



### **Advice for members in schools regarding returning to work after the Christmas holidays**

As I am sure you are aware, the current situation concerning schools in England appears to be fluid, with the government changing their position a number of times in the face of the spread of the new strain of the virus. This has raised significant questions as to whether schools can operate safely in view of this development. We have already ensured that schools within London Boroughs will remain closed for all but the children of key workers and those classed as vulnerable. Unfortunately, at the time of writing, despite calls from across the political spectrum, statements made by scientists on the Government's Sage advisory panel and unions ([Government must apply common sense and postpone schools re-opening | GMB](#)) many schools outside of the capital are still expected to open tomorrow despite many being in Tier 4 areas where the spread of the virus is alarming.

In view of this, GMB national guidance has been issued, a copy of which can be found here: <https://www.gmb.org.uk/network/public-services-section/schools-academies-education-noticeboard/schools-staff-noticeboard>

As you will see from the update, we have taken extensive legal and health and safety advice with regards to the position. This advice is that we cannot guarantee members will not face disciplinary action if they do not turn up to work tomorrow. Whilst members can refuse to work under section 44 of the 1996 Employment Rights Act (which allows employees to refuse to undertake work if it is deemed as causing a serious and imminent risk to their health and safety) we cannot give assurances that this will not lead to action from their employer. Should this occur GMB will fight on your behalf to ensure that you do not get sanctioned. However, as there is no case law as to whether this part of the legislation covers the current pandemic, we cannot therefore give cast iron guarantees that you will not face action should you exercise your rights under this law.

As a result of the above, we are continuing to press for Government, Local Authorities and Head Teachers to take steps to ensure that your health and safety is protected. We are asking for risk assessments to be updated to ensure that the dangers of the new strain are recognised and are also calling on them to leave schools closed until such times as they are better prepared to deal with the increased risks this causes. However, if your school intends to open tomorrow, we cannot encourage you to refuse to work without informing you of the possible impact of such a decision.

### **What to do tomorrow?**

Because of this, in order to ensure that your job is protected and that you do not face any consequences, we are advising members to return to work tomorrow unless you have been advised not to.

Staff should have been informed if your school is closed or opening in a limited manner and whether this means that you will be required to come in for all of your hours. If your school is closed except for

vulnerable children or those of essential workers, you should be contacted about returning on a reduced hours or on a rota system. If you still have concerns, these should be raised with your manager as soon as possible with a view of ensuring that your circumstances are understood and that the right decision can be made. Should you require any assistance with this, or feel that the school is ignoring you in this regard, please let us know immediately.

#### **What to do if you are either in Clinically Vulnerable or Clinically Extremely Vulnerable Group?**

If you are covered by this category then steps should have already been taken to ensure your health and safety which should include excusing you from duty. To find out whether you are considered as part of either of these groups, please see the following link: [Who's at higher risk from coronavirus \(COVID-19\) - NHS \(www.nhs.uk\)](https://www.nhs.uk/conditions/coronavirus/coronavirus-who-is-at-higher-risk/)

If you are in this group but have not been contacted, please let the school know as soon as possible that you are in one of these groups and ask for a personal risk assessment to be carried out to show that the school are taking the necessary steps to protect your health and safety. If the school are not able to produce this, we do not believe that adequate arrangements have been made for your health and safety and we will provide full support to any member who finds themselves experiencing difficulties because of this. Members should contact their union rep or branch should they require more information in this regards.

#### **What to do if you have already submitted a letter under section 44?**

We are aware that many of our members have already made it clear that they are unwilling to work because of the threat to their or their family's health and safety. Although, as explained above, we cannot guarantee that no action will be taken because of this, we will support any member who finds themselves in difficulty because of this. We are working with the head teachers' unions, NAHT and ASCL, to resolve any issues around this and hope that a common sense approach will apply. We also know that a large number of Heads have already refused to reopen the schools having taken the view that it is unsafe to do so. Should you find yourself in any difficulty having submitted such a letter please contact your rep or branch to ensure that we can support you moving forwards.

#### **What if I go to work but am being asked to undertake work of those who have refused to come in?**

Due to the nature of the pandemic and the fact that many staff will be off (either as a result of being required to isolate or because they are in a high risk group) it is likely that there may need to be some reallocation of a work as a result. However, whilst it is not unreasonable under the circumstances to ask support staff to undertake different work within their job description, it is important that you are not expected to undertake higher graded work or that of absent teachers. As a result of this, we will support any members who refuses to do such work if asked to do so.

#### **What if I am asked to administer Covid tests as part of my role?**

GMB has dismissed plans by the Government to get school-based staff to undertake large scale testing within the schools as rushed and ill thought out, a view shared by both Head teachers and Teachers Unions. Whilst supportive of the aims of such a programme, we do not believe that there has been anywhere near the amount of support necessary to undertake this exercise. As a result of this, GMB will provide full support to any member of staff who feel that they are being pressurised to undertake this work as we do not believe that it is fair to expect you to carry out such functions without significantly more preparation and consideration as to the manner in which the tests can be administered and skills required to do so. As a result, please get in contact with us immediately if you feel that you are being expected to undertake this type of work.

**If I have to go in, how do I stay safe?**

All schools should have undertaken detailed risk assessments which examine the steps necessary to keep staff and pupils safe under the current circumstances. These risk assessments should have been updated to take into account the issues created by the emergence of a new Covid strain. The link to the national guidance (provided above) gives a number of steps that can be taken to reduce the risk. These include social distancing measures (where possible), keeping windows open, and also the wearing of face coverings. Whilst we understand that the latter has caused some problems with some Head Teachers, we believe that it is reasonable for staff to wear such a face covering if they feel it necessary on the grounds that it is a proportionate step to protect your health and safety whilst working. Should this cause any problems within your school, please let us know immediately.

**What happens next?**

GMB will continue pressuring the Government, Local Authorities, and Head Teachers to take the necessary steps needed to ensure that schools are safe places for both children and staff. We are putting pressure on all levels to ensure that the risk assessments are reviewed and updated with the involvement of your GMB rep to ensure that the right steps are being taken. If this cannot be done safely, we will continue to fight to ensure that they take whatever action is necessary to protect you moving forwards, including demanding that schools are shut either individual or country wide in order to put the necessary protections in place. We will update you shortly but if you have questions or concerns about your own school or situation in the meantime, please contact either your rep, branch or regional office on [info@gmb.org.uk](mailto:info@gmb.org.uk)