Advice for SE Branch Officers and Reps regarding members with specific vulnerabilities and/or concerns about returning to the workplace.

Consultation:

It is important that employers consult with members and their unions as early as possible regarding returning to the workplace, particularly before any decision is made. These meetings should include details about risk assessments, reasonable adjustments if applicable, members concerns, mitigation and flexible working. Ultimately our members should feel completely reassured about their safety.

The Union's position:

The Union's position is that working from home should remain an option for members, particularly those members who are vulnerable and anxious. Indeed, even the government's guidance to FE, whilst slightly ambiguous states:

'Following the reduction in the prevalence of coronavirus (COVID-19) and relaxation of shielding measures from 1 August, we expect that most staff will attend work. It remains the case that wider government policy advises those who can work from home to do so. We recognise this will not be applicable to most staff, but where a role may be conducive to home working, for example, some administrative roles, leaders should consider what is feasible and appropriate.'[1]

Therefore, employers should, at the very least, see working from home as a reasonable adjustment option for those members who have self-identified concerns within their Individual Risk Assessments (IRAs)

We have identified that members who have particular concerns about potentially having to return to the workplace, broadly fall into one of three categories:

FIRST CATEGORY: Those who were shielding up until the 1st August 2020. The Government describes them as *'clinically extremely vulnerable'* and include:

- Solid organ transplant recipients
- People with specific cancers
- People with severe respiratory condition
- People with rare diseases that significantly increase the risk of infections
- Pregnant women with significant heart disease, congenital or acquired.
- Other people who have also been classed as clinically extremely vulnerable, based on clinical judgment and an assessment of their needs.[2]

[1] https://www.gov.uk/government/publications/coronavirus-covid-19-maintaining-further-education-provision/what-fe-colleges-and-providers-will-need-to-do-from-the-start-of-the-2020-autumn-term

Clinically vulnerable people include: those over 70 (regardless of medical conditions); under 70 with an underlying health condition, those with a chronic respiratory diseases, chronic heart/kidney/liver disease, those with a weakened immune system, those with a BMI over 40 and pregnant women.

Vulnerable people include both the extremely clinically vulnerable and clinically vulnerable.

It is also worth noting that some institutions within SE Region have already extended that list, one example being:

People in certain cohorts may be at a higher risk of being adversely affected by COVID-19 if they contract it. This includes people who:

- *are from black and minority ethnic backgrounds*
- *are over the age of 70*
- *have an underlying health condition and/or who clinically vulnerable or extremely clinically vulnerable.*
- *are pregnant*
- *are obese*
- *act as a carer for someone who is extremely clinically vulnerable.*

Equality law

In addition to their Health and Safety obligations employers must also ensure that they are complying with the Equality Act 2010. Where a member is disabled under the Act the employer should also consider any **reasonable adjustments** which could include working from home. It is important that members are referred to OH to determine whether they are disabled within the meaning of the Equality Act. If members are able to provide other medical evidence from their GP and/or other medical practitioner that would also be helpful.

Inclusivity

Death rates and complications from COVID-19 have been significantly higher amongst people of Black and Asian ethnic groups[3]. Thus, it is understandable that some of these members might be particularly anxious about returning to the work place. It is important that the IRAs factors this in and forms a basis for meaningful consultation with the individual.

THE SECOND CATEGORY: ***Those who are particularly anxious about returning to the work place without diagnosis of any underlying health condition.***

[3] Disparities in the risk and outcomes of COVID19

Employers have a duty to treat stress in the same way as any other potential workplace hazard.

The pandemic has contributed to a significant increase in deteriorating mental-health.

Employers should undertake preventative stress risk assessment with a focus of COVID 19 in consultation with union H&S reps and employees. It should identify all potential stressors that could cause harm and suitable control measures. Some potential stressors arising out of the current health crisis could include, bereavement, financial hardship, job security, excessive workload, health concerns and concerns about new ways of working etc.[4]

Acute stress and depression might fall under the definition of disability under the Equality Act, although not an easy threshold to meet, so it is important to consider a referral to OH as early as possible to determine if this protection is available. Members should also be encouraged to obtain letters from their GPs and other medical practitioners.

THIRD CATEGORY: ***Those who live with vulnerable people.***

IRAs should take into account those that live with vulnerable individuals.

Where a member lives with someone who is disabled under the Equality Act they might benefit from some form of protection from the Act. Under the Act it is unlawful to treat someone less favourable because they associate with another who has a protected characteristic (associative discrimination). For example, it would be discrimination to treat someone less favourably because their son is disabled. It is important to identify the correct comparator which would be a worker whose relative is not disabled in similar circumstances. In the case of *Attridge law v. Coleman,* Ms Coleman complained that her employer did not allow her the same flexibility regarding her working hours to look after her disabled son, as they did her colleagues, who were parents of non-disabled children. If proven this would be direct associate discrimination. Conversely, if the employer refused everyone time off for child care, whether or not their child was disabled, this would not be associative discrimination.

For **all three categories** of employees we would encourage dialogue with the employer as early as possible.

If dialogue and discussions fail then members should consider raising a formal grievance.

The right to request to work flexibly:

Since 30 June 2014, the right to ask to work flexibly has been **available to all employees** in England who have at least **26 weeks' continuous service**. There is no longer any need to be a carer for children or dependant adults so members, who meet the criteria, should be encouraged to make flexible working requests which includes working from home whether

[4] UCU – Advice to FE branches to inform discussion with employers about any future return to the workplace.

partly or wholly, part-time work etc... There is an *ACAS Code of Practice: Handling requests to work flexibly* in a reasonable manner (the ACAS Code). The Code is statutory, so employment tribunals will expect am employer to follow it.

Please do get in touch for further advice and support via either:

Michael Moran (RO) mmoran@ucu.org.uk

Ade Phillips (RSO) aphillips@ucu.org.uk

Best wishes, and keep safe.

SE Regional team