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## 7 considerations for schools on their employees' return to school

When schools began to open more widely towards the end of the summer term, we outlined [5 key questions for schools to consider on staff returning to school](#). The guidance we gave then largely remains unchanged.

As we return for the autumn term it is worth revisiting this note as it remains important to follow the government guidance and to comply with health and safety obligations. Where staff are particularly vulnerable for whatever reason or raise concerns about returning, it will be important to consider such situations on a case by case basis. You will need to bear in mind Equality Act duties and protection from detriment rights afforded to employees raising genuine health and safety concerns or who reasonably believe they will be in serious and imminent danger by returning to their place of work.



There are additional points to note:

## 1. Home working

In June, government guidance stated that every reasonable effort should be made to enable working from home as a first option. Since 1 August, guidance has been updated to advise that employees can return to the workplace if it can be made safe, even where homeworking remains possible. Specific [DfE guidance for schools](#) states that it is appropriate for teachers and other school staff to return to their workplace and that they expect that staff who need to will attend school. It goes on to say that most school-based roles are not ideally suited to home working and schools may expect most staff to return to work in settings. It acknowledges that some roles, such as administrative roles, may be conducive to home working, and school leaders should consider what is feasible and appropriate. We would suggest that, when assessing what is appropriate, full consideration should be given to travel arrangements, protected characteristics, childcare responsibilities or other personal circumstances. It is worth bearing in mind that the [Access to Work Scheme](#) has been further extended to give disabled employees additional support during the pandemic, such as offering funding for special equipment to work from home and financial support for taxi fares if public transport is not a safe option. As such, these options should be explored, where appropriate

## 2. Vulnerable employees

At the time of our previous note, the employees who would be most likely impacted by a physical return to work were those with caring responsibilities or with underlying health conditions. Whilst that remains the case, since June, there has been more evidence to suggest that other groups may also be at a higher risk of infection or an adverse outcome including older males, those with a high body mass index or those from certain BAME backgrounds. DfE guidance provides that these staff can return to school in September so long as the system of controls set out in its guidance are in place. The guidance acknowledges that the reasons for the disparities are complex and there is ongoing research. Employers are advised to be mindful of this in preparing risk assessments and it would be prudent to consider undertaking equality impact assessments when reviewing, updating or implementing any policies or procedures to address Equality Act duties.

## 3. Shielding

Our note in June referred to employees falling within the category of extremely clinically vulnerable, clinically vulnerable and shielding (or employees living with someone falling into those categories) and how that impacted upon their return to work. Since 1 August, people falling into these categories are no longer advised to shield, although the guidance is slightly contradictory. The DfE guidance advises that those who are extremely clinically vulnerable can return to school in September 2020 provided the school has implemented the system of controls it advises in line with the school's own risk assessment. Those who are extremely clinically vulnerable or

clinically vulnerable are urged to take extra care in maintaining hygiene and distancing. The fact that the government guidance no longer requires shielding does not necessarily mean it is appropriate to require such individuals to return to work without further investigation and risk assessment. The DfE guidance recommends that school leaders discuss the concerns those individuals may have around their personal circumstances and reassure staff about the protective measures in place. Schools must ease the transition for those employees ensuring robust measures are in place and agreeing plans for return. As we noted in June, those individuals are also potentially disabled under the Equality Act 2010 and, as such, there are additional considerations in order to avoid potential discrimination. The SSP entitlement for most shielding employees ended on 31 July 2020. However, any employees whose shielding notification extended beyond that date could arguably remain entitled to SSP.

## 4. Local lockdown

Legislation introduced in July 2020 gave local authorities the power to impose restrictions in local areas to mitigate local COVID-19 outbreaks. Local authorities may also be required to do so by the Secretary of State, and we have already seen this in some parts of the country. The DfE guidance on the re-opening of schools provides, in relation to local lockdowns, that if there is a spike in infection rates the appropriate authorities will decide which measures to implement to contain the spread. The DfE will be involved in such discussions and will provide support to authorities and individual settings. It notes that remote education plans will need to be available in any event for those self-isolating and these may need to be more widely available in the event that schools are closed temporarily. Schools are expected to have capacity to offer immediate remote education and strong contingency plans for remote education must be in place by the end of September 2020.

## 5. Quarantine following foreign travel

Some people arriving in the UK from overseas are required to provide contact information and undergo a 14 day quarantine period. The position in relation to their pay in these circumstances is currently unclear and will depend on the particular circumstances and whether the government amends the SSP rules again.

Where homeworking can be facilitated, this would be the best course of action and they would continue to be paid as normal. However, if staff are required to quarantine and cannot work from home, their entitlement to pay must be considered by reference to their specific circumstances as the position in respect of entitlement to pay is complicated. You should seek legal advice immediately in these situations as the answer is likely to be fact specific.

## 6. Flexibility

Schools may need to require staff to be flexible in relation to the way in which they are deployed. If this flexibility is not already provided for in arrangements with staff, then schools should discuss and agree any changes to staff roles with the individual and, if necessary or appropriate, their trade union.

## 7. Policies and Procedures

Whilst many schools have already taken steps to update employment policies and procedures as appropriate, some points to consider are:

1. **Sickness Absence Procedure** – are there changes to notification evidence requirements to reflect COVID-19 related absences (for example where self-isolating), to encourage compliance with government guidance on self-isolation or to reflect any changes to SSP entitlement;
2. **Disciplinary** – are there updates notifying employees that any failure to comply with risk assessments, social distancing (where applicable) or compliance with government guidance will be dealt with under the school's disciplinary procedure; or
3. **Mental health** – the start of term may be an opportune time, in the circumstances, to remind staff of any support available. [Acas](#), [Public Health England](#) and [DfE](#) have released guidance and the [Education Support Partnership](#) provides a free helpline.

As we look ahead to the Autumn term, we understand that times are likely to continue to be challenging given the aftermath of GCSE and A-Level results, subject access requests, likely attendance issues and strained relationships with parents understandably worried by their childrens' return to school.

This note contains general information only and if you have concerns or issues in relation to any of the matters raised above you should seek legal advice. If you have concerns in relation to any of these areas, please let us know as we are here to support you.

## How we can help

If you have any queries or would like to discuss these issues please contact:



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