

PREGNANCY AND MATERNITY LEAVE DURING THE COVID-19 PANDEMIC

The NASUWT is aware that there are a significant number of members who are pregnant or on maternity leave who will be concerned about the workplace, given the easing and withdrawal of various restrictions, coupled with the surge in cases of the coronavirus which is linked to the emergence of the Omicron variant.

In light of this, the Union has produced this advice and guidance to ensure that members who are pregnant or on maternity leave are aware of their rights and entitlements and supported during this time.

Your duties as a pregnant or new mother

Throughout the process, it is important that you inform your employer of the fact that you are pregnant or breastfeeding and that you expect the school to support you in your request for an individual risk assessment.

You must co-operate with the employer, providing them with any information which will facilitate the provision of an individual risk assessment for you as a pregnant or new mother, which should be provided to you before you return to work.

The Health and Safety at Work Act 1974

The Health and Safety at Work Act (HASAWA) places a responsibility on all employers to ensure, as far as is reasonably practicable, the health and safety of all employees and non-employees in their workplace. This includes identifying and assessing risks to health and safety, and steps to reduce or eliminate these risks, so that all those working in a school are safe, including pregnant teachers and those who are breastfeeding. This applies to COVID-19 in the same way as it would to any other hazard.

The employer is required to consider whether they have taken 'reasonable steps', so far as reasonably practicable, if necessary by amending their health and safety policies, procedures and practices, to ensure that pregnant teachers or new mothers are not placed at a substantial disadvantage.

Under the **Management of Health and Safety at Work Regulations (1999)**, employers are required by law to produce an **individual risk assessment** for you if you are pregnant or a new mother, including clear plans which demonstrate that there will be compliance at all times with the measures identified to manage the overall risk of COVID-19, as well as those specific to you as a pregnant or a new mother.

This may require employers taking advice from other professionals on specific risks (e.g. medical professionals/occupational health) for pregnant teachers and those who are new mothers to best ensure your health and safety in the workplace.

Indeed, **advice and guidance** from the Scottish Government emphasises the importance of conducting a risk assessment for those who are pregnant and ensuring that appropriate individual risk assessments are in place to inform any reasonable adjustments required to remove the risk for pregnant teachers.

The **Workplace (Health, Safety and Welfare) Regulations 1992** provide additional protections for pregnant teachers and those who are new mothers, as it requires employers to provide suitable

rest facilities for teachers who are pregnant or breastfeeding. These should be located in a suitable place (e.g. near toilets) and, if necessary, include appropriate facilities for teachers who are pregnant or new mothers to lie down.

In addition, the employer has specific duties to those with protected characteristics under the Equality Act 2010, such as expectant mothers.

‘Clinically vulnerable’/‘clinically extremely vulnerable’

It is important that any risk assessment acknowledges and accounts for the fact that those who are pregnant should still be considered ‘clinically vulnerable’. In some cases, those who are pregnant may be classed as ‘clinically extremely vulnerable’ (CEV).

Those who are pregnant have an increased risk of becoming severely unwell if they contract COVID-19 because pregnancy can alter how the body handles severe viral infections, particularly in the third trimester.

Indeed, there is some evidence that pregnant women are at higher risk of hospitalisation and suffer more severe symptoms if they contract COVID-19, a situation that can be compounded if the individual is from a Black background, if they are over the age of 35, have a BMI index in excess of 30, and/or have pre-existing medical conditions, such as high blood pressure and diabetes.

The Union maintains that until more is known about the effects of the Omicron variant, all employers should permit pregnant women, of whatever gestation, to work from home. For some teachers who are pregnant, this may mean agreeing to a temporary redeployment to other duties that can be undertaken from home.

Where this is not feasible, or a pregnant teacher chooses to be in the workplace, [advice and guidance](#) produced by the Scottish Government references the fact that pregnant women at any period of gestation should not be required to continue working unless this is supported by an appropriate risk assessment. The same advice and guidance references the need to monitor and follow the information published by the [Royal College of Obstetrics and Gynaecology \(RCOG\)](#) in order to keep the risk to exposure as low as is practically possible for pregnant women, particularly those in the third trimester.

There is an expectation that schools follow the advice and guidance for pregnant employees referenced above as part of any risk assessment, including giving due consideration to whether adapting duties and/or facilitating home working is an appropriate mitigating factor, such as the option of working in a non-front-facing role with FFP2/FFP3 masks provided.

The risk assessment must be produced and any options fully discussed with you in advance of any return to work, which should be kept under review throughout your pregnancy/period of breastfeeding and as government advice and guidance changes.

Furthermore, it should be noted that this is predicated on the ability to minimise contact. If this is not possible, then the time spent in close contact with others should be kept to a minimum.

Those who are pregnant should therefore still take care to minimise contact with others from outside their household, as well as paying particular attention to social distancing measures and good hygiene, particularly in the third trimester and beyond.

Pregnant teachers should only be in the workplace or return to the workplace if it has been demonstrated that it is safe to do so.

This may include, but is not limited to:

- adjusting your working conditions or hours of work, including:
 - providing arrangements for you to report to the school safely;
 - letting you sit down if your job involves standing;

- avoiding any heavy lifting;
- adjusting your workload (e.g. not attending after-school meetings);
- flexible working so you can stagger your working day if you suffer from morning sickness;
- providing you with a convenient suitable place to rest and lie down if you are pregnant or breastfeeding that minimises close contact with others and is located near a suitable place (e.g. toilets), as per the Workplace Regulations;
- providing you with reasonable agreed breaks that may be in addition to those already in the school timetable, including where these can be taken in a COVID-secure environment;
- providing you with a safe working environment that accommodates and adjusts both the physical and mental demands of your role accordingly at different stages of your pregnancy;
- providing a private, healthy and safe environment for breastfeeding teachers to express and store milk;
- allocating you to your own office;
- allocating you the safest alternative role with the greatest likelihood of minimising close contact with others;
- ensuring those who may have close contact are advised to clean their hands thoroughly and more often than usual;
- ensuring good respiratory hygiene for everyone coming into contact with you (e.g. 'catch it, bin it, kill it');
- maintaining enhanced cleaning regimes in and around your work area and any classrooms used;
- providing you with details of the arrangements for how pupils are expected to be managed to ensure compliance with any additional mitigations for you as a pregnant teacher or new mother (e.g. classroom layouts), including measures to deal with any medical conditions, behavioural issues and/or violent pupils, special educational needs or disabilities (SEND) in respect of COVID-19;
- providing you with details of the revised fire exit and any revised evacuation plans, including routes and procedures for you as a pregnant or new mother (these should identify any additional mitigations required in the context of COVID-19);
- providing you with the details of how you will be deployed to protect you in regards to any COVID-19 testing regime;
- providing you with the details of what contingency planning is in place for you as a pregnant or new mother in the event of a suspected outbreak of COVID-19;
- addressing the risk assessment on a regular basis, particularly in light of any medical evidence from your GP and/or midwife;
- addressing issues relating to stress, including postnatal depression, as well as those relating to mental health wellbeing, particularly if utilising remote learning/working from home;
- addressing issues relating to personal protective equipment (PPE), including the wearing of face coverings as appropriate and 'recommended' circumstances, including for both staff and pupils in classrooms and communal areas;
- addressing issues to do with ventilation and extremes of temperature, including identifying and agreeing processes for keeping your working environment well ventilated, including through the use of carbon dioxide sensors as suggested by the Health and Safety Executive (HSE); and
- addressing issues relating to the use of public transport.

Furthermore, women who are pregnant are advised to keep mobile and hydrated to reduce the risk of blood clots during the pregnancy.

This could potentially be mitigated by including provisions for you to be able to access drinking water as and when required, without putting you at risk and while maintaining attention to social distancing.

Your individual risk assessment should be provided to you by the employer in enough time to fully familiarise yourself with the situation at the earliest opportunity.

This should demonstrate what considerations have been given to the issues raised above and how the working environment has been adjusted accordingly.

School leaders will therefore need to be cognisant of this and share and discuss this with pregnant teachers as part of an ongoing risk assessment, including being flexible with how those members of staff are deployed if the school is not able to demonstrate that the risks are removed or mitigated satisfactorily, including:

- altering your working conditions or hours of work;
- providing suitable alternative work on the same terms and conditions, including working from home; and
- suspending you on full pay (if there is no suitable alternative work).

Teachers who are pregnant and in the third trimester

In respect to women who are pregnant and in their third trimester (more than 28 weeks' pregnant), there is evidence which suggests a link between the symptoms of COVID-19 and complications in and around the time of birth, including premature birth, pre-eclampsia, the need for an emergency caesarean, and stillbirth.

Previous advice and guidance produced by the UK Government referenced the need for employers to take a '*more precautionary approach*' for those who are pregnant and in the third trimester. This is because information produced by the [Royal College of Obstetricians and Gynaecologists \(RCOG\)](#) suggests that the majority of pregnant women admitted to hospital with COVID-19 were in the third trimester of pregnancy.

Because of this, issues to do with health and safety and the need for a comprehensive individual risk assessment become even more important for those who are pregnant and in the third trimester.

For example, the provision of suitable rest facilities which are located in a suitable place (e.g. near toilets), including, if necessary, appropriate facilities for teachers who are pregnant, becomes even more important during the third trimester, given it is likely there will be issues associated with mobility.

Additional mitigations for those who are pregnant and in the third trimester could include the provision of a dedicated classroom for you to use on the ground floor that is close to an emergency exit, so you do not have to move around the school/college.

School leaders will need to be cognisant of this information, including being more flexible with how teachers who are pregnant and in the third trimester are deployed if the school is not able to demonstrate that the risks are removed or mitigated satisfactorily.

The significance of social distancing

Although the easing and the withdrawal of various restrictions in relation to the COVID-19 pandemic has meant there is no longer a requirement to stay two metres apart, there is still an expectation that individuals limit close contact with those they do not live with and minimise the number, duration and proximity of social contacts.

This is particularly relevant for those who are pregnant. Indeed, the RCOG continues to advocate that those who are pregnant, particularly in the third trimester, pay particular attention to social distancing measures.

The same advice and guidance from the RCOG should be used as the basis for a risk assessment, including specific reference to evidence that suggests the risk of becoming infected with COVID-19 is higher in individuals who are more exposed; for example, those working in healthcare or other public-facing occupations (e.g. teaching).

School leaders will therefore need to be cognisant of this information and share and discuss this as part of an ongoing risk assessment, specifically with teachers who are pregnant and in the third trimester.

Your employer should be asked to demonstrate what considerations have been given to the issues raised above and how the working environment has been adjusted accordingly, particularly in respect of those who are pregnant and in the third trimester.

The role of the 'competent person'

Pregnant and breastfeeding mothers, including those in the third trimester, should expect any discussions about their risk assessment to be undertaken by, or in conjunction with, a 'competent person' in order to meet the requirements of health and safety law.

A 'competent person' should be someone in your school or college who has sufficient training and experience or knowledge to assist you in the process properly.

The level of competence required will depend on the complexity of the situation, but there is an expectation that the 'competent person' is able to offer the specific advice and guidance required.

This can include the employer or someone within the school or college. If this is the case, you should enquire as to their experience and expertise so you can be satisfied that any and all concerns you have regarding your situation as a pregnant and breastfeeding mother can be addressed accordingly.

It should be noted that it is not essential for your employer to meet with you in person to discuss your risk assessment. Due to the ongoing COVID-19 pandemic, it is perfectly reasonable for your risk assessment to be conducted remotely, particularly if it would put you at risk to travel to the workplace to discuss your risk assessment.

However, even with a comprehensive risk assessment in place, you may still have concerns around returning to school. This is a natural reaction to the circumstances and it is likely that there will be a sense of trepidation ahead of the wider reopening. It is important, therefore, that these concerns or anxieties are shared with line managers/headteachers. If issues are not raised, they cannot be addressed. Good employers will welcome this feedback in order to review and adapt arrangements.

If you are feeling anxious about returning, you should also enquire about any employee assistance programmes (EAPs) that your employer may offer.

If there are concerns around your school's response and/or the risk assessment, in the first instance, these should be raised with your line manager/headteacher at the earliest opportunity. If you do not receive a satisfactory response, or continue to have any outstanding or ongoing concerns, you should contact the NASUWT for further advice.

Medical advice/occupational health

If you still feel anxious about the plans in place for you as a pregnant teacher, particularly if you are a pregnant teacher in the third trimester, you should seek advice from your midwife and/or GP. Your health and wellbeing must be your top priority and your midwife and/or GP may be able to supply you with a fit note stating that you are fit to work, providing the adjustments required are put in place.

As referenced above, a referral to occupational health can also be beneficial and supportive to addressing concerns in the workplace and facilitating a return. Absence also gives time for the employer to resolve any outstanding concerns around the workplace which can then facilitate a return.

Your school or college should respond sympathetically, and there should be dialogue in order to try to address any underlying issues.

Vaccinations

Whilst the decision over whether or not to get vaccinated rests with the individual, the RCOG recommends vaccination as the most effective way of protecting pregnant women from COVID-19.

Vaccination is the best way to protect from the known risks of COVID-19 in pregnancy for both women and babies, including during severe illness and pre-term birth.

It should be noted that schools and colleges are still obliged to undertake a risk assessment for pregnant and breastfeeding mothers whether or not they have been vaccinated.

The [advice and guidance](#) from the Scottish Government references the increased risks for those pregnant teachers who are non-vaccinated or not fully vaccinated and emphasises the importance of a workforce risk assessment, including, where appropriate, consideration of how best to redeploy such staff and how to maximise the potential for home working, wherever possible.

Contingency planning for a COVID-19 outbreak

Schools in Scotland are expected to follow the advice and guidance from the Scottish Government for schools which details the steps to be taken if there is an outbreak in the school. It is for local Health Protection Teams to consider individual risks for any staff or pupils. The NASUWT considers that local outbreaks should result in a review of the risk assessment for pregnant women and additional mitigations where appropriate, and members should check that this is in place.

If you have concerns around your school's response and/or the risk assessment, these should be raised with your line manager/headteacher at the earliest opportunity. If you do not receive a satisfactory response, contact the NASUWT for further advice.

The Equality Act 2010

The provisions under the Equality Act 2010 and corresponding Public Sector Equality Duty (PSED) apply to all employees. The duties under this legislation apply to England, Scotland and Wales.

Under the PSED, school management and governing bodies are required to have 'due regard', when making decisions and developing policies, to the need to:

- eliminate discrimination, harassment, victimisation and other conduct that is prohibited under the Equality Act 2010;
- advance equality of opportunity between people who share a protected characteristic and people who do not share it; and
- foster good relations across all protected characteristics – between people who share a protected characteristic and people who do not share it.

As a pregnant teacher or new mother, you are protected from discrimination, victimisation and harassment under these provisions. All school risk assessments should be equality impact assessed to ensure that there are no discriminatory provisions or practices for pregnant teachers or new mothers.