



# Critical worker status in further 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 further 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 and college 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 site or deliver face-to-face teaching.



*Staff who do not wish to send their children to school should be offered appropriate working arrangements to allow them to undertake home-schooling.*

### ARE FE 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) have stated that further education staff 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.'

A number of FE employers have been making blanket statements about staff being critical/essential workers and using that to expect staff to work 'normally' either on-site or at home. Some are even using this definition to argue that staff are required to work on site 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 behaviour.

### FE STAFF WITH SCHOOL-AGED CHILDREN

Only those staff regarded as critical workers will be able to access a school place for their children.

Although FE staff may be regarded as critical workers it is clear that the government would not expect all FE teachers with school aged children to make use of this provision and expect the employers to offer staff flexibility.

Branches should be working with their employers to ensure that these numbers are kept to a minimum.

There should be no obligation on staff to send their children to school if they do not wish to do so.

Staff who do not wish to send their children to school 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>)

Workloads need to be managed in light of these new ways of working and it is not acceptable to simply transfer in-person timetables to remote working situations.

### WORKING ON SITE

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.

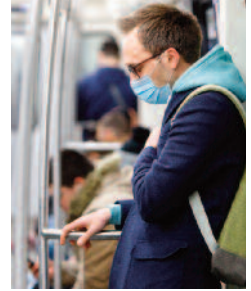
Any requirement to work on site should be solely on the basis that the work is essential and cannot be performed remotely, not simply on whether a member of staff can be categorised as a critical worker for the purpose of accessing a school place for their children.

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

Up until at least mid-February, we would expect that the only teaching staff required to attend college premises would be those essential to teaching vulnerable students and those of critical workers who are attending the college in person. UCU branches should be consulted on the levels of staffing required and how such staffing will be sought (by voluntary means wherever possible).

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.



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*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.*

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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.