

National Employers for local government services

To: Chief Executives in England, Wales and N Ireland
(additional copy for HR Director)
Members of the National Employers' Side
Regional Directors

12 August 2020

Dear Chief Executive,

COVID-19: relaxation of shielding and return to work

Please continue to visit the LGA's [Coronavirus: information for councils](#) webpage for all up to date advice.

All information contained in this circular is correct at time of publication but all links to external websites should be checked regularly as official advice is likely to be updated as the situation continues to develop.

As you will be aware, until now our advisory circulars throughout the pandemic have been produced jointly with the trade unions. Considerable efforts on both Sides were made to develop a joint circular on the issues covered below, but the unions have on this occasion been unable to add their signatures. This is because they feel strongly that people in the two vulnerable groups (*Clinically Extremely Vulnerable* and *Clinically Vulnerable*) should receive mandatory individual risk assessments. The concept of individual risk assessments goes beyond official Government advice but the National Employers wish to highlight the importance of ensuring conversations with individual staff take place in order to understand any concerns and needs they may have as part of planning for a possible return to the workplace.

From 1 August employers have had more discretion, in consultation with their employees, on how to [return to their workplace](#). Employers must have taken steps to ensure the workplace is [COVID secure](#) and social distancing measures are in place. Employers will, however, have the discretion to make decisions about how their staff can work safely, which could mean continuing to work from home.

The government advises that employers should carry out a risk assessment of the workplace in line with [HSE guidance](#) and consult with employees or trade unions and then share the results of the risk assessment with employees through their website. Separate workplaces should be risk assessed accordingly, eg. offices, depots, call centres etc which may require specific COVID-related risks to be addressed.

Employers may wish to refer to this [guidance produced by NHS Employers](#) which sets out how to enhance existing risk assessments particularly for at-risk and vulnerable groups within the workforce. It includes workers returning to work, and existing

employees who are potentially more at risk due to their race and ethnicity, age, weight, underlying health condition, disability, or pregnancy.

Clinically Extremely Vulnerable (CEV)

From 1 August (16 August in Wales), people in this group will no longer need to follow advice on shielding, though should still take particular care to follow the [social distancing guidelines](#), by keeping 2 metres away from others wherever possible or [1 metre, plus other precautions](#).

The government advises that people in the CEV group can return to work, as long as the workplace is COVID secure, but employers should support CEV employees to work from home in the first instance. Consideration should also be given to requests from employees to be based at a site other than their usual workplace.

Now that national shielding has been paused, where it is not possible for workers to work from home, employers must regularly review their [risk assessment](#), and do everything reasonably practicable to protect those workers from harm.

There will be circumstances in which outbreaks of COVID in specific geographic areas will require [local restrictions](#) that may include the [reintroduction of shielding](#) and therefore the requirement for people in the CEV and / or CV groups to remain at home.

If workers were previously in the shielded categories, it should be made clear what steps are being taken to protect them, for example discussing an option to reassign them to tasks where stringent [social distancing guidelines](#) can be followed if that cannot be assured in their normal role. This also applies to workers living with someone in the shielded group.

Clinically Vulnerable (CV)

Some people, including those aged 70 and over, those with certain underlying conditions and [pregnant women](#), are clinically vulnerable, meaning they may be at higher risk of severe illness from coronavirus. As restrictions are continued to be eased, this group should take particular care to minimise contact with others outside their household, so homeworking may continue to be an important option. Consideration should also be given to requests from employees to be based at a site other than their usual workplace.

As advised previously in NJC circular dated 12 June:

If an employee expresses concerns about returning to the workplace it is important that their manager and / or HR ascertains and seeks to address the reason for the concerns and carries out an individual risk assessment. Concerns raised by the employee could include, but are not limited to, their BAME background, gender, age, physical or mental health conditions, other caring responsibilities, vulnerable members of the household or practicalities of uncertain childcare arrangements.

Employees may also have concerns about [using public transport](#) to get to and from work, so consideration should be given to staggered start and finish times to help avoid having

to travel at peak times. Consideration should also be given to requests from employees to be based at a site other than their usual workplace if this were to facilitate more convenient travel arrangements, for example.

Employers should begin careful conversations by recognising that NHS research shows that around 30% of staff may suffer from post-traumatic stress disorder and similar challenges in the wake of the pandemic crisis. Occupational therapy, employee assistance programmes and other services should be brought into play as part of planning for help for employees with problems.

The employer should be able to demonstrate that all necessary actions have been taken to ensure that everything reasonably practicable has been done to minimise risk.

The government advises that employers should carry out a risk assessment in line with [HSE guidance](#) and consult with employees or trade unions and then share the results of the risk assessment with employees on your website. Separate workplaces should be risk assessed accordingly, eg. offices, depots, call centres etc which may require specific COVID-related risks to be addressed.

To confirm that you have complied with the government's guidance on managing the risk of COVID-19, this [poster](#) should be displayed in a prominent position in each workplace.

If everything has reasonably been done to address an employee's concerns, and action taken accordingly, but they still refuse to attend work, this may constitute unauthorised absence or partial performance (ie. where they are only prepared to carry out certain tasks rather than their full range of duties). The manager should explain the individual's contractual obligations and the potential consequences of refusing to work, including, in extremis, the risk of withdrawal of pay. If there is still no change in the individual's position, the manager should seek immediate advice from HR who should ensure an appropriate and consistent approach is taken across the organisation. The employee should also be reminded of their right to seek advice from their trade union representative.

However, if an employee has expressed concerns that have not been addressed and they reasonably believe their health and safety is at serious and imminent danger then they have rights under Sections 44 and 100 of the Employment Rights Act 1996 not to face a detriment (or dismissal) for failing to attend an unsafe workplace.

Yours sincerely,

Naomi Cooke

Naomi Cooke
Employers' Secretary