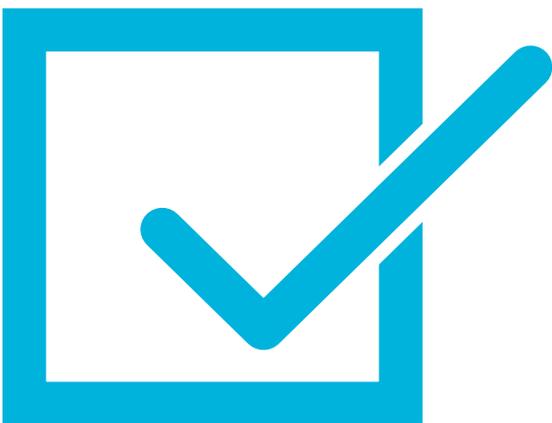


National Education Union
**guidance on the health and
safety aspects of schools
opening more widely**



Coronavirus crisis
Workplace checklist



The National Education Union (NEU) is not opposed to the wider opening of schools, but **only when it is safe**. We continue to challenge the Government and employers at national and local level over plans to open schools more widely when there is no reassurance that it is safe to do so.

Of course, many schools have remained open to vulnerable children and children of key workers. It is the proposed increase in staff and pupils attending school that means the health and safety of all may be compromised.

We set out five tests that need to be met before we can be assured, as can our members, that introducing more pupils and staff into schools is safe. Those five tests are:

- Much lower numbers of Covid-19 cases
- A national plan for social distancing
- A fully functioning test and trace system
- A whole school strategy
- Protection for the vulnerable

Our stance on wider opening has never been about political point scoring. It is based on the lack of scientific proof, the chaotic nature of the DfE's guidance (amended 41 times in a week) and ensuring the health and safety of staff, pupils and the wider community.

Through the work we have done many local authorities, MATs and individual schools have delayed or limited wider opening. A safer and more responsible approach is being taken by these employers.

Some schools are pushing ahead with wider opening and they must therefore properly assess the risks to the health and safety of pupils, staff and the wider community to ensure they comply with health and safety legislation.

Plans and risk assessments must address all aspects of school life including cleaning, catering and other ancillary issues. No member of staff should become a part-time cleaner if that is not already one of their duties. Schools must use properly trained cleaners using the right equipment and wearing suitable PPE.

The NEU does not agree with the current DfE guidance on PPE – that it is generally not necessary. Local risk assessments should decide whether PPE is necessary taking into account particular risks staff may be exposed to e.g. if children returning to school have known behavioural problems and may bite or spit.

The NEU, with Unison, GMB and Unite, has produced comprehensive checklists which schools should use to properly assess the risks in that school and what measures are need in place to reduce those risks to the absolute lowest level.

Legal responsibilities

The government took a nationwide decision to close all schools except to enable the attendance of vulnerable children and children of key workers. However, when it comes to wider opening, responsibility is being left squarely with individual employers. That means that each employer must decide if it is safe for their school(s) to open more widely and when. Similarly, each individual should decide whether their workplace will be safe enough for them to return. It may be that, for example, due to a failure by a school to adopt all necessary measures all staff being asked to return may reach the same conclusion and decide to collectively communicate that decision. In other cases, individual staff may decide that their own particular circumstances mean it is unsafe for them to attend the workplace.

Guidance and advice

The NEU has published checklists for [primary schools and early years](#), for [secondary schools and colleges](#) and for [special schools and PRUs](#) and has also issued [advice for staff at greater risk](#) and for [Black staff](#).

The joint union checklists are available [here](#).

The NEU, together with Unison, GMB and Unite wrote to all heads and local authorities reminding them of their duties under health and safety law (more information below). In relation to local authorities this included reminding them that they are responsible for the welfare of all children in their area.

What are my rights as an individual?

Your employer is under a duty both under legislation and contractually to provide you with a safe place of work. In every contract of employment there is an implied term that gives the employee the right not to work in an unsafe workplace.

Is there any legislation that enforces this right?

Under the Employment Rights Act 1996 employees are protected from detriment (s44) or dismissal (s100) if they:

1. are a safety rep and carried out activities in connection with preventing or reducing risks to health & safety;
2. are a safety rep and performed any functions as a safety rep or member of a safety committee;
3. work at a place with no safety rep and brought to the employer's attention (by reasonable means) circumstances that were harmful or potentially harmful to health & safety;
4. in circumstances of **danger** which the employee reasonably believed to be **serious** and **imminent** and which they could not reasonably have been expected to avert, they left (or proposed to leave) or (while the danger persisted) refused to return to their place of work or any dangerous part of the place of work, or
5. in circumstances of **danger** which the employee reasonably believed to be **serious** and **imminent**, they took (or proposed to take) appropriate steps to protect themselves or other persons from the danger.

Detriment in this case may include pay being deducted or a disciplinary sanction such as a written warning.

What does this mean for me?

Any employee has a legal right not to attend their place of work if they reasonably believe it will expose them, or others, to a serious and imminent risk of danger. The following will need to be considered.

- It must be a reasonable belief of serious and imminent danger (given the wording of the Health Protection (Coronavirus, Restrictions) Regulations 2020 this should not be problematic – see below).
- The risk of danger does not need to be to the employee themselves alone, but can be risk to others.
- The risk may arise from lack of safety on the journey to work¹.
- An employee doesn't have an unlimited right to conclude the existence of serious and imminent danger. Their belief must be reasonable. Such a belief may be formed if a school or college fails to tackle the risk in accordance with the joint union checklist.
- An employee who is penalised for exercising a reasonable belief of serious and imminent has a legal remedy in tribunal.
- A worker raising concerns over health and safety will also have the protection under the whistleblowing legislation, this will include supply staff.

¹ Lack of safety when travelling to and from work will arise when someone is reliant on public transport. An individual who feels it is unsafe to travel should take photographic evidence to support their conclusion i.e. evidence of overcrowding and other passengers not wearing face coverings.

What should I do if I believe my workplace is unsafe?

1. If your school has a rep, speak to the rep as others may share your concern. In which case your rep can send a letter on behalf of some or all staff.
2. If there is no rep, it may still be worth trying to speak to your colleagues to see if they share your concerns. The NEU has produced a template letter that you can each use.
3. It may be that others do not share your concerns, but you are in a particularly difficult position due to your own vulnerability or because of someone in your family. In such a case you should send the template letter completed as appropriate.

Why are we not balloting for industrial action?

With the best will in the world the statutory balloting process takes at least 5 weeks, during which, if required, members would need to return to work.

Second and more importantly, concerns around the safe wider opening of schools is a public health and safety issue not an industrial issue. If the industrial action process is followed our narrative around the wider opening of schools would, by legal necessity, have to be focused on the working conditions of members. That is not the focus of the NEU's concern. Our overriding concern is on the threat to health & safety should more pupils and staff attend school.

What is the health and safety legislation that applies to my employer?

The key pieces of health and safety legislation are: -

The Health & Safety Act 1974

Section 2 of the 1974 Act places a duty on employers to ensure the health, safety and welfare at work of all employees. Section 3 extends this duty to persons not in employment but who may be affected by the employers' actions (pupils, parents, anyone sharing a home with a pupil or member of staff).

The Management of Health & Safety at Work Regulations 1999

The 1999 Regs place obligations on both employers and employees. The key provisions are as follows: -

Regulation 3 - requires employers to undertake a suitable and sufficient assessment of the risks to health & safety of employees and others affected by the conduct of the employers undertaking (pupils and arguably parents).

Regulation 8 - requires employers to: -

- a) have appropriate procedures in place in the event of a serious and imminent danger to workers,

Such procedures shall

- a) inform workers exposed to serious and imminent danger the nature of the hazard and steps taken to protect them from it,
- b) enable workers concerned to stop work and immediately proceed to a place of safety in the event of their being exposed to serious, imminent and unavoidable danger; and
- c) require the persons concerned to be prevented from resuming work in any situation where there is still a serious and imminent danger.

Regulation 14(b) requires employees to inform their employer or safety rep of any work situation which represents a serious and immediate danger to health & safety and any shortcoming in the employer's protection arrangements for health & safety.

Regulation 16 requires a separate and distinct risk assessment to be carried out for pregnant or breastfeeding women and new mothers. If it is impossible to avoid the risk to the health & safety of a pregnant or breastfeeding woman or new mother, from any processes, working conditions, physical, biological or chemical agents she should be suspended on full pay in accordance with section 68 of the Employment Rights Act 1996.

The Personal Protective Equipment at Work Regulations 1992

Regulation 4 requires every employer to ensure that such suitable personal protective equipment is provided to employees who may be exposed to a risk to their health & safety while at work unless the risk is adequately controlled by other means that are equally or more effective.

The Workplace (Health, Safety & Welfare) Regulations 1992

Regulation 4 requires that workstations are "suitable" for any person that works there. This would include a classroom, or any other area of a school or college for our members.

In addition, there is implied into every contract of employment the implied term that the employer will provide a safe working environment and the wider implied term of mutual trust and confidence.

The Control of Substances Hazardous to Health Regulations 2002

Regulation 7 requires every employer to ensure that the exposure of his employees to substances hazardous to health is either prevented or, where this is not reasonably practicable, adequately controlled.

Other relevant legal duties and legislation

Members of staff also have responsibilities towards pupils in their care.

The Children's Act 1989

Section 3 provides that a person who—

- a) does not have parental responsibility for a particular child; but
- b) has care of the child,

may do what is reasonable in all the circumstances of the case for the purpose of safeguarding or promoting the child's welfare.

The Health Protection (Coronavirus, Restrictions) Regulations 2020, state that they are made in response to the "serious and imminent" threat to public health posed by Coronavirus. This is a replication of the words used in s44 and s100 of the Employment Rights Act referenced above.

