

# Back to School

## HR and employment FAQs

March 2021

## Contents

Long COVID.....	2
Vaccines .....	3
Annual leave.....	5
Performance management.....	7
Risk assessments.....	8
Clinically Extremely Vulnerable .....	9
Anxious employees .....	12
Face coverings .....	15
Recruitment .....	17
Contact us .....	21

# Long Covid

## What is long Covid?

For some people, coronavirus can cause symptoms that last weeks or months after the infection has gone. This is sometimes called post Covid-19 syndrome or "long Covid".

How long it takes to recover from coronavirus is different for everybody. Many people feel better in a few days or weeks and most will make a full recovery within 12 weeks. But for some people, symptoms can last longer.

The chances of having long-term symptoms does not seem to be linked to how ill the individual is when they first get coronavirus. People who had mild symptoms at first can still have long-term problems.

## What do we do if an employee is absent due to having symptoms of long Covid?

Providing that the employee is no longer infected with Covid and testing positive, then you should treat this absence as normal in line with your sickness absence policy.

We would advise that you seek occupational health guidance and look at implementing any reasonable adjustments and supporting the employee to return back to work.

## If an employee is off with long Covid symptoms, would this count towards absence triggers in line with our sickness absence policy?

Yes, the absence would count towards sickness absence triggers as outlined in your policy. It is likely that the employee would be absent on a long-term basis and it would be unreasonable not to manage the absence and for the employee to be off indefinitely. Therefore, you should manage the absence as you would any other long-term absence. If your policies have been amended to discount Covid-related absence from absence triggers, then you should revisit this wording to ensure that it doesn't inadvertently include long-Covid.

There is the potential that long Covid may be considered to be a disability under the Equality Act 2010 if it is deemed to meet the criteria of a 'physical or mental impairment' that has a 'substantial' and 'long-term' negative effect on an individual's ability to do normal daily activities. Therefore, employers need to be mindful of treating employees in a non-discriminatory way, as well as making reasonable adjustments where possible as otherwise there may be the risk of discrimination claims further down the line. This may include adjusting the sickness absence triggers as a reasonable adjustment.

Any legal argument about whether or not long Covid would be defined as a disability would be determined by an Employment Tribunal.

## Can we dismiss an employee who is absent due to long Covid if we have exhausted the stages in our sickness absence policy?

We would advise that you contact us if you are at the stage of considering dismissing an employee due to long Covid so that we can provide a legal view of the risks associated with the dismissal.

As above, we also do not yet know how Employment Tribunals will view dismissals linked to Covid-19 and therefore there may be risks of unfair dismissal/discrimination claims if not managed correctly.

# Vaccines

## Should employers mandate staff to have the Covid-19 vaccination?

Some employers may want staff to be vaccinated (when widely available) to reduce health and safety risks within the workplace. However, relying on health and safety to justify such a requirement may be difficult for many employers as it would not be in line with the Government's advice on the vaccine. They have said they are not making vaccinations mandatory for UK citizens. The Government guidance says that an individual should be given enough information to enable them to make their own decision regarding vaccinations.

The starting position would be to assess whether it is a fair and proportionate measure to take. For example in special schools where there may be particular health risks for some students, it may be more reasonable for employers to mandate staff to have the vaccine. However, you should take advice on potential risks before taking a decision to make vaccination mandatory.

## What are the risks of making the vaccination mandatory?

Making vaccinations mandatory for staff may leave you at risk of employment claims being brought against you.

For example, these claims could include discrimination allegations from staff who have decided not to have the vaccination (for example on religious grounds, health grounds or because they are pregnant) and feel that their personal views and/or beliefs or health has not been considered.

Likewise, if staff refuse to be vaccinated and are dismissed as a result, this could lead to claims for unfair dismissal (if they have the required two years' service).

## What should employers do?

For the majority of employers, it would be appropriate to provide staff with the facts including links to Government and NHS website links; this will allow them to make their own decision on whether to have the vaccination.

Employers may also encourage and recommend staff to have the vaccination. A lot of employers have already publicly set out their support for the vaccine and have played their part in supporting the public message that we all need to be vaccinated. But it is more than that. Health and safety legislation obliges employers to take reasonable steps to ensure a safe working environment. It is likely that encouraging staff to be vaccinated is a reasonable step in ensuring your working environment is as safe as it can be for all your staff and customers.

## So practically how do you encourage staff to have the vaccination?

Why not hold a webinar, deliver a podcast and/or send a global email? Whatever you feel is the right way to send a message to your staff - one that works for you.

- What information should your message include?
- Start with informing staff of your support for the Government's vaccination plan and why.
- You may want to discuss the vaccination rate and the momentous achievement that is being realised by the NHS. Vaccines are the way out of this pandemic and there is no doubt that your staff are looking forward to life returning to normal.

Provide staff with the facts. For example, the Oxford University/AstraZeneca being used in the UK have undergone robust clinical trials and have met the Medicines and Healthcare products Regulatory Agency's strict standards of safety, effectiveness and quality.

Put together a company vaccination policy setting out your support.

### **An employee has had a dose of the vaccine and is now absent from work due to feeling poorly, how do we manage this absence?**

Since it will affect everyone differently, our advice is that it should be classed the same as any other illness. For example, if someone had an adverse reaction to the yearly flu jab, the absence wouldn't be treated any differently.

We would advise that you clarify with staff that it will be paid as sick pay (rather than full normal pay) but that the absence would not count towards triggers for absence management purposes. This is because it may be considered unreasonable to do so and may stop someone from wanting to having the vaccine.

### **Do Clinically Extremely Vulnerable employees still need to shield after having the vaccine?**

Yes. The guidance states that, *"Even if you have had both doses of the vaccine, you should continue to follow shielding advice, until further notice as we continue to assess the impact of vaccination among all groups"*.

# Annual Leave

## What should I do about employees who have a holiday entitlement and are needed to work during term time?

The latest Department for Education (DfE) guidance<sup>1</sup> states that employees will need to be available to work in school during term time. However they recommend that discussions on leave should take place in schools so that the school can ensure they have effective workforce planning in place i.e. the right numbers of the right kinds of staff in place to deliver the services. This also needs to be balanced against the employees having an entitlement to take leave as per their contract.

[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/920904/2020\\_STPCD\\_FINAL\\_230920.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/920904/2020_STPCD_FINAL_230920.pdf)

## Can an employee carry forward holiday due to Covid-19?

Yes, but this is unlikely for most school employees. Last year, new regulations were published that allowed employees to carry forward four weeks of their statutory annual leave entitlement (5.6 weeks). However, the circumstances in which such leave can be carried forward are limited; it can only be carried forward where it is 'not reasonably practicable' for the employee to take that leave as a result of the effects of coronavirus. Any carried forward leave must be used in the next two leave years. Payment in lieu cannot be made for this holiday, except where employment terminates.

It is unlikely that those individuals working in a school will be prevented from taking their leave. You should already be thinking about those employees and when they can take their holidays; you should certainly be encouraging your employees to book leave as normal (see below). It will not be acceptable for employees to save leave up where for example they have been working from home, or where they would prefer to travel abroad when restrictions are reduced. If an employee believes that they will be unable to take their leave they should discuss this with their line manager. However, employers should be saying to employees that they are expected to request and take leave as normal particular during normal closure periods, rather than saving it up.

It may be that a few employees are unable to take all their remaining annual leave before the end of the leave year. For example, you could have an increased workload because of the coronavirus situation or they have not been able to take annual leave because they have been sick or self-isolating. In such situations, you could agree to suspend your usual rules that they lose any unused annual leave not taken by a certain time or they can only carry over a maximum number of days to the following leave year. That way you can be ensure work is covered but you are also supporting your staff.

## Can I tell my staff when to take leave?

Yes you can and it may be that you will have to do this if employees are not booking leave for the forthcoming holidays and they therefore accruing leave. Even though things are not back to normal as yet, you should still be encouraging your employees to take holiday as they normally would; they still need to have a break from work which is a legal requirement. Therefore, you do have the right to tell your employees when to take holiday. To do so, you must give twice as many days' notice for the number days leave that you want them to take. For example, if you want them to take five days leave at Easter you would need to give them 10 days' notice of this prior to the Easter holidays.

This will ensure that your employees are taking holiday during the normal 'holiday' period and are not building up too much holiday that could then impact on service delivery at a later point in the year.

---

<sup>1</sup> [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/920904/2020\\_STPCD\\_FINAL\\_230920.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/920904/2020_STPCD_FINAL_230920.pdf)

When we are able to travel aboard again for holidays, what happens if employees go abroad and when they return they need to quarantine in a hotel and are not able to come back to school?

Your employees should be available to work in school from the start of the new term including the new academic year in September. Therefore, you may wish to remind them that they will be expected to return to work after the holidays and they should make sure they arrange their holidays accordingly.

However, there may be an exceptional reason (for example a visit to a sick relative), where they have had to travel at the end of the holidays resulting in them needing to quarantine during term time. If this was to happen, and you would like advice on a particular situation, please contact us.

# Performance Management

## How should we manage the appraisal process at this time?

The government guidance is clear that for maintained schools they must continue to follow STPCD and ensure all pay progression is linked to performance management. Although academies are not bound by the same regulations, their pay policy may require that pay progression is linked to performance in the same way.

The guidance advises that schools adapt their performance management and appraisal arrangements to suit the current situation particularly where it is impacting on being able to fully meet objectives. Teachers should not be penalised during the appraisal process or with any pay decision due to the restriction of pupil attendance at school.

To support this, you may have already looked at different objectives or ways of assessing performance, for this current cycle taking into account what is happening this year.

We advise that you consider adapting your appraisal process this year, bearing in mind that for a proportion of it there has been remote learning. You may need to revise objectives again and this is perfectly reasonable under the circumstances where exams and normal learning has been disrupted.

For the appraisal review to take place later on in 2021, you may wish to:

- Decide on what period of time will be used to make decisions in relation to performance related pay (if the full year is not counted)
- Determine that where performance is below expectations, whether there has been sufficient opportunity to demonstrate improvement due to the current situation
- Make it clear that no one will be expected to create new evidence to demonstrate progression against objectives as the evidence should already be available

In relation to support staff, you should continue carry out any appraisals and performance management in accordance with the employee's contract of employment or any policy that you have in place.

You should consider whether you need to adjust the process, for example conducting remote appraisals for any employees who are still home-based or putting additional safety measures in place for face-to-face appraisal meetings.

# Risk Assessments

## Do we need to review our Covid-19 risk assessments?

As schools are reopening from the 8 March to all pupils it is advised to review and update your Covid-19 risk assessments in advance of the school fully opening to staff and pupils to ensure that they are compliant with the latest government advice and the Health and Safety Executive (HSE) guidance on ensuring your workplace is a safe environment for staff and pupils and to identify any further improvements that need to be taken:

<https://www.gov.uk/government/publications/actions-for-schools-during-the-coronavirus-outbreak/annex-a-health-and-safety-risk-assessment>

<https://www.hse.gov.uk/coronavirus/working-safely/index.htm>

Government guidance on the additional measures required will be in place until Easter when we can expect further guidance to be issued at that point. Remember that risk assessments are not fixed in stone and should be kept under review.

## Who should the school consult with when amending the risk assessment?

Employers should ensure that they consult with Trade Unions and employees on measures that have been put in place to ensure the workplace is Covid secure in good time prior to the full re-opening of schools on the 8 March. It is also sensible to ensure that pupils and parents are involved where possible so they can understand why the measures have been put in place. The risk assessment should be shared with all employees and Trade Unions and it should be noted that the HSE expects all employers with over 50 employees to publish the risk assessment on their website to ensure transparency.

## What areas of the risk assessment do I need to particularly review?

The majority of the guidance for measures have not changed since the autumn term but in order to further strengthen the measures in place and in response to the new highly infectious variants of Covid-19 amended guidance has been issued.

The specific areas of the risk assessment that need reviewing based on amended government guidance are as follows:

- Face masks for secondary age pupils and staff
- Mandatory attendance in different school phrases
- Clinically Extremely Vulnerable (CEV) pupils and staff
- Curriculum expectations
- Elective home education
- Exams
- Vaccinations
- Testing

It is important that any amendments to the risk assessments are highlighted to pupils, staff, parents and trade unions as appropriate in good time prior to the 8 March.

# Clinically Extremely Vulnerable (CEV)

## **The employee is clinically extremely vulnerable - can we insist that they return to work onsite?**

No, formal shielding measures remain in place for CEV people. The government guidance states *“CEV staff are advised not to attend the workplace. Staff who are CEV will previously have received a letter from the NHS or their GP telling them this (no new letter is required).”*

The employee should be supported to work from home. If it is not possible for their role to be done at home, you should explore whether they can take on an alternative role temporarily whilst working at home, or if this is not possible then they should not attend work. CEV staff in publicly funded roles should continue to be paid on their usual terms. If they are engaged in privately funded roles, it may be possible for them to be furloughed.

At present, guidance is that shielding will remain in place until at least 31 March 2021. This is set to be reviewed regularly, and further extensions may apply.

## **Can CEV employees return to work on site if they have had the vaccine?**

No. Current advice is that CEV individuals should continue to shield even after they have been vaccinated.

## **What if an employee refuses to attend the workplace because they live with someone who is classified as a CEV?**

Current guidance is that employees who live with someone who is CEV can still attend work where home working is not possible and should ensure that they maintain good prevention practice in workplace and home settings.

However, if resource allows and the education provision is not affected then you may want to treat the employee as if they are CEV themselves as this avoids complex arguments about associative discrimination rights; rights under section 44 and section 100 of the Employment Rights Act 1996 also extend to dangers faced by others and this could therefore include those within the employee’s household/bubble.

## **The employee is clinically vulnerable - can we insist that they return to work onsite?**

Yes, providing you follow the guidance. The government guidance states: *“Clinically vulnerable staff can continue to attend school. While in school they must follow the system of controls to minimise the risks of transmission.”*

This includes taking particular care to observe good hand and respiratory hygiene, wearing face masks where recommended, minimising contact and maintaining social distancing. This provides that ideally, adults should maintain two metre distance from others, and where this is not possible additional control measures should be implemented.

## **The employee is pregnant - can we insist that they return to work onsite?**

Yes, providing you follow the guidance. Pregnant employees are classified as clinically vulnerable. They are able to return to work provided they can social distance using two metres. Ensure there is a risk assessment in place and as part of this consider the safest possible roles available in school or if none are available consider alternative work that could be delivered from home.

Be mindful that in some cases pregnant women may also have other health conditions that mean they are considered CEV, where the advice for CEV employees will apply.

Pregnant women from 28 weeks gestation may also be at greater risk of severe illness. As such, you should take an even more precautionary approach. As above, you should ensure the employee is able to adhere to social distancing and if this is not possible consider whether the employee can work from home/undertake alternative work from home.

Where social distancing cannot be guaranteed onsite, and working from home is not possible, the pregnant employee may be suspended on paid leave.

### **The employee is concerned that their characteristics place them at a higher risk from coronavirus - can we insist that they return to work onsite?**

The government guidance states *“current evidence shows that a range of factors mean that some people may be at comparatively high risk from coronavirus (Covid-19). Those at particularly high risk from a range of underlying health conditions should now have been included in the CEV group and will be receiving a letter to confirm this.”*

There is ongoing research to understand different factors and risks. For others who feel that they may be at increased risk, provided the system of controls are in place, these staff can return to work onsite. It is important for school leaders to communicate with staff about how they are controlling risks more widely and ensure that you understand the specific concerns an individual employee has; communicating how you have resolved these or why they are not applicable.

### **Can supply staff and other temporary or peripatetic staff return in the normal way?**

The guidance states that supply teachers and other visiting staff such as temporary and peripatetic are able to move between schools. So you may continue to use such groups. You should ensure that such staff follow your school's arrangements for minimising risk and you should make them aware of these as soon possible after booking.

### **Can we deploy staff and use them more flexibly on return?**

Due to resource challenges you may indeed need use existing teaching and support staff more flexibly, although you do need to ensure that any redeployments do not impact the support of pupils with SEND.

All changes should be discussed with the staff member and as long as the Head teacher is satisfied that the staff member has the skills or expertise to carry out the work the guidance allows for this, that is after ensuring all appropriate checks are made for engaging in regulated activity. Staff who are not teachers may be deployed to lead groups but under the direction and supervision of a qualified teacher.

### ***Increased number of people who have been told to shield until the end of March***

### **What do we need to consider for CEV staff now that the previous shielding guidance has been extended until 31 March?**

New technology has been introduced in England to help clinicians identify, for the first time, a new group of people who may be at high risk from Covid-19. This has led to more people identified as CEV and therefore more susceptible to developing Covid-19.

If this means you now have a higher number of employees who have been told to shield (who are CEV) and advised not to attend the workplace, you may find that you have a shortage of staff in some areas once all pupils return on 8 March 2021. You should explore whether staff who are CEV can work from home but if not, whether their work can be redistributed to other employees. Some schools are operating with a teaching assistant in the classroom with the students whilst a CEV teacher delivers lessons remotely. Another option is to cover work using temporary or agency staff.

You should continue to pay CEV staff on their usual terms.

### **If an employee who is CEV wants to return to work onsite can we allow them to?**

The Government strongly advises that people who are CEV should work from home if possible, and if they cannot work from home they should not attend work.

Our advice is that staff who are CEV should not attend the workplace, even if they offer to provide a written waiver - an employee waiver/agreement will not protect against criminal proceedings by the HSE.

# Anxious employees (section 44 and 100)

## **We have employees who are too scared and anxious to return to work for fear of having an increased exposure to the coronavirus. What can we do?**

It is understandable that some staff will feel varying degrees of anxiety returning to the workplace. All employers have a duty of care to their employees, and this extends to their mental health. Make sure you have explained to all staff the measures you are putting in place. Discuss with all staff any changes in place as part of these measures.

Some staff may be particularly anxious about returning, and you may need extra systems in place to support staff wellbeing. Education Support provides a free helpline for school staff and targeted support for mental health and wellbeing:

<https://www.educationsupport.org.uk/>

MindEd have also developed a coronavirus (Covid-19) staff resilience hub with advice and tips for frontline staff:

<https://covid.minded.org.uk/>

Now that there is an agreed date for all pupils to return to school these staff may not have a right to full pay and if they do not attend work despite measures taken and evidence of you acting reasonably, then as a very last resort you could consider taking disciplinary action. Our advice is that you consider each case individually, take any health and safety concerns very seriously and seek advice.

As always it is vitally important to keep reviewing the situation and reassuring through regular communication.

## **What do section 44 and section 100 of the Employment Rights Act 1996 (ERA) involve?**

Employees have the right not to suffer a detriment or be dismissed (including constructive dismissal) for leaving work or refusing to return to work when they have a reasonable belief that they are in serious and imminent danger (section 44(1)(d) and 100(1)(d)). Employees have similar rights not to be subjected to a detriment or dismissed for taking appropriate steps to protect themselves or other persons from danger (section 44(1)(e) and 100(1)(e)).

## **What can we do to mitigate section 44 and section 100 being used by employees?**

Due to an increased number of employees and pupils now being categorised as CEV meaning less staff on site, vaccinations not yet being rolled out to all employees and the new variants of Covid-19, unions may again support employees who refuse to work or take other appropriate steps under section 44 and section 100 of the ERA dependant on the reasonableness of their own view about the danger, considering what they know and have been told. Therefore, it is important for school leaders to communicate with staff about how they are controlling the risks by sharing the updated risk assessments and FAQs following the latest government advice.

Furthermore, it is important to train staff on their own health and safety duties and responsibilities and how to protect themselves and others, including encouraging staff to participate in testing and having the vaccine when available to them. It is also important to inform staff that they must remove themselves from obvious danger (e.g. people not following social distancing guidance or not wearing a face covering when social distancing can't be maintained). Taking these steps will help reduce the risk of negligence claims over the behaviour of others. Furthermore, it will help staff avert danger without having to leave the workplace under section 44 of the ERA.

Leaders should take action against those who are not following the guidance and putting others at risk as this limits the risk of employer's vicarious liability for others' actions. It also removes the serious and imminent threat of danger to employees and therefore limits an employee's ability to refuse to work in the workplace because of what others may be doing. This is particularly challenging if the employee's concerns are about the behaviour of children.

It is important that you act quickly to rectify legitimate safety concerns raised through your workplace reporting channels. This will help to mitigate any negligence claims and also show that your speed of response works to remove any serious/imminent danger. If the serious/imminent danger is mitigated through risk assessment and measures introduced, then it could be argued that the employee no longer needs to leave the workplace.

You will also need to make sure that you understand the specific concerns that the individual employee has - it will be important for you to communicate how you have resolved those concerns (or explained why they are not applicable) as it makes it less likely for the employee(s) to justify any continuing refusal to attend the workplace.

## **If an employee decides to follow union advice and refuse to attend work on the ground of section 44 and section 100 what will this mean for:**

### **a) their pay?**

If an employee is refusing to attend work on the grounds of section 44 then it will come down to the reasonableness of their own belief that they will be in danger if they were to attend work. It is our advice that you maintain full pay until you are in a position where you are confident that it is no longer reasonable for the employee to believe they face serious/imminent danger in the workplace.

If you have followed steps to inform employees of the reasonably practicable steps taken to mitigate risks in accordance with the latest government guidance and provided instruction to staff in order that they can safeguard themselves in the workplace without having to remove themselves from the workplace, then it is likely that you will be able to raise confidence quickly that it is no longer reasonable for the employee to believe they face serious/imminent danger upon returning to work. This should help to bring matters regarding section 44 to a close sooner rather than later. Whilst the employee refuses to attend the workplace, they can still carry out work and you may decide to give them work to do from home.

If you are not confident that you can argue that it is no longer reasonable for the employee to believe that they face serious/imminent danger in the workplace, then you may need to continue reviewing your risk assessments and instead put in place alternative work arrangements so that the employee is not absent from work and is instead working from home, or you may decide to require the individual to work in other environments or other situations where the risk has been reasonably practicably mitigated (e.g. where bubbles have closed earlier in the year, the teacher has attend the workplace and delivered teaching in the classroom to pupils via virtual means, e.g. Teams/Zoom/Google Classroom). An employee whose pay is maintained in these circumstances has suffered no detriment for the purposes of a claim under section 44 of the ERA or indeed under whistleblowing. This will minimise the risk of unlawful deductions from wages and constructive unfair dismissal claims.

### **b) how their absence will be managed and what action can be taken to tackle it?**

As explained above it is possible that you will be able to raise confidence quickly that it is no longer reasonable for the employee to believe they face serious/imminent danger upon returning to work. Conversations can then take place about bringing the employee back into the workplace. This is not without its challenge as it is likely that the employee will be feeling incredibly anxious and it will require a great deal of leadership to work with the employee, to reassure them that you have their best interests at heart and that you are committed to continually reviewing the health and safety aspects of the workplace. Employers have a duty of care regarding employee wellbeing as well, so it is important to keep reviewing the situation and reassuring through regular communication.

If you decide that the employee should work from home, then the employee will not be absent. You will just need to keep working arrangements under regular review.

If the employee decides to get signed off from work by a GP on mental health grounds, then you will need to manage the absence in line with your sickness absence procedures. The employee will receive normal sick pay.

If the employee cannot work from home and also won't attend the workplace and you have done all you can to both reassure the employee and reasonably and practicably mitigate risks, then we would advise you to contact us for specialist legal advice. Moving to formal action should be done carefully and not without specialist legal advice first.

### **What if an employee refuses to attend the workplace because they live with someone who is CEV?**

The government has recently reviewed the CEV group of individuals with underlying health conditions that may be at an increased risk of Covid-19 and have written to these individuals to confirm this. For staff who live with someone who is now classed as CEV, the government guidance states that these employees can continue to attend the workplace where it is not possible to work from home. However, if resource allows and the education provision is not affected then you may want to treat the employee as if they are CEV themselves as this avoids complex arguments about associative discrimination rights; rights under section 44 and section 100 of the ERA also extend to dangers faced by others and this could therefore include those within the employee's household/bubble.

What if due to the increased number of CEV individuals there is not sufficient staff working within the school to keep it open? Firstly, the school should do all it can to obtain staff and remain fully open or partially open if possible. Failing this the school would not be safe to be open for onsite attendance and a partial or full closure would be reasonable in the circumstances. Although any decision to partially close or fully close should be kept under constant review and advice should be sought prior to any decision to partially close or fully close due to health and safety grounds relating to Covid-19. It is also important to note that under the Coronavirus Act 2020 the DfE does have powers to issue directions to schools to required them to open to on site attendance which could be enforced by an injunction if not ultimately followed and this should be taken into account before making a final decision.

### **What if an employee refuses to attend as they have not yet had the vaccine or because they refuse to have the vaccine?**

For those employees who refuses to attend as they feel at increased risk as they have not yet had the vaccine or because they refuse to have the vaccine for medical, religious or other grounds should be reassured of the measures in place in accordance with recent government guidance. Additionally, an individual risk assessment should be carried out for them if applicable that includes putting in place additional measures such as extra PPE. The school should also consider if it is possible to allow the employee to work from home and encourage the employee to have the vaccine if they are refusing to take it.

# Face coverings

## What is the latest Government advice on face coverings?

The latest Government guidance applies to schools and other education institutions in England from 8th March 2021 and will be in place until Easter. The guidance states:

*“Where pupils in year 7 (which would be children who were aged 11 on 31 August 2020) and above are educated, we recommend that face coverings should be worn by adults and pupils when moving around the premises, outside of classrooms, such as in corridors and communal areas where social distancing cannot easily be maintained. Face coverings do not need to be worn by pupils when outdoors on the premises.*

*In addition, we now also recommend in those schools, that face coverings should be worn in classrooms or during activities unless social distancing can be maintained. This does not apply in situations where wearing a face covering would impact on the ability to take part in exercise or strenuous activity, for example in PE lessons.*

*In primary schools, we recommend that face coverings should be worn by staff and adult visitors in situations where social distancing between adults is not possible (for example, when moving around in corridors and communal areas). Children in primary school do not need to wear a face covering.”*

## What should I do if an employee refuses to wear a face mask?

School leaders should revise rules and policies that set out the standards and expectations for all its employees to include the use of face coverings and masks in school. The requirement to wear a mask should be included in the Health and Safety policy and Code of Conduct Policy for example and any unreasonable breach of these rules should be investigated under the disciplinary policy.

Some individuals are exempt from wearing face coverings and school leaders will need to communicate the need for staff to be sensitive to those needs, noting that some reasons may not be visible to others. This applies to those who:

- Cannot put on, wear or remove a face covering because of a physical impairment or disability, illness or mental health difficulties.
- Speak to or provide help to someone who relies on lip reading, clear sound or facial expression to communicate.

Transparent face coverings can be used to assist with pupils or staff that relies on lip reading, clear sound or facial expression to communicate. It should be noted that there is an exemption to wear a face covering for any individual that need visual signals for communication or support individuals that need visual signals for communication and for those individuals with a physical impairment or disability, illness or mental health difficulties.

## Do we need to provide masks to employees?

No, unless it has been provided as a reasonable adjustment on account of a disability. It's reasonable to expect that employees provide their own masks, however, should their mask become soiled during the school day, lost or damaged, every school should have a small contingency supply to provide. You should remind staff not to touch the front part of their mask, and to wash their hands before and after putting their mask on.

### **What if staff wear branded or themed face masks?**

Subject to the guidance above you can specify what you consider to be acceptable in terms of style, branding and theme. For example, you may decide to specify that masks should be non-offensive, without any pictures or slogans.

A logical approach would be to try and mirror your staff dress code - no branding etc.

### **What if staff do not stick to social distancing measures generally?**

Unless there are specific reasons not to follow social distancing measures, then it should be dealt with immediately by reminding staff of the guidance and risks in not following it.

Continued breaches of safety measures could result in disciplinary action, but as above please seek advice before continuing down this route.

### **How should face masks be disposed of and stored?**

Government guidance says that face masks should be safely stored in individual, sealable bags between use. Reusable face masks should be stored in a plastic bag until you have an opportunity to wash them. If the face mask is single use, dispose of it in a residual waste bin. Do not put them in a recycling bin. Make sure you clean any surfaces the face mask has touched using normal household cleaning products.

# Recruitment

## How can we recruit as safely as possible?

The current pandemic does not mean that you cannot carry out a thorough interview remotely, either by telephone or video call. Holding an interview is still an essential element to ensure safer recruitment and should be as robust and structured as it would be if you were conducting it face to face; for example, you should still have someone on the panel who has been suitably safer-recruitment trained. You should still explore suitability in terms of working with children. Therefore, online interviews can be just as valid as face-to-face ones.

However, if you are conducting a video interview, there are a few important things to consider ahead of the interviews:

- Ensure you have appropriate technology in place and that those staff conducting the interviews are fully conversant with how it works. Test your technology: audio and camera settings and internet connection (have a trial run first).
- Ensure you send the interview details to the applicant including any link and/or pin to access the online interview on the day. This can be sent in advance via email.
- Build in time prior to the start of the interview so that all those participants have time to log on.
- Provide the applicant with a guidance document (see below) so they understand the format of the interview and how it will be conducted.
- Find a quiet space with a plain backdrop (nothing that would distract the candidate), no background noise and plenty of natural light.

If the applicant has disclosed details of reasonable adjustment(s) they require to this stage of the recruitment process, make sure these are put in place to ensure a fair selection and interview process.

At the start of the interview check the applicant's DBS and right to work documents (see guidance below), explaining the purpose of this temporary change to the process.

Remember, throughout the interview speak slowly and clearly to the applicant to ensure they can hear and understand you. Try to not to be put off by the internet dropping in and out.

## *The process*

The purpose of selection is to assess the skills, experience and general background of a candidate in order to decide on whether that person is a suitable person for a job role. Combining several selection methods increases the validity and reliability of the decision. You should therefore continue to include various selection activities.

### **For teachers, the assessment process could look like:**

A timed presentation (say 10 minutes) on a set topic to either be submitted or recorded in advance of the interview or that can be presented during the online interview. This may include a Q&A. This will assess the applicant's presentation and communication skills. Another option is to ask the candidate to submit a recording in advance of the interview of them delivering an extract of a lesson.

OR

Asking them in advance to answer and submit a case study, for example based on behaviour management, sent to the applicant ahead of the interview, to assess their strategies of dealing with poor behaviour as an alternative to teaching a class in real-time.

OR

A lesson plan submitted ahead of the interview plus a Q&A during the online interview.

AND

An online panel interview.

**For Teaching Assistants, the assessment process could include:**

A case study sent to the candidate and to be returned ahead of the interview to assess their communication and behaviour management skills.

OR

A case study with a range of responses presented to the applicant during the interview for them to choose their most likely and least likely response and an explanation why.

AND

An online panel interview.

**For support staff, the assessment process could include:**

An in-tray exercise, sent to the candidate and to be returned ahead of the interview to assess their organisational, prioritisation and problem-solving skills.

AND

An online panel interview.

**For Headteachers, the assessment process could include:**

A timed presentation on a set topic to either be submitted or recorded in advance of the interview plus a Q&A during the online interview. This will assess the applicant's presentation and communication skills.

AND/OR

A case study, for example a data and/or finance task, submitted in advance of the interview plus a Q&A.

AND/OR

An online panel interview.

Consideration should be given at the earliest opportunity if there is a post where a practical exercise is necessary to assess the applicant's suitability for the post and you are unable to assess these skills any other way, for example a catering post. We recommend you include in the offer letter that a practical assessment will be arranged with the individual at the school as soon as it is safe to do so and that any offer is therefore subject to satisfactory completion of the practical assessment together with pre-employment checks.

If face-to-face interviews are necessary, you should share the school's control measures in advance and make it clear to candidates that they must follow the system of controls that you have in place. This includes any requirements for wearing face coverings where social distancing cannot be managed safely.

You still have a duty to follow safer recruitment processes in these unprecedented times, including, as appropriate, relevant sections in Part 3 of KCSIE.

### ***Temporary changes to DBS checks:***

In response to Covid-19, the DBS has made temporary changes to standard and enhanced DBS ID checking to minimise the need for face-to-face contact. This note from the DBS explains the temporary changes that came into effect on 24 March 2020.

These changes enable ID documents to be viewed over the video link and scanned images can be used in advance of the DBS check being submitted.

However, the change should only be implemented for urgent cases where it is not possible to follow the normal identity checking guidelines. The applicant will then be required to present the original versions of these documents when they first attend their employment or volunteering role.

Where you are utilising volunteers, you should continue to follow the checking and risk assessment process as set out in paragraphs 183 to 188 of KCSIE. Under no circumstances should a volunteer who has not been checked be left unsupervised or allowed to work in regulated activity.

### ***Right to work checks***

Right to work checks have also been temporarily adjusted due to Covid-19 to make it easier for employers to carry them out. The most recent Home Office guidance was issued on 17 December 2020.

On a temporary basis, checks can now be carried out over video calls or in person, however in both cases you must be in physical possession of the original documents. For example, an individual may choose to send their documents to you by post to enable you to conduct the check with them via live video link. You may not rely on the inspection of the document via a live video link or by checking a faxed or scanned copy of the document.

### ***Probationary clauses***

The social distancing causes problems for assessing suitability, so we advise that when appointing new external staff currently, you consider changing your probationary clause to allow a longer period to assess suitability. Where a contract has

already been issued, you may still want to extend the probationary period. The method by which you can extend probation will depend on whether the employee's contract of employment allows you to extend the probationary period.

If the contract doesn't provide the right to extend probation, then you can still extend it but will need the individual's agreement to do so.

If the member of staff does not agree with your decision/recommendation, take further advice before deciding on whether to terminate.

# Contact us

---

## Birmingham office

Victoria House  
Victoria Square  
Birmingham  
B2 4BU

+44 (0)121 237 3900  
+44 (0)121 236 1291

---

## Exeter office

1st Floor  
The Mount  
72 Paris Street  
Exeter  
EX1 2JY

+44 (0)370 270 6000  
+44 (0)1392 458801

---

## London office

15th Floor  
6 Bevis Marks  
London  
EC3A 7BA

+44 (0)20 7337 1000  
+44 (0)20 7929 1724

---

## Manchester office

14th Floor  
No.1 Spinningfields  
1 Hardman Square  
Spinningfields  
Manchester  
M3 3EB

+44 (0)370 270 6000  
+44 (0)161 375 0068

---

## Nottingham office

Mowbray House  
Castle Meadow Road  
Nottingham  
NG2 1BJ

+44 (0)115 976 6000  
+44 (0)115 947 5246



