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## POA Circular 073/2020

27<sup>th</sup> April 2020

Dear Colleagues

### **HEALTH AND SAFETY EXECUTIVE AND TUC**

The HSE has now provided an email address for unions to report concerns directly to them: [Union.Covidconcerns@hse.gov.uk](mailto:Union.Covidconcerns@hse.gov.uk)

The National Executive welcome this along with other Trade Unions to allow Local Branch Officials to raise issues, demonstrate to the Health and Safety Executive the scale of the problems members face and to encourage them to take urgent necessary action to ensure all of our members are safe.

Secondly, the TUC has today launched a report outlining some of the steps we need to ensure that our workplace is safe before any easing of 'lockdown' can be proposed (see attached).

Yours Sincerely

**STEVE GILLAN**  
General Secretary

Yours Sincerely

**MARK FAIRHURST**  
National Chair

**ENCLOSURE**

# Preparing for the return to work outside the home

**A trade union approach**

# Executive summary

The coronavirus outbreak has led to a dramatic change in working practices across Britain. Millions of frontline staff, in care homes, shops, transport and across our public services are keeping the country running while facing risks to their own and their families' health. Nearly half of businesses have people working from home, and over a quarter of the workforce have been furloughed, using the newly introduced job retention scheme.

It is vital that workers' health, safety and livelihoods are protected as we continue to work or return to work outside the home. During this pandemic, unions across the UK in multiple sectors have negotiated agreements with employers to protect workers' safety. As the return to work begins, unions will seek to negotiate safe return to work policies. But too many employers (especially those where there is as yet no recognised union) have undermined the safety and wellbeing of staff by their actions.

This report sets out what we believe the government must do now to ensure a safe transition from lockdown, looking at how to safely return to work outside the home, the enforcement measures needed to protect workers, and how best to protect workers' livelihoods.

## 1. Return to work: what do workers think?

We know that workers need reassurance about returning to work. Forty-one per cent (49 per cent of women) say that they are somewhat or very worried about returning to work outside the home.

- The government must ensure that workers' mental health and wellbeing is prioritised alongside physical safety.
- The government must run a public information campaign to ensure working people can be confident that health and safety at work is a priority as they return to work. This should be on a scale similar to recent public information campaigns about coronavirus actions.

## 2. Ensuring a safe return to work outside the home

Many workers have continued to work outside the home, risking their health and in some cases their lives to keep the country going. Too many of them have been let down by the failure of government to secure adequate personal protective equipment, and of employers to put adequate protections in place. Urgent action is needed to ensure that no-one is put in danger by their job.

- Every employer must carry out a specific Covid-19 risk assessment. Employers should work with unions and workers to assess the risks in the workplace, and set out specific steps, including enforcing social distancing, for how these can be mitigated and how

workers can work safely. This plan must be signed off by one of the UK's 100,000 trade union health and safety reps, or by a Health and Safety Executive (HSE) inspector.

- Personal protective equipment (PPE) must be provided where necessary, and no-one should be asked to re-use PPE inappropriately. Where risk assessments show that PPE is necessary, employers must provide this, and no-one, including Public Health England, should require health and social care workers to re-use PPE.
- Government must provide specific advice and protection for those groups most at risk. This includes workers advised to 'shield' and those who are pregnant. If these workers cannot work safely, their livelihoods must be protected. Black and ethnic minority workers have suffered disproportionate harm from the impact of the virus. The EHRC must ensure that the return to work strategy seeks to prevent this disproportionate impact and complies with the public sector equality duty.
- Unions should be consulted when the government prepares sector-specific guidance, and when employers seek to implement it.

### **3. Ensuring no-one is forced to work in an unsafe workplace**

Workers need to know that where these measures are not in place they will not be forced into an unsafe workplace.

- The Health and Safety Executive (HSE) must act quickly to apply sanctions to employers that do not risk assess for Covid-19 or fail to provide safe working arrangements. We know Covid-19 is spread by people displaying no symptoms. We cannot wait for workers to be infected before action is taken. The HSE needs to take action – including prosecutions – against employers who do not take safety seriously.
- The HSE must run a public information campaign to ensure workers know their rights. To support this, the HSE and local authority regulators who inspect workplaces need additional resources and inspectors to act swiftly on reports of unsafe working practices.
- No worker should face a sanction for refusing to work in an unsafe workplace. Employees have the right to withdraw from and to refuse to return to an unsafe workplace, and the legal protection from dismissal, disciplinary or any other detriment for raising a health and safety issue. Employers must be reminded of this and workers must have this right guaranteed.

### **4. Protecting workers' livelihoods**

A safe return to work is one that protects workers' livelihoods. No-one should face the choice between going to an unsafe workplace or working while ill and not being able to feed their family.

- Government must ensure the job retention scheme continues to protect jobs. This means:
  - maintaining the scheme as long as lockdown is in place
  - increasing the flexibility of the scheme to support short-time working, to enable people to return to work gradually
  - ensuring the scheme still protects those who cannot work, including those who are shielding or caring for someone shielding, parents who cannot work while schools are closed, and those who are ordered to self-isolate by the contact-tracing programme.
- Those who lose their jobs must be protected by a strengthened safety net.
  - The basic rate of universal credit and legacy benefits should be raised to at least £260 a week, 80 per cent of the real living wage. And the five-week wait for support must end.
- We need decent sick pay for all to ensure no-one has to go to work when sick.
  - The basic level of sick pay should be raised to the equivalent of a week's pay at the real living wage.
  - The coronavirus crisis has exposed the problems faced by millions of workers on zero-hours contracts and in bogus self-employment, including the fact that they too often miss out on sick pay. The estimated two million people who miss out on sick pay because they don't earn enough must be included in the sick pay system now.

# Introduction

As a result of the coronavirus (Covid-19) outbreak, the UK announced a series of restrictions on activities outside the home, which began on 23 March 2020. Under these restrictions, people can only leave their households for a set number of reasons – for example to buy food, for medical reasons, to exercise and to work, if their work cannot be done from home. These measures – colloquially known as ‘lockdown’ - are scheduled to run at least until Friday 8 May, at which point they may either be extended or eased.

Around 45 per cent of the UK workforce is currently estimated to be working from home,<sup>1</sup> with an estimated 70 per cent of businesses having furloughed staff<sup>2</sup> and a significant proportion otherwise unable to work. When the restrictions are eased, significant numbers of people will need to return to work outside their household – although it is likely that a significant minority who are in the “shielding” group as they have underlying health conditions will need to remain in lockdown conditions for a longer period.

This paper sets out the TUC’s initial thinking on how to manage the mass return to work at the end or easing of lockdown, in a way that supports worker safety and worker livelihoods.

Working people will need to return to work outside the home at some point in the coming months. The TUC does not take a position on the science of how to manage a pandemic, or the speed or nature of any return to work. It is invidious to argue about the relative priority of public health or economic growth: both are important to the wellbeing of working people.

It has been suggested that the government may seek to stage the return to work, perhaps by sector, by region or by age group. Rather than proposing or commenting on such staging, our priority is that any mass return to work outside the home is managed in a way that minimises the risk to individuals, and that working people are not financially penalised during this period.

Therefore, this paper sets out some principles and approaches that we recommend. Above all, we call for unions to be involved in planning the return to work outside the home. That means unions should be consulted by government nationally and in the devolved nations as they set their approaches, and that unions should be involved in discussions alongside employer representatives and the relevant government departments on a sector-by-sector basis. And it means individual employers negotiating return to work policies and agreeing a risk assessment on Covid-19 risk with their staff unions.

Even as we look ahead to the mass return to work outside the home, the TUC remains clear that safe working has not yet been comprehensively and consistently achieved for the significant minority of workers who have continued working outside the home during lockdown. This group includes both essential workers, such as NHS, care staff and

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<sup>1</sup> [www.tuc.org.uk/blogs/new-coronavirus-data-shows-why-workers-need-more-protection-government](http://www.tuc.org.uk/blogs/new-coronavirus-data-shows-why-workers-need-more-protection-government)

<sup>2</sup> [www.britishchambers.org.uk/news/2020/04/bcc-coronavirus-business-impact-tracker-more-than-70-per-cent-of-firms-surveyed-have-furloughed-staff-as-scheme-goes-live](http://www.britishchambers.org.uk/news/2020/04/bcc-coronavirus-business-impact-tracker-more-than-70-per-cent-of-firms-surveyed-have-furloughed-staff-as-scheme-goes-live)

emergency services, but also local government, schools, criminal justice, retail, energy and distribution staff, amongst others, as well as workers across the economy whose jobs cannot be completed from home.

Unions have heard too many reports of workers expected to work in unsafe conditions. We are extremely concerned by the failure of enforcement agencies to take action against employers who are putting the health and safety of their workers in jeopardy during this pandemic. We continue to press the government to enforce Public Health England's guidance on every employer whose staff are continuing to work. We want to see further tough enforcement action against employers whose actions have put staff at risk, and call on the relevant enforcement agencies (including the HSE and local authorities) to act to guarantee worker safety.

## Section One

# Return to work: what do workers think?

In mid-April 2020, the TUC asked 791 members of the public who are currently working from home, employed but not currently working, furloughed or recently unemployed and expect to be back in work soon, what most worried them about returning to work as the social restrictions end.

Of these, 41 per cent were worried or slightly worried about returning to work, 23 per cent were neither worried nor unworried, and 34 per cent were not very or not at all worried. Interestingly the gender gap is significant: only 33 per cent of men are slightly or very worried, compared to 49 per cent of women.

When asked what was worrying them about returning to work, the most popular answers were about the ability to socially distance from colleagues, customers and clients. The gender gap on this last issue was significant, reflecting gender segregation: 20 per cent of men are concerned versus 36 per cent of women. The risk of exposing family is also front of mind: overall it is a concern for 34 per cent, but that rises to 44 per cent among those with children in their household, and 48 per cent with children under 4.

A quarter were concerned about their employer asking them to return to work when they don't think it is safe.

One in five were concerned about travelling to work on public transport – but this rose to 44 per cent amongst Londoners. Significant numbers were concerned about access to PPE and workplace cleanliness. And 14 per cent are concerned that their underlying conditions would make returning to work riskier for them – including 21 per cent of the over 55s.

Interestingly, a fifth noted that they would prefer to continue working from home. If working from home becomes more widely accepted, this may form a lasting legacy from this period of restrictions. Nearly a quarter of those responding didn't have any concerns about returning to work outside the home.

Although this is only a snapshot, as discussion about the easing of restrictions becomes more widespread, it is interesting to note where people's concerns lie. It is likely that workers will be asked to return to working outside the home before the threat of Covid-19 has completely subsided.

Employers and government must also recognise that a growing number in the workforce will have experienced bereavement during this pandemic. It is likely that significant numbers will experience anxiety about the virus, its impact on daily life and wellbeing, and the risk of a return to work outside the home for themselves and their families. Employers must pay attention to their workers' mental health and wellbeing, in addition to physical safety.

### What most worries you about returning to work?

Reason for concern	% agreeing
Not being able to socially distance from colleagues once at work	39%
That I may expose others in my household to greater risk	34%
Not being able to socially distance from clients or customers at work	28%
That my employer may ask me to return to work outside my home when I don't think it is safe	25%
Not applicable - I have no concerns about returning to my place of work	24%
My workplace not being cleaned adequately	23%
Having to travel to work on public transport	20%
I prefer working from home and wish to continue if possible	20%
Not having access to the appropriate personal protective equipment at work	17%
My underlying health conditions that make returning to work riskier for me	14%
Having to travel to other locations once at work (eg to make deliveries)	7%
Other	3%
Don't know	2%

So, in formulating a strategy for the mass return to work, government must think about how it gives confidence to working people that they and their loved ones will not be exposed to unnecessary risk.

This is in two parts: firstly, the government must create and publish a plan for ensuring health and safety when people return to work. That plan must be written with unions' and employers' engagement and agreement, and it must include credible actions to ensure that employers comply with their health and safety responsibilities. It must also include meaningful action to reduce the risk to commuters and to ensure that livelihoods are protected for those who still get sick, lose their jobs or cannot return to work. What should be in this plan is the subject of the rest of this paper.

Secondly, the government must consider how they build public confidence that the risks of returning to work outside the home will be minimised. Public information communications have been important in ensuring compliance during the restrictions, and informing

employers of the support available to them from government to weather this crisis. If Britain is going to get back to work and rebuild our economy, the government needs to ensure that employers understand and comply with an enhanced set of health and safety responsibilities and that working people know that their employer is managing the risk to them. This communications effort will need to be of a similar scale to that deployed to ensure that employers were aware of the support available to them from the government.

## Section Two

# How to ensure a safe return to work outside the home

At some point in the coming weeks or months, a significant proportion of the UK workforce who are currently either working from home, or are unable to do their job whilst confined to home, will need to return to work.

No easing of restrictions should take place until adequate measures are in place to protect the health and safety of working people. This section outlines the principles that should guide the development of the government's strategy for the return to work outside the home.

## Unions must be engaged nationally and in sectors

A key principle for a safe return to work outside the home is that trade unions and employers must work together to agree how the return is managed.

This principle applies nationally – the government should consult with unions and the TUC to inform the national strategy on easing restrictions and managing a safe mass return to work outside the home. It applies equally to the devolved administrations, and to the responsibilities of elected mayors in England. And government must build on its initial efforts to bring together unions, employers and government to discuss a safe return to work by establishing tripartite bodies in every sector of the economy to determine the shape of a safe return to work for specific sectors and industries.

## Employers and unions must negotiate in workplaces

Employers and trade unions working together is the best way to preserve jobs and livelihoods and get businesses running again while protecting the health of the workforce. Working with unions can help employers identify hazards and build trust and co-operation among the workforce towards new measures introduced.

Union health and safety reps hold a legally recognised role and are typically well-trained and respected. As well as supporting the risk assessment process, union reps can help build workforce support for changed ways of working such as working from home, social distancing measures and deployment of PPE.

Employers have a legal duty to consult employees or their union representatives on any changes made to working practices. This includes new equipment, shift changes, training and information. Where existing consultation arrangements with unions exist, these should be used. Where they do not, employers should open conversation with their union. Where normal consultative arrangements do not resolve health and safety issues, employees are entitled to raise a grievance. Employers must keep their workforce informed about health

and safety at work, using digital methods, posters and other visual aids in preference to face-to-face meetings.

## **A new requirement for a written and published Covid-19 risk assessment**

The TUC believes that, before easing lockdown restrictions, the government must require all employers with more than five staff to carry out a specific Covid-19 risk assessment. This must be available to all employees before they are expected to return to work.

Employers already have a legal duty to assess the risks to the health and safety of employees, as well to others not in their employment such as customers and passengers. Assessments must identify the probability of Covid-19 exposure and outline a health and safety action plan, with measures to mitigate against such hazards. In carrying out a risk assessment, employers should consult employees, their unions and health and safety representatives to assess workplace hazards and outline steps for mitigation.

We are in a new environment, with a new threat to health and safety. Before it is agreed, the Covid-19 risk assessment should be approved either by an accredited union health and safety rep, or by a Health and Safety Executive inspector. There are approximately 100,000 trained union health and safety reps in workplaces across the UK. This workforce should be mobilised to help ensure that workplaces are safe, including in workplaces where there are no existing union reps and unions are not recognised. Union health and safety reps should be given a roving role, able to enter workplaces where there is not yet a union recognised, in order to ensure compliance.

In cases where there is no health and safety rep able to sign off a risk assessment, an employer must seek approval for it from an HSE inspector.

If there are disagreements and a resolution cannot be reached between employers and unions, employees and/or their recognised trade union should contact the HSE for advice or make a complaint. The HSE must consider all appropriate enforcement action, as necessary.

Once agreed, risk assessments and action plans must be sent or otherwise effectively communicated to the whole workforce.

## **Actions to safeguard workers**

Until a vaccine is available, any relaxation of the restrictions on individuals will carry some risk that more people will become ill. So, every workplace should carefully assess the risks and seek to manage them, following the standard hierarchy of risk management:

- i) If possible, remove the hazard.
- ii) If not possible, seek to control the hazard.
- iii) If not possible, protect the worker.

Where work must be done outside the home, it may not be possible to remove the hazard. So, approaches to control the hazard – such as social distancing – may be required. If those

are not possible, then employers should move to the use of personal protective equipment, depending on the nature of the work.

Employers should think creatively with their unions about how to enable social distancing at work. For example, they could change the layout of workplaces, adjust shift patterns or alternate sections of the workforce, and stagger commute times.

## **Union access to workplaces**

Unions must be able to continue supporting workers. Where workplaces have introduced restrictions on external visitors as part of social distancing measures, this should not apply to trade union officials attending the workplace for meetings and representations on health and safety. Union reps should be able to continue with their union duties, including while furloughed. Any restrictions in place on facility time or release for union duties in the public sector should be set aside.

Employers should not unreasonably withhold access to the premises as long as sufficient notice is given by the trade union. Any visits must take place in line with social distancing measures and relevant safety precautions in place in the workplace.

## **Access to appropriate personal protective equipment (PPE)**

Employers must provide PPE as required by their risk assessments. The government must work with employers to identify which sectors require which types of PPE to ensure there is adequate supply.

Given the well-documented difficulties in securing adequate PPE for health and social care staff, the TUC is concerned that where risk assessments flag the need for PPE for other staff to return safely to work, this may not be readily available. Where the necessary PPE cannot be supplied, work should not recommence. Public Health England and the HSE should also rescind their guidance allowing for the reuse of certain items of PPE in exceptional circumstances of scarcity. Unions need assurances that the necessary long-term plan for PPE procurement is in place for every sector requiring this equipment.

## **Testing and vaccinations**

As part of the strategy for enabling a return to work outside the home, the government must publish a plan for the testing of key worker groups, with realistic targets. As we note below, those notified via the contact-tracing programme that they have been exposed to the virus and must self-isolate, if they cannot work from home, should be eligible for continued furloughing at 80 per cent of pay. It must be made clear who will be the priority for vaccinations when they become available and publish a realistic timeline for rollout.

## **Travelling to work**

Without significant changes to travelling patterns, unions believe it is not possible for social distancing measures to be in place on public transport, especially at peak times. As part of

its plan for a mass return to work outside the home, the government must provide guidance for employers, commuters and transport providers on what measures are needed to safeguard public health. For example, in aviation, Public Health England recommends that passengers are seated one seat apart. If similar measures are recommended on other forms of transport, the government must make this clear, and ensure transport providers are meeting those measures.

Employers should be encouraged to allow workers to stagger their shift times to avoid overcrowding on public transport, and should consider maintaining significant numbers of workers working from home where possible in order to reduce pressure on public transport.

## **Safe staffing levels**

Work should only take place when there is an adequate number of people able to carry out the work safely. Risk assessment should factor in the likelihood of continuing absences across any business, and the availability of any safety-critical staff. Employers must also be mindful that workloads are manageable. As the rate of absence remains high because of sickness, self-isolation or other factors, output may need to be adjusted to safeguard employees' mental and physical health. It is recommended that sickness absence policies remain suspended as absences related to Covid-19 continue.

## **Specific groups of workers**

The government must provide clear advice to employers and working people on what any change in restrictions means for those in the 'shielded' category (ie those whose health conditions put them at additional risk). This group will contain a significant number of older and disabled workers, so employers and government should give due regard to avoiding discriminatory treatment. If this group cannot return to work outside the home safely, they should be supported to continue observing social distancing. If they cannot work from home, the government should consider extending the job retention scheme to support these workers to remain in the labour market. And where necessary, other government and voluntary support such as eligibility for food packages should also continue.

Employers must be reminded of their existing legal obligation to specifically assess the workplace risks for pregnant employees and breastfeeding mothers who have returned to work. The risks to women of childbearing age and expectant and new mothers must be considered as part of the general risk assessment, and discussed with workers who are pregnant or breastfeeding.

Where it is not possible to remove or reduce risks, these workers must be given the option to work from home or have their duties adjusted. Failing this, employers must legally suspend workers on full pay, based on usual earnings. The government should make the necessary changes to ensure pregnant workers placed on statutory sick leave due to Covid-19 do not have their eligibility for statutory maternity pay affected.

The government has launched a review into the disproportionate impact of Covid-19 on black and minority ethnic people. The review should consider the full range of factors, including structural inequalities and discriminatory treatment, which may influence differential outcomes for black and minority ethnic workers.

The Equality and Human Rights Commission should monitor and report on the government's return-to-work strategy, with a specific focus on compliance with the public sector equality duty. Decisions taken now will shape people's lives for years to come. It is crucial therefore that the government takes this legal duty seriously and gives proper consideration to the impact of their decisions on different groups.

## **What should happen if workplaces are not safe?**

### **Enforcing safe working**

The Covid-19 crisis has already taken the lives of thousands of workers. And it has exposed significant gaps in the enforcement of health and safety rules in the workplace.

Although many employers take the safety and wellbeing of their staff seriously, the TUC believes that these gaps mean that bad employers can jeopardise the health and wellbeing of their workers with impunity. Since this crisis began, individuals and reps have raised many examples of poor working practices that amount to significant breaches of health and safety in workplaces that have remained operational. We believe this problem will only increase as workers return to work outside the home.

The Covid-19 crisis has shown that the current arrangements for making workplaces safe for working people have been exposed as inadequate. The current regulatory arrangements are not fit for purpose.

A key issue is the difficulty of reporting a breach of health and safety. The responsibilities are split between a number of bodies – principally the Health and Safety Executive (HSE) and local authorities. It is not always immediately obvious who the relevant enforcement agency is, which poses a barrier to workers seeking redress. And in common with all public bodies, both the HSE and (particularly) local authorities lack the resources to deal effectively and proactively with the issue of employers wilfully flouting health and safety rules.

The TUC is concerned by the low number of reports of unsafe working received by the HSE and by the low level of enforcement action that has taken place. There are significant barriers to reporting and a lack of confidence in effective enforcement.

In this public health crisis, enforcement agencies must urgently switch from an approach of merely encouraging compliance to a tougher stance where they get out into high-risk and low-compliance sectors proactively, communicate their readiness to take action and ensure that they follow through swiftly on egregious breaches. The HSE must act quickly to apply sanctions to employers that do not risk-assess for Covid-19 or fail to provide safe working arrangements.

Employers must be made aware of the consequences of refusing or failing in their health and safety responsibilities – including prosecution and the forced closure of businesses. We know Covid-19 is spread by people displaying no symptoms, so we cannot wait for workers to be infected before action is taken. The HSE needs to take action against employers who do not take safety seriously.

The HSE and local authority regulators need greater means to deal with reports swiftly and take the necessary enforcement measures against employers who continue to put the safety of workers at risk. The government should recruit more inspectors and give the regulators an urgent funding boost to ensure they can meet the expected high and urgent demand.

And as noted above, to build confidence amongst workers expected to return to work, there must be a significant public communications campaign to reassure working people that their employers will manage the risk to them, how to report breaches, and that action will be taken against employers if they do not comply.

### **Refusing to work when it is not safe**

Employees have the right to withdraw from and to refuse to return to an unsafe workplace. They also have legal protection from dismissal, disciplinary or any other detriment for raising a health and safety issue. The government must remind employers of employees' legal protections when dealing with what they reasonably believe to be a serious or imminent danger in the workplace. Unions will back up our members refusing to work when it is not safe.

## Section Four

# Protecting livelihoods in the return to work

To ensure a safe return to work, the government will need to adapt and extend its current economic package to protect jobs, and to ensure that no-one faces the choice between economic hardship and working when ill. There are three, key ways it must do this:

- Extend the job retention scheme, and make it more flexible, to allow for shorter working hours.
- Fix the social safety net for those who do need it.
- Raise statutory sick pay to a week's worth of the real living wage and remove the lower earnings limit.

## Ensure the job retention scheme continues to protect jobs

The coronavirus job retention scheme (JRS) is a welcome and positive step from the government, delivered after union campaigning. It has helped to protect jobs that otherwise may have been lost, and ensured that workers are being paid at least 80 per cent of their usual wage during the crisis.

Responses to the most recent business impact survey, published by the Office of National Statistics,<sup>3</sup> show there has been a high level of take-up. Over a quarter of the workforce (27 per cent) been furloughed. Take up of the scheme is particularly among businesses that have temporarily closed or paused trading. Eighty-two per cent of the workforce in these businesses have been furloughed. These are workers who otherwise could have lost their jobs without the JRS being put in place.

The government needs to ensure that the valuable work of the scheme in preventing redundancies is not lost if the support it provides comes to a sudden stop. This means that the scheme must be operational as long as lockdown is in place.

One way the JRS could be improved is to increase the flexibility of the scheme so that it covers shorter working hours. Presently, the JRS only covers an employee's wages in cases where they cannot work at all. While furloughed, an employee must not do any work, or provide any services, for the employer.<sup>4</sup> Once furloughed, employees must remain furloughed for three weeks.

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<sup>3</sup> *Furloughing of workers across UK businesses: 23 March 2020 to 5 April 2020*, ONS. Available at: [www.ons.gov.uk/employmentandlabourmarket/peopleinwork/employmentandemployeetypes/articles/furloughingofworkersacrossukbusinesses/23march2020to5april2020](https://www.ons.gov.uk/employmentandlabourmarket/peopleinwork/employmentandemployeetypes/articles/furloughingofworkersacrossukbusinesses/23march2020to5april2020)

<sup>4</sup> *Check if you can claim for your employees' wages through the Coronavirus Job Retention Scheme*, GOV.UK. Available at: [www.gov.uk/guidance/claim-for-wage-costs-through-the-coronavirus-job-retention-scheme#when-your-employees-are-on-furlough](https://www.gov.uk/guidance/claim-for-wage-costs-through-the-coronavirus-job-retention-scheme#when-your-employees-are-on-furlough) (Accessed 20 April 2020)

The ONS survey shows that around a third of businesses still trading have already reduced working hours. As businesses reopen after the lockdown, it will be likely that, either due to business needs or the conditions of reopening, some employers will want staff to return on shortened working hours, and this can help to enable safe working practices. To ensure that these employees don't experience a drop in income at a time when the economy will be precarious, the government should make the job retention scheme more flexible.

One option would be to reduce the minimum period so that firms can furlough workers for a minimum of one week rather than three. This would enable more businesses to operate a job rotation scheme.

Another option could be to allow employees to return to work on reduced hours, with the government paying 80 per cent of the wages of the gap between their actual weekly hours and their usual weekly hours. For example, if an employee usually works 40 hours, the employer could allow them to return for 20 hours, paid by the employer. The government would then cover the remaining 20 hours not being worked at 80 per cent of usual pay.

These options are particularly important for working parents. If full-time furloughing remains the only option available this could damage the progress made towards equalising caring responsibilities with women being more likely to be forced back into full-time caring roles. This is particularly key if nurseries and schools re-open on a part-time basis.

The government will also need to ensure financial support for those workers who continue to be unable to return to work because they are self-isolating, shielding, caring for someone shielding, or because schools and childcare settings are closed and they need to care for children. This is particularly key as the testing and contact-tracing programme ramps up: those workers who are ordered into self-isolation because contact-tracing finds that they have been exposed to the virus must be able to remain at home for the appropriate period without worrying about meeting their living expenses. The government should continue to support the full costs of businesses furloughing these workers for as long as the public health restrictions on them attending their place of work remain. It is not appropriate to use statutory sick pay for these employees as they are not sick.

As well as this, more flexibility is also needed when it comes to union reps. Under the furlough scheme, while employees cannot work, they can take part in training. A similar exception should also be made for furloughed union reps, who, while furloughed, should be supported to continue carrying out their union duties. And where there are restrictions on external visitors, this should not apply to trade union officials who may be attending the workplace for meetings and representations on health and safety.

As noted above, where it is not possible for pregnant women and breastfeeding mothers to undertake their usual activities safely, even with adjustments, employers must legally suspend workers on full pay, based on usual earnings. It's not appropriate to place them on furlough unless 100 per cent of wages is paid. The government should make the necessary changes to ensure pregnant workers placed on statutory sick leave due to Covid-19 do not have their eligibility for statutory maternity pay affected.

## Fixing our social safety net

Alongside action to ensure that as few people lose their jobs as possible, we also need to fix the social safety net so that it is fit for purpose for those who do need it.

Our social security system has already faced high levels of demand, and the pandemic has highlighted many of the flaws and faults in our system.

The introduction of universal credit (UC) and a decade of austerity policies such as the benefits freeze have led to a broken social safety net, with low benefits payments, a long and punitive application system, and a five-week wait for first payment that pushes people into poverty and debt. Women, black and minority ethnic families and disabled people have been hit hardest by these changes, with disabled adults being four times worse off than non-disabled adults as a result of ten years of austerity.<sup>5</sup> Particular policy consideration will need to be given to the impact of any changes to the safety net on these groups.

The government has already introduced some measures to improve universal credit, increasing the basic amount of UC by £1,000 per year. This means weekly payments are now around £94 per week. As well as this, eligibility has been widened, with self-employed people temporarily not needing to meet a minimum income floor in order to qualify for the benefit. Housing benefit has also been increased.

However, emergency measures are desperately needed. In our report on the social security system, we put forward seven measures to be put in place as an emergency rehaul of UC:

- i) Suspend any conditionality requirements with UC, as well as parts of the application process. The requirement to hold a phone interview should be suspended, in addition to any work-related conditionality.
- ii) Remove the savings rules to allow more people to access it.
- iii) End the five-week wait by converting emergency payment loans to grants.
- iv) Raise the basic level of UC, and legacy benefits including JSA and ESA, to at least 80 per cent of the national living wage (£260 per week). In future, we would like to see a more earnings-based model, but this is too difficult to introduce swiftly. For existing claimants, payments can be topped up automatically, and the benefit cap should be lifted to account for this.
- v) Significantly increase child benefit payments, and remove the two-child limit within universal credit and working tax credit.
- vi) Ensure nobody loses out as a result of these changes. These increases must not just mean a change in the composition of the benefits someone receives. As well as this, no one on legacy benefits should lose the protection of the managed transition to UC as part of this changes.
- vii) Remove the minimum hours requirements in working tax credits.

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<sup>5</sup> Disability Benefits Consortium (2019) Has welfare become unfair?  
<https://disabilitybenefitsconsortium.files.wordpress.com/2019/09/disability-benefits-consortium-report-has-welfare-become-unfair.pdf>

While these are emergency measures, they must be the start of a wider conversation on how we replace UC in the long term.

## Decent statutory sick pay

Since the crisis began, we have been urging government to fix our abysmal statutory sick pay (SSP) system so that no-one faces the choice between going to work when ill and facing hardship. This will be even more important as more people are asked to return to their workplace.

Early pressure led to some positive changes. In early March, the government temporarily removed the waiting period for SSP, meaning that workers can receive SSP from the first day of illness, rather than the fourth.

However, much more still needs to be done. SSP is currently just £95.85 per week. That's 19 per cent of average weekly earnings (£512). This means that the average employee taking SSP for two weeks will lose around £830. This is a massive financial hit, and leaves employees facing the tough choice of going to work ill or suffering a massive loss in income. The pressure to work when sick is felt even more keenly by those in precarious employment, such as zero-hours contracts and bogus self-employment.

An estimated seven million workers are only eligible for SSP, rather than a higher rate of contractual or occupational sick pay. As well as this, many people miss out on SSP. Just less than two million employees are ineligible as they don't meet the lower income limit.<sup>6</sup>

The percentage of those ineligible and the percentage of those only receiving SSP is higher among certain occupations. Customer-facing occupations, such as caring and leisure, sales and customer service, and elementary occupations, tend to have higher rates of both ineligibility and only being eligible for SSP.<sup>7</sup>

We want to see the lower earnings limit removed to ensure that everyone can access sick pay. We also want to see the weekly SSP rate raised to the equivalent of a week's pay at the real living wage.

Many of those who miss out on sick pay are part of the group of the UK's 3.7 million insecure workers. These include one million people on zero-hours contracts, and many in bogus self-employment. The low pay and uncertain work conditions these workers face have been exposed in this crisis and must be tackled as we come out of it. The government needs to ban zero-hours contracts, introduce a presumption that workers are employed, and give all workers full employment rights from the first day of their job.

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<sup>6</sup> Based on Labour Force Survey analysis, done in March 2020, based on pay data from 2019, when the lower earnings limit was £118. It was raised to £120 in April 2020, but there is no pay data for this period.

<sup>7</sup> Ineligibility due to not meeting lower earnings limit by occupation based on TUC analysis of the Labour Force Survey (LFS). Percentage of employees by occupation who receive taken from Table 3c in the data tables of the Department for Work and Pensions report *Health in the workplace: patterns of sickness absence, employer support and employment retention*. The estimated number of those eligible for SSP only is based on TUC analysis of this data, as well as LFS data. Available at:

[www.gov.uk/government/statistics/health-in-the-workplace-patterns-of-sickness-absence-employer-support-and-employment-retention](http://www.gov.uk/government/statistics/health-in-the-workplace-patterns-of-sickness-absence-employer-support-and-employment-retention)

## Section Five

# List of recommendations

- The government must ensure that workers' mental health and wellbeing is prioritised alongside physical safety.
- The government must run a public information campaign to ensure working people can be confident that health and safety at work is a priority as they return to work. This should be on a scale similar to recent public information campaigns about coronavirus actions.
- Every employer must carry out a specific Covid-19 risk assessment. Employers should work with unions and workers to assess the risks in the workplace, and set out specific steps, including enforcing social distancing, for how these can be mitigated and workers can work safely. This plan must be signed off by one of the UK's 100,000 trade union health and safety reps, or by a Health and Safety Executive (HSE) inspector.
- Personal protective equipment (PPE) must be provided where necessary, and no-one should be asked to re-use PPE inappropriately. Where risk assessments show that PPE is necessary employers must provide this, and no-one, including Public Health England, should require health and social care workers to re-use PPE.
- Government must provide specific advice and protection for those groups most at risk. This includes workers advised to 'shield' and those who are pregnant. If these workers cannot work safely, their livelihoods must be protected.
- Black and ethnic minority workers have suffered disproportionate harm from the impact of the virus. The EHRC must ensure that the return to work strategy seeks to prevent this disproportionate impact and complies with the public sector equality duty.
- Unions should be consulted when the government prepares sector-specific guidance, and when employers seek to implement it.
- The Health and Safety Executive (HSE) must act quickly to sanction employers that do not risk-assess for Covid-19 or fail to provide safe working arrangements. We know Covid-19 is spread by people displaying no symptoms. We cannot wait for workers to be infected before action is taken. The HSE needs to take action – including prosecutions – against employers who do not take safety seriously.
- The HSE must run a public information campaign to ensure workers know their rights. To support this, the HSE and local authority regulators who inspect workplaces need additional resources and inspectors to act swiftly on reports of unsafe working practices.
- No worker should face a sanction for refusing to work in an unsafe workplace. Employees have the right to withdraw from and to refuse to return to an unsafe workplace, and the right to legal protection from dismissal, disciplinary or any other

detriment for raising a health and safety issue. Employers must be reminded of this and workers must have this right guaranteed.

- Government must ensure the job retention scheme continues to protect jobs. This means:
  - maintaining the scheme as long as lockdown is in place
  - increasing the flexibility of the scheme to support short-time working, to enable people to gradually return to work
  - ensuring the scheme still protects those who cannot work, including those who are shielding or caring for someone shielding, parents who cannot work while schools are closed, and those who are ordered to self-isolate by the contact-tracing programme
  - making clear in the guidance on the JRS that union reps can continue to carry out their duties.
- Those who lose their jobs must be protected by a strengthened safety net.
  - The basic rate of universal credit and legacy benefits should be raised to at least £260 a week, 80 per cent of the real living wage.
  - Suspend any conditionality requirements with UC, as well as parts of the application process. The requirement to hold a phone interview should be suspended, in addition to any work-related conditionality.
  - Remove the savings rules to allow more people to access UC.
  - End the five-week wait by converting emergency payment loans to grants.
  - Raise the basic level of UC, and legacy benefits including JSA and ESA, to at least 80 per cent of the national living wage (£260 per week). In future, we would like to see a more earnings-based model, but this is too difficult to introduce swiftly. For existing claimants, payments can be topped up automatically, and the benefit cap should be lifted to account for this.
  - Significantly increase child benefit payments, and remove the two-child limit within universal credit and working tax credit.
  - Ensure nobody loses out as a result of these changes. These increases must not just mean a change in the composition of the benefits someone receives. As well as this, no one on legacy benefits should lose the protection of the managed transition to UC as part of this changes.
  - Remove the minimum-hours requirements in working tax credits.
- We need decent sick pay for all to ensure no-one has to go to work when sick.
  - The basic level of sick pay should be raised to the equivalent of a weeks' pay at the real living wage.
  - The estimated two million people who miss out on sick pay because they don't earn enough must be included in the sick pay system now.

- The coronavirus has exposed even more starkly the conditions faced by those in insecure work. Government must ban zero-hours contracts, tackle false self-employment, and guarantee all workers day-one employment rights.