

## Health and work update for clients as at 7 Mar 2022

### UPDATE ON PROMOTING, PROTECTING AND SUPPORTING HEALTH IN WORK

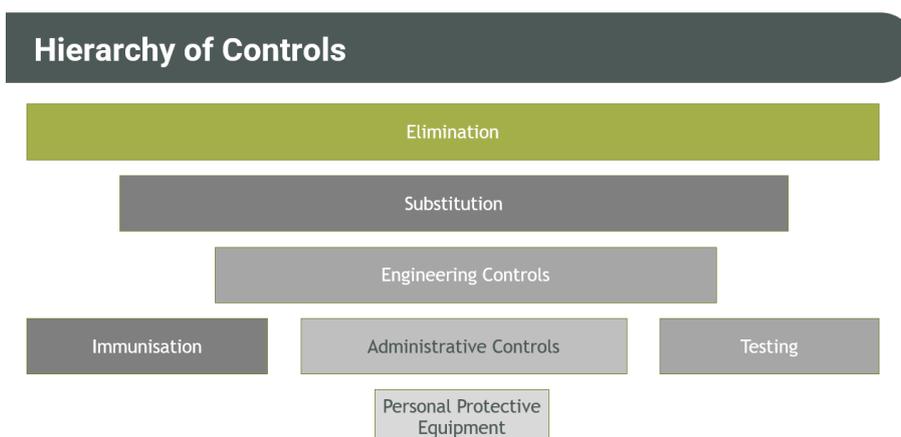
#### 1. Longer term view on health, work and COVID-19

Since our last update, World events have now greatly overshadowed the COVID-19 pandemic, and the situation will of course be of great concern for employers and employees. From this issue we had in any case intended to broaden this brief to clients to encompass developments in factors affecting work and health; their importance will be heightened at this time of pressure on businesses and their people.

Legal restrictions in England put in place to protect the public and the economy have ended. The global pandemic is not over, but there has been a shift in responsibilities from Government to Society<sup>1</sup>. Whereas it was a legal requirement for people with COVID-19 to self-isolate, this has now been replaced with guidance. With this has come a re-emphasis on the long standing requirement for employers to decide on appropriate measures to protect their employees and others affected by their activities<sup>2</sup>.

The Health and Safety Executive (HSE) continue to publish guidance on risk management for employers<sup>3</sup>, including risk management in the context of COVID-19<sup>4</sup>.

Risk management measures will be decided by the employer, based on risk assessment, and we continue to recommend the hierarchy of controls approach (as shown in the diagram below). As we work in the health sector, we continue to wear masks in consultations, and additional PPE for higher risk work, for as long as our health risk assessment indicates this is needed. The aim is to protect the health of the workforce, and others affected by the work of the organisation, as well as supporting business continuity. We expect this will be especially important for many of our clients in view of the impact of the war on costs, supply chains and other aspects of operations. We suggest promoting mental health in the workplace will be especially important at this time of uncertainty, and again HSE publish guidance<sup>5</sup>.



<sup>1</sup> UKHSA guidance at: <https://www.gov.uk/government/organisations/uk-health-security-agency>

<sup>2</sup> Working safely during COVID-19 at: <https://www.gov.uk/guidance/working-safely-during-covid-19>

<sup>3</sup> HSE guidance on risk management at: <https://www.hse.gov.uk/simple-health-safety/risk/index.htm>

<sup>4</sup> HSE guidance on working safely during COVID-19 at: <https://www.hse.gov.uk/coronavirus/working-safely/index.htm>

<sup>5</sup> HSE guidance on stress at work at: <https://www.hse.gov.uk/stress/>

## 2. Testing

The provision of free lateral flow device (LFD) testing is expected to end at the end of this month, and routine twice weekly asymptomatic testing of the general population is no longer recommended.

Routine testing in schools ended on 21 Feb 2022<sup>6</sup>. However, asymptomatic testing will continue in settings where infection remains more likely, and the impact of infection is higher, such as for staff and pupils in special schools (and SEND settings in mainstream schools and further education)<sup>7</sup>, and in health and social care<sup>8</sup>. This is however more targeted; social care staff are now expected to test themselves before coming in to care homes on the days they work. This is also the approach we adopt for our clinical staff undertaking face to face work. It has long been the case that those who have had COVID-19 should not have a PCR test for 90 days after a positive test; this is also the case for LFD testing<sup>9</sup>.

For other workplaces, as suggested in previous updates, any decision on testing should be based on risk assessment and consider the likelihood of infection occurring in the workplace, the impact of infection occurring (on individuals and on business continuity) and on the effectiveness of controls in place.

Whereas we still suggest that routine asymptomatic testing for staff is not likely to add value in most workplaces beyond the end of March 2022, a more targeted approach may well add value until infection levels in the community reduce substantially. This might for example be encouraging LFD testing before larger gatherings or other higher impact events

LFD testing will remain useful for those with symptoms to test themselves. A positive LFD is a reliable indicator of infection if positive, and so those with symptoms and a positive LFD test should not come into the workplace. Government guidance continues to recommend testing before returning to the workplace<sup>10</sup>. Once free LFD provision ends, some employers might consider providing LFD tests to their employees for this purpose.

Currently all those with symptoms of COVID-19 can obtain free PCR tests<sup>11</sup>. Although it is possible that the universal access to free testing for those with symptoms may end, those considered most vulnerable will be provided with free test. The main purpose of this is to provide the new treatments for COVID-19 (for example Sotrovimab, a neutralising monoclonal antibody, and Molnupiravir, an antiviral) available through the NHS for people aged 12 and over who test positive for COVID-19, and are at highest risk of getting seriously ill even though they have been vaccinated<sup>12</sup>.

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<sup>6</sup> What parents and carers need to know about early years providers, schools and colleges at: <https://www.gov.uk/government/publications/what-parents-and-carers-need-to-know-about-early-years-providers-schools-and-colleges-during-the-coronavirus-covid-19-outbreak/step-4-update-what-parents-and-carers-need-to-know-about-early-years-providers-schools-and-colleges>

<sup>7</sup> Special schools and other specialist settings: coronavirus (COVID-19) at: <https://www.gov.uk/government/publications/guidance-for-full-opening-special-schools-and-other-specialist-settings>

<sup>8</sup> COVID-19 care home testing guidance for regular and outbreak testing of staff and residents at: <https://www.gov.uk/government/publications/coronavirus-covid-19-testing-in-adult-care-homes/covid-19-care-home-testing-guidance-for-regular-and-outbreak-testing-of-staff-and-residents>

<sup>9</sup> COVID-19: management of staff and exposed patients or residents in health and social care settings at: [https://www.gov.uk/government/publications/covid-19-management-of-exposed-healthcare-workers-and-patients-in-hospital-settings](https://www.gov.uk/government/publications/covid-19-management-of-exposed-healthcare-workers-and-patients-in-hospital-settings/covid-19-management-of-exposed-healthcare-workers-and-patients-in-hospital-settings)

<sup>10</sup> COVID-19: people with COVID-19 and their contacts at: <https://www.gov.uk/government/publications/covid-19-people-with-covid-19-and-their-contacts/covid-19-people-with-covid-19-and-their-contacts>

<sup>11</sup> Get a free PCR test to check if you have coronavirus (COVID-19) at: <https://www.gov.uk/get-coronavirus-test>

<sup>12</sup> Treatments for coronavirus (COVID-19) at: <https://www.nhs.uk/conditions/coronavirus-covid-19/treatments-for-coronavirus/>

### 3. Vaccination

The Government's COVID-19 strategy has been enabled by the success of vaccination<sup>13</sup>, and this is supported by evidence including the survey published on 23 Feb 2022 by the Office for National Statistics (ONS) and the Department for Health and Social Care (DHSC) working with the University of Oxford and Lighthouse Laboratory, which reports that as at 31 Jan 2022, 98% of the sample of the UK population tested had antibodies, reflecting having had COVID-19 in the past or having been vaccinated<sup>14</sup>.

Legislation making vaccination a condition of deployment in health and care settings has been revoked<sup>15</sup>, and as of 15 Mar 2022 those who are not fully vaccinated will once again be able to work in care homes<sup>16</sup>. Protecting staff working in health and social care setting remains highly important, as they are at a higher risk of exposure than employees working in other sectors.

The evidence shows that immunisation, and particularly boosters, are highly effective in preventing severe disease and death<sup>17</sup>. Whereas vaccination does not reliably stop transmission<sup>18</sup>, it does make this less likely, and as for other immunisations given to healthcare staff, all health and social care staff should be encouraged to keep updated with their vaccinations (including COVID-19 and influenza) to protect those they provide care to, as well as themselves.

Vaccination is especially important for pregnant women, and those who may be more vulnerable to COVID-19 if infected. Those who are most vulnerable will receive a booster this Spring<sup>19</sup>.

### 4. Pregnant employees

The Government continues to update guidance for pregnant employees<sup>20</sup>. Until levels of COVID-19 in the community fall, restrictions on employment in direct patient care may continue to be needed for some pregnant health and social care employees, and also for some employees in other employment groups who may be at higher risk of exposure, such as teachers. Whereas such staff who are immunised, and who do not have the known risk factors for an adverse outcome in pregnancy, are likely to be able to continue in their work during pregnancy, subject to the employers' risk assessment, those who have not been vaccinated and/or have the factors known to increase risk in pregnancy, may need restrictions.

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<sup>13</sup> COVID-19 Response: Living with COVID-19 at: <https://www.gov.uk/government/publications/covid-19-response-living-with-covid-19/covid-19-response-living-with-covid-19>

<sup>14</sup> Coronavirus (COVID-19) Infection Survey, antibody data, UK: 23 February 2022 at: <https://www.ons.gov.uk/peoplepopulationandcommunity/healthandsocialcare/conditionsanddiseases/bulletins/coronaviruscovid19infectionsurveyantibodyandvaccinationdatafortheuk/23february2022>

<sup>15</sup> Regulations making COVID-19 vaccination a condition of deployment to end at: <https://www.gov.uk/government/news/regulations-making-covid-19-vaccination-a-condition-of-deployment-to-end>

<sup>16</sup> COVID-19 vaccination of people working or deployed in care homes: operational guidance at: <https://www.gov.uk/government/publications/vaccination-of-people-working-or-deployed-in-care-homes-operational-guidance>

<sup>17</sup> Boosters prevented over 105,000 hospitalisations, UKHSA analysis estimates at: <https://www.gov.uk/government/news/boosters-prevented-over-105-000-hospitalisations-ukhsa-analysis-estimates>

<sup>18</sup> COVID-19 vaccine weekly surveillance reports at: <https://www.gov.uk/government/publications/covid-19-vaccine-weekly-surveillance-reports>

<sup>19</sup> Joint Committee on Vaccination and Immunisation (JCVI) statement on COVID-19 vaccinations in 2022: at: <https://www.gov.uk/government/publications/joint-committee-on-vaccination-and-immunisation-statement-on-covid-19-vaccinations-in-2022/joint-committee-on-vaccination-and-immunisation-jcvi-statement-on-covid-19-vaccinations-in-2022-21-february-2022>

<sup>20</sup> Coronavirus (COVID-19): advice for pregnant employees at: <https://www.gov.uk/government/publications/coronavirus-covid-19-advice-for-pregnant-employees/coronavirus-covid-19-advice-for-pregnant-employees>

We should be happy to assess the individual pregnant employee's health risk to support employers' risk assessments routinely undertaken for all pregnant employees.

## **5. Vulnerable employees and home working**

We have had a number of calls from clients who have employees who have been working from home for the last two years, and who wish to continue to do so. Whereas it is for the employer to decide whether or not such requests can be accommodated, and would be able to take action against those employees who do not comply with their reasonable instructions, such requests from those previously identified as being more vulnerable will need to be considered very carefully. Although the Government is no longer using the term clinically extremely vulnerable (CEV), and most who were CEV are recommended to follow the same guidance as everyone else on staying safe and preventing the spread of coronavirus in Government guidance<sup>21</sup>, HSE make clear in their guidance on COVID-19 and their general guidance that those more vulnerable need to be considered in assessing risk<sup>22</sup>.

The advice we have given is that such employees are referred to us for assessment, as there are some people who may continue to be more vulnerable. We are able to advise if the employee is at a high level of vulnerability, and also whether they have an impairment that is substantial and long term, such that the disability provisions of the Equality Act 2010 would be likely to apply (the Act would also apply if they have one of the conditions which automatically apply, such as cancer). Even for those who are at a high level of vulnerability, and for whom home working might be suggested, it will be for the employer to determine if an adjustment of home working can reasonably be accommodated indefinitely.

## **6. Recommendations on tolerance of absence for those with disabilities**

A more general point linked to this, and not related to COVID-19, has also been asked this month.

In our reports we may recommend considering some tolerance of absence, where it is likely the disability provisions of the Act would apply, and when further short term absence, or long term absence, is likely.

We have been asked to suggest the level to which triggers should be re-set in this situation. Historic levels of absence are an indicator for future absence, and so employers may use this as a guide. However, it will be for the employer to decide the level of absence that they can reasonably accommodate.

We can therefore indicate to employers the level of absence that might be expected in such cases referred to us, but we cannot advise on where triggers might be reset. This is because it is not the condition that determines the level of absence that the employer can tolerate; this will depend on a number of workplace factors that might include the nature of the employee's role, in some cases the potential impact on service users, and other considerations the employer will wish to take into account.

Dr Robin Cordell

7 March 2022

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<sup>21</sup> Guidance for people previously considered clinically extremely vulnerable from COVID-19 at: <https://www.gov.uk/government/publications/guidance-on-shielding-and-protecting-extremely-vulnerable-persons-from-covid-19/guidance-on-shielding-and-protecting-extremely-vulnerable-persons-from-covid-19>

<sup>22</sup> HSE guidance on risk assessment and those more vulnerable to COVID-19 at: <https://www.hse.gov.uk/coronavirus/working-safely/protect-people.htm>