

COVID 19 – know your rights

Guidance for pregnant women

COVID 19 and pregnant women

Under the UK government coronavirus advice, pregnant women are classified as clinically vulnerable, meaning they could be at higher risk of severe illness from coronavirus.

This additional risk to pregnant workers must be considered by employers when undertaking COVID-secure risk assessments of workplaces.

What does it mean in practice for you and your job? Employers already have a legal obligation under the Management of Health and Safety at Work Regulations to assess workplace risks for pregnant employees and their unborn children, as well as for breastfeeding mothers who have returned to work. This continues, but now must also address the potential risk of contracting COVID-19.

Do I have to go to work?

Many key workers have been attending their normal place of work throughout the 'lockdown'. For others, with the easing at varying rates within Scotland, Wales, Northern Ireland and England, an extended period away from the normal workplace will be coming to an end. However the general advice remains that employers should help clinically vulnerable people to work from home where they can.

If you are pregnant and have significant heart disease, congenital or acquired, you are classified as clinically extremely vulnerable and should work from home wherever possible.

All pregnant women will be able to start maternity leave as usual. Statutory maternity leave and pay entitlements do not change and the normal rules apply.

What if I have to go to work?

If it is not possible for you to work from home, it is essential that your employer undertakes a workplace health and safety risk assessment of your individual working environment, specifically looking at your role within it.

Whatever stage of pregnancy you are at, your employer has a duty to consider the risk of contracting COVID-19 to you and your unborn child.

If your employer undertook a risk assessment before the COVID-19 pandemic, they should carry out a new assessment to consider these particular circumstances.

A UK Obstetric Surveillance System study in May 2020 found that pregnant women “from black, Asian and minority ethnic (BAME) backgrounds are more likely than other women to be admitted to hospital for coronavirus. Pregnant women over the age of 35, those who are overweight or obese, and those women who have pre-existing medical problems, such as high blood pressure and diabetes, also appear to be at higher risk of developing severe illness.”

Therefore, the risk assessment should also take account of any additional risks to you in relation to COVID-19, such as if you are Black or have any pre-existing medical condition.

► **Speak to your local representative if you would like support or advice.**

The Equality Act 2010

If you are a pregnant worker then you have additional rights under the Equality Act 2010 (in Northern Ireland, under the Sex Discrimination (Northern Ireland) Order 1976). The Equality Act defines pregnancy and maternity as a 'protected characteristic'. It is unlawful to directly or indirectly discriminate against people at work because of a protected characteristic.

It could be unlawful discrimination on the grounds of pregnancy if an employer unreasonably pressurises a pregnant worker to go to work or disciplines them for not going to work when they have a reasonable belief that they are at risk of infection.

Employers should also ensure that decisions on deployment, redeployment, furloughing and redundancy, as well as the treatment of vulnerable workers, do not have a disproportionate impact on any groups of workers, such as pregnant women.

Risk assessments

All employers must do an overall risk assessment of the workplace, but they should also carry out a risk assessment specifically for pregnant and breastfeeding staff. Employers will need to prioritise higher risk workers for specific personal risks assessments to mitigate risks to these groups of workers.

There should be no detriment to your pay, benefits or employment rights.

The risk assessment should cover the following:

- do you come into contact with other people at work?
- does your job allow you to maintain an appropriate social distance from colleagues and members of the public as recommended by the government? (generally, distancing requirements are to keep 2 metres apart from another person, or in England if this is not possible, to keep 1 metre apart plus mitigations which reduce the risk of transmission)
- do you face any other additional risks that may make you more vulnerable to COVID-19?

It is also best practice to include how you travel to work.

Risk assessments should additionally specifically consider those staff who live with a pregnant woman.

Acting on the risk assessment

The employer must then look at how to remove or reduce the risks that have been identified.

This could include some or most of the following:

- organising your workload to allow you to work from home as much as possible
- redeploying you to the safest available on-site role, enabling you to stay appropriate distance away from others
- reducing your shift lengths so you have less interaction with other people
- providing you with additional personal protective equipment (PPE)
- staggering your start time so you travel when public transport is less busy.

If you are unable to maintain the appropriate social distance from others, your employer should carefully assess whether this involves an acceptable level of risk.

Where the risks in the workplace cannot be reduced, your employer should look at whether they can temporarily redeploy you to a job that can be done at home.

However, it is important that you're not forced to take on a different role just to keep your job. It should be a voluntary agreement and you should be properly supported by your employer in this different role, such as receiving additional training.

Where there is no suitable alternative work available that could be done from home, your employer should consider suspending you on full pay in line with requirements for the risk assessment of pregnant workers under The Management of Health and Safety at Work Regulations 1999. Full pay should be based on your usual earnings, not just the pay based on your contractual hours.

The Health and Safety Executive (HSE) clearly states in its guidance:

“If a significant health and safety risk is identified for a new or expectant mother, which goes beyond the normal level of risk found outside the workplace, [employers] must take the following actions:

Action 1: Temporarily adjust her working conditions and / or working hours; or if that is not possible

Action 2: Offer her suitable alternative work (at the same rate of pay) if available; or if that is not possible

Action 3: Suspend her from work on paid leave for as long as necessary to protect her health and safety, and that of her child.”

As the **government states**, suspension “will last as long as the employee, or their baby, is in danger... The employee has the right to normal pay (including bonuses) for up to 26 weeks, as long as they’ve been in their job for a month or more.”

You should not be required to take sick leave when you are not sick, to take annual leave or unpaid leave, or to start your maternity leave early because your employer has not acted to make your workplace safe for you. Furloughing you might also breach your legal protections.

What if I’m also vulnerable to COVID-19 for other reasons?

Disabled people (who may come into the government’s classification of ‘clinically vulnerable’ and ‘extremely clinically vulnerable’ people) may be more vulnerable to COVID-19 than non-disabled. In addition, Black people have been found to be more vulnerable and the risk increases the older people are, and the larger their BMI. Where you live, the number of people in your household and deprivation are also factors that will affect your risk.

When your employer is assessing your risk, they should also include any additional risk you face, for example due to being disabled and being Black. Note that the impact on a protected characteristic (eg disability, sex, age) will be relevant for potential rights under the Equality Act 2010.

What if I don’t feel safe at work?

UNISON believes that our members should never be in a situation where they might endanger themselves and others in the course of doing their jobs.

Putting you in that situation is potentially a breach of health and safety law and may also spread coronavirus to others. It may also amount to unlawful discrimination.

As a last resort, when faced with a dangerous working environment which cannot reasonably be averted, every employee has the right not to suffer detriment if they leave, or refuse to attend their place of work (or take other appropriate steps) in circumstances where they reasonably believe there is a risk of being exposed to serious and imminent danger (section 44 of the Employment Rights Act 1996).

Although this is very much a right of last resort, the context of a situation will be key to whether refusing to return to work or any other steps are appropriate. This means that an employee cannot automatically refuse a reasonable instruction to return to work without a good reason.

If you feel you are being put at risk, it is crucial to get advice and discuss the situation with your UNISON representative. Contact **your branch and if needed you can seek advice from your regional office or legal team.**

UNISON women’s member groups

UNISON has more than 1.3 million members and activists, making us one of Europe’s largest unions. More than 70% of our members are women.

UNISON’s women’s member groups (known as self-organised groups) campaign for equality in the workplace and for improvements to women’s rights in the workplace and in the wider community.

They also support campaigns aimed at improving women’s lives – for example, to change the law to protect women experiencing domestic violence, or to raise awareness of health issues which mainly affect women.

Women members equality