

## Guidance for clinically extremely vulnerable members, their reps and district/branch secretaries

The NEU has issued new guidance to CEV members advising them of their rights to continue to work from home when the national lockdown ends on 2<sup>nd</sup> December. The NEU has written to head teachers asking them to support their CEV staff in this regard.

The NEU will be supporting our members who fall within the CEV category and wish to remain working from home. Every contract of employment contains an implied right that an employee can refuse to attend their workplace if it is unsafe. Schools and colleges currently fall clearly into this category. The Employment Rights Act 1996 contains protections for employees who exercise their right to stay away from an unsafe workplace.

The National Education Union's general advice for clinically extremely vulnerable members is available here <https://neu.org.uk/advice/coronavirus-medically-vulnerable-and-higher-risk-groups>

This advice specifically relates to your legal position as the end to lockdown 2.0 is announced.

When the government announced an England wide lockdown in November until 2 December [clinically extremely vulnerable people were advised not to attend their place of work](#).

The government now say that from 2 December CEV people can return to their workplace. They have provided no scientific evidence to explain this position.

The National Education Union is still deeply concerned that the safety of our CEV members will be compromised should they return to workplace. We have reached this conclusion for the following reasons: -

1. There have been 1,997 confirmed outbreaks of coronavirus in England's schools this term. 73% of state-funded secondaries and 29% of state-funded primaries reporting last week that one or more pupils were self-isolating due to potential contact with a case of Covid-19 inside the school.
2. Infection amongst secondary pupils is the highest of any age group – 54 times what it was at the beginning of September. Infection amongst primary pupils is also high - the infection rate has increased 11 times since the beginning of September.
3. The rate amongst pupils increased significantly after the start of lockdown. The Coronavirus Infection Survey (CIS) reported that coronavirus infection amongst primary pupils has increased by a sixth and a quarter amongst secondary age pupils.
4. While the infection rates among school age children may now have levelled off, they remain higher than at the start of the lockdown. According to the CIS, there has yet to be a fall in the rate of infection in the population and SAGE reports the R rate to have remained above 1 throughout lockdown.
5. Secondary age children transmit the virus as much as adults. SAGE now finds that secondary age pupils are the most efficient transmitter of COVID into households. This means that secondary pupils can transmit the virus to adults in schools.
6. The WHO and SAGE recognise that aerosol transmission of coronavirus is possible. SAGE advise: *Good ventilation of indoor spaces will dilute and remove virus in the air. People should not spend long periods of time in poorly ventilated spaces with other people. It is recommended that organisations should take steps to ensure appropriate ventilation provision and improve ventilation or limit the occupancy of spaces that have inadequate ventilation.*

7. However, classrooms are often poorly ventilated and crowded. SAGE also caution that: *Asymptomatic and presymptomatic transmission of SARS CoV2 is now known to occur*. So, the risk of aerosol transmission is high in classrooms.
8. The rate of coronavirus has not declined very far since 5th November when it was necessary to implement the lockdown. According to the Coronavirus Infection Survey (CIS) there has yet to be a fall in the rate of infection in the population and SAGE report R to have remained above 1 throughout lockdown.
9. There is very significant regional variation in the rate of infection. Between 8<sup>th</sup> to 21<sup>st</sup> November, the [Office for National Statistics](#) estimated that the rate of Covid-19 infection amongst secondary pupils in Yorkshire and The Humber was 4.9%, more than double the national average. And they estimated that the rate of infection amongst primary pupils in the West Midlands was 2.7%, again more than double the national average.
10. The Government has refused to release any absence figures for teachers and support staff. However, we know from [a survey by Teacher Tapp](#) that last week 8% of teachers were self-isolating and this was double the rate for any other week this term.

The high levels of pupil absence generally (which are even higher in areas with the highest rates of infection) suggest that CEV staff would be able to undertake plenty of work in relation to those pupils and those who are at school when working at home.

### **What the law says about safety**

All employers have statutory duties to protect the health and safety of their employees. These duties are found in the following: -

- Sections 2 and 3 of the Health & Safety Act 1974
- Regulations 3 and 8 of the Management of Health & Safety at Work Regulations 1999
- Regulation 4 of the Personal Protective Equipment at Work Regulations 1992
- Regulation 4 of the Workplace (Health, Safety & Welfare) Regulations 1992
- Regulation 7 of the Control of Substances Hazardous to Health Regulations 2002

All members of staff who are deemed CEV must have an individual risk assessment completed to deal with their own personal circumstances. The National Education Union does not believe that a properly carried out risk assessment can reasonably conclude that it is safe for a CEV member to be in the workplace.

Every contract of employment has an implied term that an employee can refuse to attend their place of work if it is unsafe for them to do so. Further, an employee is protected from suffering a detriment or being dismissed if they do not go into their workplace because they reasonably believe to do so would place them at serious and imminent danger to their health and safety

### **What this means for you**

The NEU cannot categorically conclude if your workplace is safe or unsafe. This is a decision for you to make based on the information above, your own medical circumstances and the situation in your particular area. If you reasonably believe it is unsafe for you to go into your school or college you should send this letter [link] (or ask your rep or district or

branch secretary to send this letter [link] on your behalf). You should make it clear that you are ready, willing and able to work from home.

If you have any concerns about the response you receive from your Head/Principal, then contact us immediately via the Adviceline. You will be fully supported by the union whatever decision you make.