of compliance should not be delegated to staff where this will create an increased risk of conflict or work-related stress

- offer of disability leave as a form of reasonable adjustment
- preventative action to avoid or mitigate stress and protect the mental health and well-being of disabled staff
- provision of mental health support

UCU promotes the use of the social model of disability focuses on the ways in which society is organised, and the social and institutional barriers which restrict disabled people's opportunities. The social model sees the person first and argues that the barriers they face, in combination with their impairments, are what disables them. You can watch our short film on the social model of disability here <https://youtu.be/Do6U1j1vRYU>.

Disabled workers facing disability discrimination should contact their branch rep and/or regional office for further advice and assistance. You can find further support such as your local contacts and regional office here <https://www.ucu.org.uk/support>.

This document supplements our existing guidance and advice for members on the Coronavirus and rights at work. This can be accessed at www.ucu.org.uk/coronavirus. Please visit this webpage regularly as information is updated.

As information is fast changing during the current period, we will endeavour to provide up to date information as soon as is possible. If you have any queries, please send these to egadmin@ucu.org.uk

Return to work

Returning to onsite working will raise several issues for everyone, namely how their health, safety and wellbeing will be protected in the workplace, and what steps the employer will be taking to minimise risks and transmission of the disease.

In FE and HE, government(s) across the devolved nations have introduced a staged approach to managing local COVID-19 risks which in England is called 'Tiering'. The government has given powers to Upper Tier Local Authorities in England to introduce a range of local lockdown measures when there are local outbreaks. Employers are now expected to develop contingency plans based upon these 'tiers' which should consider local infection rates and transmission risks.

Branches have been advised to negotiate with employers in developing their contingency plans and to consider what level of risk currently exists in their local area.

Members should follow local advice if there are outbreaks in their areas. They should also seek advice from their UCU branch on the additional steps their employers should be taking to ensure any workplace risks are avoided or reduced to low levels.

I believe that if I return to work, my health may be compromised. Can I be told that I must return to the workplace?

People on the government's list as 'vulnerable' have not been advised to shield though this advice may change as infection rates rise. Initially the government had published specific guidance aimed at 'vulnerable' people, but this was withdrawn on 1 May 2020 after information had been updated and the 'clinically vulnerable' category had been developed. There is, however, recognition that anyone with the health conditions set out in the regulations may be at greater risk from contracting the virus and may wish to continue to shield. Where members do wish to work remotely due to serious health and safety concerns they should request individual risk assessment and/or reasonable adjustments that will allow them to work remotely. Where increased risk relates to disability they can also request to work remotely as a reasonable adjustment.

Members should contact their local branches for further advice and branch officers should have access to template letters for disabled staff and staff in higher risk groups that will allow them to formally request remote working due to their personal risk factors and concerns.

UCU would also expect employers to conduct an individual risk assessment to avoid or reduce risks to low levels. When employees disclose health issues as a risk factor, employers may require further input from a GP or occupational health practitioner. Employers must continue to act within equality and health and safety legislation when determining appropriate risk assessment controls and reasonable adjustments.

My employer has assessed my individual risk level using a COVID-Age calculator. Should I trust this method of assessing individual risk levels?

Increasingly employers are looking to quantify the individual health risks of Covid-19 to better identify those individuals who are at an increased risk of contracting Covid-19 and suffering poor outcomes. Examples of individual risk assessment tools quantifying risk levels:

Welsh Government Covid-19 Risk assessment tool and guidance for different sectors - <https://gov.wales/covid-19-workforce-risk-assessment-tool>

Association of Local Authority Medical Advisors (ALAMA) Covid-19 medical risk assessment which determines 'COVID-Age': <https://alama.org.uk/covid-19medical-risk-assessment/>

The ALAMA 'Covid-Age' model has also been utilised by the Scottish government (see: <https://www.gov.scot/publications/coronavirus-covid-19-guidance-onindividual-risk-assessment-for-the-workplace/>) the University of Warwick, and the University of Southampton as part of their approach to individual risk assessment of higher risk staff.

However, the research underpinning this model, while useful does offer caution in the application of the 'Covid-Age' tool in capturing all workplace risk factors for individual workers.

"We caution against simplistic rules for decisions based only on the risks that it estimates. It does not remove the need for clinical judgement, and there are other important considerations when managing occupational risks from Covid19—for example, the practicability of different possible control measures, the expected prevalence of infection in the local population, the personal value judgements of the individual worker and prevailing advice from government (which may be driven by a need to control demands on healthcare services as well as individual risk)."

<https://academic.oup.com/occmed/advancearticle/doi/10.1093/occmed/kqaa150/5881715>

While this type of assessment can be helpful in aiding discussion around risks and suitable control measures, it has potential to be misused by employers. Close scrutiny is needed to ensure employers are using these tools appropriately and that any data underpinning the health risk assessments is up to date and accurate. This type of quantitative assessment does not in itself constitute a suitable and sufficient assessment of individual risks and needs to be much more comprehensive if it is to effectively address the different types of risks posed by COVID-19. Any use of health risk assessments as part of the risk assessment approach within an organisation should be subject to union consultation and agreement.

Furthermore, individual health risk assessments do not capture all potential drivers for inequality of outcomes in the spread of Covid-19. For instance, socio-economic status, immigration status, employment status, occupational risks, access to health services and support, housing, households with other members at increased risk of COVID-19, geography (urban vs rural), mental health, isolation and loneliness, stigma and discrimination are all factors to be considered.

I am disabled but my disability is not listed on the 'extremely clinically vulnerable' list, or 'vulnerable' list. Can I refuse to return to work as I feel at increased risk due to COVID-19?

Employers will undoubtedly refer to the list issued by the government of people who are extremely clinically vulnerable or vulnerable. However, because an employee's health condition is not on the list does not mean that they may not be at increased risk from contracting COVID-19 or suffering poorer outcomes. Similarly, disabled people may experience exacerbation of health issues due to COVID-19 restrictions or controls for example, a person with a mental health issue or condition. Employers need to be made aware of all these issues and factor these into risk assessments and reasonable adjustments. Members should seek advice and guidance from their UCU branch who will be able to represent disabled employees both collectively and individually.

What is an 'isolation' fit note?

If you have been isolating because of coronavirus symptoms or because you live with someone who has symptoms, you can get an isolation fit note. The fit note will provide evidence for employers that you have been advised to self-isolate and therefore cannot work.

Isolation fit notes can be obtained by calling the 111-coronavirus service in England, or NHS Direct Wales, or in Scotland, or by visiting <https://111.nhs.uk/isolation-note/>

Reasonable adjustments

A reasonable adjustment is an alteration an employer could make to enable a disabled person to continue to carry out their duties without being at a disadvantage compared to others.

The adjustment would mean that as far as is reasonable, a disabled worker has the same access to everything that is involved in applying for, doing, and keeping a job as a non-disabled person.

What does the law say about reasonable adjustments?

The Equality Act 2010 <https://www.legislation.gov.uk/ukpga/2010/15/contents> says employers must make reasonable adjustments to your working conditions.

This obligation covers physical and hidden disabilities as well as non-contractual terms and policies, such as those relating to recruitment, discipline or sickness absence.

If I am working at home, can I still receive my reasonable adjustments?

S20 of the Act states the employer's duty for providing reasonable adjustments. Many of the adjustments your employer can make will not be particularly expensive, and they are not required to do more than it is reasonable for them to do. What is reasonable depends, among other factors, on the size and nature of your employer's organisation.

What adjustments can I expect to receive if working at home?

As a Disabled worker, you are in the best position to say what adjustments you require. Adjustments for working at home can include:

- A change to the way your job is done and when it is done
- Extra aids or services to do your job
- Changing your working hours

- Provision of ergonomic / specialist equipment
- Installation of specialist software on home PC's / laptops

What are the typical forms of reasonable adjustments?

Typical adjustments can include:

- Adjustments to premises
- Allocating some of the disabled person's duties to another person
- Transferring somebody to fill an existing vacancy
- Altering working hours
- Disability leave: allowing absence for rehabilitation, absence or treatment or when reasonable adjustments are not yet implemented and an individual cannot work as a result
- Acquiring or modifying equipment
- Providing a reader, interpreter or support worker

What adjustments might an employer have to make for someone who has had the virus?

A person diagnosed with the virus may require additional reasonable adjustments. Employers will need to ensure that they meet the requirements of the Act to make reasonable adjustments - failure can amount to disability discrimination. Adjustments can include but is not limited to:

- **Additional time to recover:** Employers should be aware that employees recovering from the virus may require additional time to recover – employers should be sensitive to employees needs as the disease is new and affects people differently.

- **Phased return to work:** Employees should be offered a phased return to work that can be gradually increased until they return to full capacity. It is important that workers recovering from the virus are given full access to support and advice.
- **Disability leave:** Disability leave should also be offered to disabled employees as a reasonable adjustment to allow for any absence for rehabilitation or treatment and UCU would strongly advise that this should be counted separately and not recorded under the usual sickness absence schemes / procedures. Branches can find out further about disability leave and negotiating a disability leave policy here https://www.ucu.org.uk/media/7836/Disability-leave-2016/doc/Disability_Leave_2016.doc
- **Access to Work:** In discussing the types of adjustments available, disabled workers should be provided with information on the Access to Work scheme and how it operates.

Who is responsible for financing my reasonable adjustments?

Your employer is responsible for providing and paying for your adjustments. As explained above, many of these adjustments will not be particularly expensive. If you pay for any of your adjustments, you should ensure that you have agreement from your employer that you will be reimbursed for the full amount paid.

Additional funding is also available via a grant from the Access to Work scheme https://www.ucu.org.uk/media/11006/Guide-to-Access-to-Work/pdf/ucu_guide-to-access-to-work.pdf

Legislation

Being subject to discrimination can be incredibly upsetting and undermining.

It can feel like a personal attack and those subject to it can feel isolated. It is important that branch reps and members work together to identify what treatment is discriminatory and challenge employers where that is the case.

Unlawful discrimination under the Equality Act 2010 takes many forms and people respond differently to how they have been treated in a variety of circumstances.

Are people categorised as 'extremely clinically vulnerable', disabled within the meaning of the Equality Act 2010?

It is highly likely that people identified by the government as 'extremely clinically vulnerable' will be disabled within the meaning of the Equality Act 2010, see <https://www.gov.uk/government/publications/guidance-on-shielding-and-protecting-extremely-vulnerable-persons-from-covid-19/guidance-on-shielding-and-protecting-extremely-vulnerable-persons-from-covid-19>. This also includes anyone who has been in hospital with the virus.

The definition of disability is laid out in s6 of the Act, and states a person is disabled if 'you have a physical or mental impairment that has a substantial and long-term negative effect on your ability to do normal daily activities.'

Whilst the virus is new, there have been reports that people who have had the virus are likely to be impacted in the long-term with post viral effects includes: coughing, loss of taste and smell, chronic fatigue, muscle pain, fever, breathlessness, dizziness, vomiting and diarrhoea
<https://www.telegraph.co.uk/global-health/science-and-disease/nine-10-people-have-persistent-symptoms-months-recovering-severe/>.

'Substantial' is defined as being 'more than minor or trivial, for example, it takes much longer than it usually would to complete a daily task like getting dressed.'

'Long term' means it will last or is likely to last 12 months or more, i.e., a breathing condition that develops as a result of a lung infection.'

<https://www.legislation.gov.uk/ukxi/2020/350/schedule/1/made>.

Conditions such as type 1 diabetes is covered under the Act, however, type 2 diabetes is not necessarily covered. If a person has a progressive condition that gets worse over time, e.g. rheumatoid arthritis or asthma, they will also fit the criteria under the Act if severe and impacts upon daily life. Protection by the Act also includes diagnosis with cancer, HIV or multiple sclerosis. If the criteria is not met, and/or your employer is not aware of an individual's disability, they will not be covered in terms of unfavourable treatment under the Equality Act 2010.

Are people who are identified as 'vulnerable' under the Health Protection (Coronavirus, Restrictions) Regulations 2020, disabled under the Equality Act 2010?

Yes, the Health Protection (Coronavirus, Restrictions) Regulations 2020 are concerned mainly with restrictions to contain the virus and as such, people identified as 'vulnerable' are likely to be disabled under the Act. Whilst the list (Schedule 1 to the regulations) is not exhaustive, there may well be other people who might also be considered 'vulnerable' to the virus.

My employer is unaware I am disabled, do I need to disclose my disability?

Disclosing a disability is an individual decision, and there is no obligation on anybody to do so. You are not obliged to tell your employer about your disability but remember that if the employer does not know (and cannot reasonably be expected to realise) you are disabled, they are not obliged to

make reasonable adjustments to accommodate your needs, and they cannot be criticised for treating you less favourably for a reason relating to your disability.

Shielding

In managing the pandemic, the government identified people who may be at a high risk of serious illness if they contracted coronavirus.

As of 1st August 2020, the current shielding advice changed. The government has 'paused' shielding 'unless the transmission of Covid-19 in the community starts to rise significantly'. Please follow local guidance.

If an employee wants to shield at home because he lives with a 'vulnerable' or 'extremely clinically vulnerable' person must an employer permit it?

UCU maintains the view that employers should ensure those employees living with or caring for people at increased risk of contracting COVID-19 or at increased risk of poorer outcomes should be considered in risk assessments and offered additional safety measures where appropriate. This should include an option to work remotely and any measures that minimise contact with other people.

Employers need to discharge their duties under health and safety legislation and to ensure that risk assessments are 'suitable and sufficient' and safety measures fully understood, implemented and reviewed regularly for their effectiveness.

How do I protect myself if I have a reasonable belief that I am at risk of serious and imminent danger?

If you feel at risk of serious and imminent danger due to COVID-19 you should follow your locally negotiated procedure for Serious and Imminent Danger.

The procedure should allow an employee to stop work immediately, be that withdrawal from or no engagement with the work activity, and to enter a place of safety. The escalation steps should be clear so that workers can raise their concerns with the employer once they are in a place of safety.

The employer should ensure no others are exposed to harm and that appropriate advice and support can be offered to all those affected.

Employers should have this procedure in place to comply with the following legislation:

The Management of Health & Safety at Work Regulations 1999 – Regulation 8: Establish procedures to be followed in any emergency and in serious and imminent danger, and appoint competent people to implement them: and ensure they can stop work and immediately proceed to a place of safety in the event of their being exposed to serious, imminent and unavoidable danger, and do not return to work until the danger is removed.

The Management of Health & Safety at Work Regulations 1999 – Regulation 14: requires that workers must work in a safe manner, and tell the employer if there is a serious and imminent danger, or where they believe there is a shortcoming in the employer's protective arrangements.

If your employer does not have this procedure in place UCU branches should request this be rectified immediately in consultation with unions. This procedure should be widely publicised to all employees.

Individuals also have rights under section 44 of the Employment Rights Act to remove themselves from 'serious and imminent danger' at their workplace and this includes rights to protection from detriment and dismissal.

However this places significant responsibility on individuals to exercise this right and we must be mindful not to overlook employers' responsibilities.

Employers should already have in place a serious and imminent danger procedure for COVID-19 that staff should be able to follow to protect themselves from serious and imminent danger.

Health and Safety

The decision for disabled workers to return to the workplace will largely be made on an individual basis, taking into consideration, how effectively the employer will manage the risk of the virus in the workplace, preventing further transmission of the virus.

What are the specific legal duties my employer is required to follow in respect of work and coronavirus?

Employers must operate within the legal framework in the UK to ensure employees are safe and protected from harm while at work.

They have a legal duty to consult with trade union health and safety reps in recognised workplaces on all significant safety matters under the Safety Reps and Safety Committees Regs 1977 https://www.ucu.org.uk/media/4830/TUC-Safety-representatives-and-safety-committees/pdf/R25807_Safety_Reps_Brown_Book_2015_UCU.pdf (also known as the 'Brown Book').

The Health and Safety at Work Act 1974 requires employers to take a precautionary approach to health and safety in the interests of all who may come into contact with their undertaking. The Management of Health and Safety at Work Regulations 1999 detail how employers must conduct suitable and sufficient risk assessments, following principles of prevention <https://www.legislation.gov.uk/uksi/1999/3242/schedule/1/made> to avoid or mitigate against any potential risks to workers health, safety and welfare.

The Control of Substances Hazardous to Health Regulations 2002 also requires employers to take a robust approach to the management of hazards such as COVID-19.

Covid-19 is classed as a 'biological agent' under these regulations and employers must eliminate or reduce exposure to low levels before work can begin.

The Equality Act 2010 protects people from discrimination both inside and outside the workplace based upon a number of 'protected characteristics' including disability.

The public sector equality duty <https://www.ucu.org.uk/article/8219/Public-Sector-Equality-Duty> applies to colleges, universities and other employers providing a public service to eliminate discrimination, advance equality of opportunity and foster good relations between those who share a protected characteristic and those who don't.

The Coronavirus Legislation <https://www.legislation.gov.uk/coronavirus> for England, Wales, Scotland and Northern Ireland, continues to be developed to protect public health as new evidence emerges and as the public health crisis continues.

Who should my employer be consulting with about health and safety in the workplace?

UCU would expect all employers to consult with Health and Safety Reps as prescribed by s2 (6) of the Health and Safety at Work Act 1974 that states it is the duty of every employer to 'consult any such representatives with a view to the making and maintenance of arrangements which will enable him and his employees to co-operate effectively in promoting and developing measures to ensure the health and safety at work of the employees, and in checking the effectiveness of such measures'. If your branch is without a safety rep, please contact your regional office as a matter of urgency.

Please refer our guidance here https://www.ucu.org.uk/media/10959/Covid-19-hazards-and-controls-in-HE/pdf/ucu_covid-19_he-hazards.pdf

What does an employer need to do to carry out a risk assessment?

Employers will be required to consult with unions and employees when undertaking risk assessments. Risk assessments should capture all the potential hazards and risks within the workplace and seek to avoid or reduce risks to low levels following principles of prevention.

The risk assessments should also consider local and national infection rates and be under regular review. The following areas should be considered when undertaking risk assessments with respect to the virus:

- How can the risk at work be avoided?
 - Working at home?
 - Can systems be changed and or equipment be provided to enable working from home?
- What are the risks of people working together?
 - Respiratory transmission – mainly transmitted between people through ‘respiratory droplets’ when infected people talk, cough, sneeze
 - Aerosol transmission – small virus droplets that remain suspended in the air long enough to infect others.
 - Contact transmission – infected surfaces or objects

When risks have been considered and identified, the risk assessment should cover how the employer is going to address the risk, how the workplace is to be adapted, including how it operates its business and adapting work equipment. The Health and Safety Executive (HSE) has set out a guide here <https://www.hse.gov.uk/risk/controlling-risks.htm>.

What is a Personal Evacuation Plan and do I need one?

A Personal Evacuation Plan (PEP) also known as a Personal Emergency Evacuation Plan (PEEP) is an individual escape plan for anyone who may need (some) assistance to manage their evacuation safely and quickly from a building to reach a place of safety, in the event of an emergency.

Employers have a legal duty to implement effective safety arrangements for all staff including those who may require some assistance to manage their evacuation from a building in an emergency. The plan is needed for individuals with visible and hidden disabilities, including, but not limited to:

- Mobility impairments
- Sight impairments
- Hearing impairments
- Medical condition or injury which might cause an individual to require assistance to evacuate safely

Not everyone with a disability will need a PEP / PEEP, however, everyone's disability needs are different and we would advocate for PEP/PEEP's to be specific to the individual's needs and requirements. Please speak with your H&S rep for assistance in developing your plan.

What is the guidance if my employer cannot maintain social distancing?

Social distancing is vital to help prevent further transmission of the virus. Therefore, if Institutions are unable to implement social distancing IN FULL, then those operations or activities should only be continued if they are necessary for the business to operate.

Remember, employers have a duty of care for the health and safety of ALL employees. If on returning to work, you find that social distancing measures have not been put in place, your employer would certainly be exposing you and colleagues to greater risk. You should bring this to the attention of your H&S Rep and/or regional office.

We are keen to hear any good practice on policies or agreements branches have negotiated, please send these to egadmin@ucu.org.uk.