



# Critical worker status in higher education in England

## **GUIDANCE FOR MEMBERS AND BRANCHES**

### **WHAT IS A CRITICAL WORKER?**

Who in England is categorised as a 'critical' worker is set out in Government guidance updated on 8 January 2021 with an expanded definition including those employed in higher education.

The guidance states that critical workers include 'Parents whose work is critical to the coronavirus (Covid-19) and EU transition response' and those who work in health and social care and other key sectors. Key sectors include support and teaching staff in education and 'specialist education professionals who must remain active during the coronavirus (Covid-19) response to deliver this approach'.

The full guidance can be found at: <https://tinyurl.com/yy6zpm5n>

### **WHAT DOES BEING A 'CRITICAL WORKER' MEAN?**

The government guidance is concerned with access to school places for children of parents who are regarded as critical workers.

From 4 January 2021 only children of critical workers and vulnerable children and young people should attend school or college. All other pupils and students will receive remote education.

The guidance states that children with at least one parent or carer who is a critical worker can go to school or college if required, **but parents and carers should keep their children at home if they can.**

Being a critical worker therefore means only that you should be able to access a school place for your children. It does NOT mean that you have to send your children to school. It is also important to stress that being regarded as a critical worker should not, in any sense, be conflated with a requirement to work on campus or deliver face to face teaching / services.



*Higher education staff who are required to deliver or to support delivery of teaching or research and the provision of appropriate university facilities are considered critical workers for the purposes of access to education.*

## ARE HE STAFF 'CRITICAL WORKERS'?

Despite the limitations in the guidance (restricting the status of 'critical worker' to those involved in the Covid-19 (or EU transition) responses) the Department for Education (DfE) has stated that higher education staff who are required to deliver or to support delivery of teaching or research and the provision of appropriate university facilities are considered critical workers for the purposes of access to education.

The DfE however stress the government's position that **everyone who can work from home should do so.**

Further, the DfE state: 'we expect employers to show understanding and offer flexibility when making these decisions. As such, we ask that accessing school places is considered as part of a range of family friendly working practices.'

The DfE have further explained to the sector employers that while decisions about employment, including those staff deemed critical to the continuing operation of the institution should be agreed on a case-by-case basis, they expect employers and staff to show understanding and offer flexibility when making these decisions. They have stated that roles that may be prioritised for accessing school places, would usually fall in four broad categories:

- 1 Staff or research students responsible for research and other activities to mitigate the effects of COVID-19 and for other essential research and supporting activity necessary to meet regulatory, legal, health and safety or other on-going requirements. This would include long-running research which cannot tolerate a break, staff or others looking after living resources (e.g. animals, plants or bacterial cultures) or hazardous materials; or those that are essential for the maintenance of equipment and facilities.
- 2 Academic and teaching staff, to deliver face to face teaching to those students that are permitted to receive teaching on campus, or to support those students who are continuing their placements in person and cannot be supported remotely, as well as those developing or delivering resources for remote learning where these need to be created or updated using facilities only available on the provider's premises.
- 3 Staff responsible for providing services for students who need to remain in student accommodation or in facilities which remain open for students or essential research, including catering staff, cleaners, wardens, mental health support, IT and security staff.
- 4 Staff critical to the safety and security of the university estate and other business-critical operations.

A number of HE employers have been making blanket statements about HE staff (and in some cases PGRs) being critical / essential workers and using that to expect staff to work 'normally' either on-campus or at home. Some are even using this definition to argue that staff are required to work on campus and / or deliver face to face teaching or services.

Given the overriding advice about working from home and keeping children at home where possible, this is, at the very least, an irresponsible response from employers who should be setting an example of good community behavior.

## HE STAFF WITH SCHOOL-AGED CHILDREN

Only those staff regarded as critical workers will be able to access a school place for their children. Given the various pieces of government guidance, we believe that this will be available to only a minority of members working in HE. Branches should be working with their employers to ensure that these numbers are kept to a minimum.

Even when a member of staff is regarded as a critical worker there should be no obligation on them to send their children to school if they do not wish to do so.

Critical workers who do not wish to send their children to school and those who are not classed as critical workers should be offered appropriate working arrangements to allow them to undertake home-schooling. This may range from flexible working and reduced workloads to offering paid special leave / furlough (on full pay) to such staff where requested. Employers cannot expect parents of school aged children to work 'normally' during school closures. Branches should seek to reach agreement with their employer to facilitate such arrangements, ensuring that those who make such requests are fairly treated when they are considered, and do not suffer a career detriment as a result, since this could be a breach of the Equality Act 2010.

Staff who believe they do meet the definition of critical worker AND wish to access a school place for their children should ask their employer to provide a letter confirming their critical worker status, to give to their children's school requesting a place.

All staff working from home (with or without children) should be provided with the necessary equipment to do so safely and workloads should be reasonable providing for regular breaks in accordance with the Display Screen Equipment regulations (see: <https://tinyurl.com/y5rta5uq>)

Bargaining for better workloads in HE in light of the Covid-19 pandemic can be found at: <https://tinyurl.com/y33jz6pq>

## WORKING ONSITE / ON CAMPUS

All staff should work from home wherever possible, both in line with government advice and with employers' duty to minimize the health and safety risks their staff are exposed to.

Any requirement to work on site should be solely on the basis that the work is essential and cannot be performed remotely, not simply on whether a member of staff can be categorised as a critical worker for the purpose of accessing a school place for their children.

All government guidance makes clear that the most important thing everyone can do is 'Stay Home' because this will limit transmission of COVID-19 and help to get the virus under control. Government guidance also makes clear that leaving home is only permitted in very



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specific circumstances, attending work being one of them, but only if work cannot reasonably be done from home. In universities the vast majority of work can, and should, be done remotely / from home.

Furthermore, Government guidance in England makes clear that higher education provision will remain online until mid-February for all except future critical worker courses, eg health and social care courses.

Where it is essential that you attend work (ie it is impossible for your work to be carried out at home) then:

- The employer should have carried out a revised generic and personal risk assessment taking into account the new variant of the virus (see <https://tinyurl.com/yxp3uh3m>).
- Personal risk assessments should include travel to and from work, and relevant personal circumstances.
- All control measures should be in place before any member of staff is required to attend work.
- Adequate cleaning regimes must be in place.
- PPE should be provided where necessary.

If you have any concerns about your health and safety (including those arising from an unreasonable workload), you should raise it directly with your manager and make sure your local UCU branch representative is copied in.

See also the Thompsons Solicitors briefing on employer and employees' responsibilities in the wake of coronavirus - <https://tinyurl.com/y2oparcx>

## **I DO NOT FEEL SAFE ATTENDING THE WORK SITE. WHAT SHOULD I DO?**

In addition to the guidance on collective approaches to address COVID-19 health and safety concerns individual members may also have particular concerns about the safety of a return to onsite work and / or face-to-face activities. This may be due to inadequate controls put in place by the employer or particular individual circumstances.

UCU has produced a series of template letters for use by members who reasonably believe that a request or demand that they return to on site working would place them in serious danger from Covid-19, in order to raise their concerns directly with their manager.

The letters are drafted for use by members in different circumstances; the relevant template will need to be tailored to the circumstances of an individual member and branches may need to support members to assist them in completing their letter. The template letters can be found here - <https://www.ucu.org.uk/covid19letters> - you will need your UCU member log in details to access them.