

## Your Questions Answered

This Frequently Asked Questions sheet provides an overview of your rights and responsibilities in work as the NI Executive's 'shielding' programme is paused.

**For free and tailored advice on any of the issues discussed in this FAQ or any other aspect of employment law, please call (028) 9024 4401 and ask to speak to an employment law adviser. Alternatively, you can email [employmentadvice@lawcentreni.org](mailto:employmentadvice@lawcentreni.org), leaving your contact details.**

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## **In general, can an employer require employees to attend work when it reopens?**

An employer may require staff to attend their workplace if:

- the work cannot be done from home (assuming no change to the Executive guidance on this point)
- the organisation has not been instructed to close
- the employer can meet current guidance (e.g. protecting the vulnerable, those shielding, and rules on social distancing)
- the employer ensures, as far as is reasonably practicable, the health and safety of their employees and adjusts for those with conditions that amount to a disability

## **I've received a letter telling me that Shielding is being 'paused'. What does this mean for me and my job?**

The Chief Medical Officer (CMO) recently issued letters to everyone who is shielding in Northern Ireland. These advise that if the infection rate remains low, people who are currently shielding will not need to do so after 31 July 2020. The letters also announced other changes to the guidance, giving more options for support and socialising.

The CMO has issued this guidance on the basis that the risk of catching COVID-19 is now relatively low. However, the advice will remain under review i.e. if the infection rate starts to rise again, the CMO will review this position. If you have been able to work from home while shielding, you should continue to do so where possible. However, from 31 July 2020, your employer can ask you to come back into the workplace if you are unable to work from home.

## **I received Statutory Sick Pay (SSP) while I was shielding. Can this continue once shielding has ended?**

You might still be able to receive SSP, but you will not be automatically eligible due to shielding after 31 July 2020. Effectively, after this point, the rules around SSP will

revert to the way they were prior to the pandemic and shielding will no longer be included.

To be eligible for SSP, you will need to:

- Have a contract of employment with your employer (if you were previously claiming SSP, you will fulfil this criteria) and have done some work for your employer
- Earn an average of at least £120 per week
- Have been ill for at least 4 days in a row

If you are off sick for more than 7 days in a row (including non-working days) you will need to give your employer a 'fit note'. You can get a fit note from your GP or hospital doctor. If your employer agrees, a similar document can be provided by a physiotherapist, podiatrist or occupational therapist instead. This is called an Allied Health Professional (AHP) Health and Work Report.

## How am I protected under health & safety legislation and can I refuse to go to work?

**Employers** have a legal duty to ensure, so far as is reasonably practicable, the health, safety and welfare at work of their employees and anyone else who may be affected by the employer's business. They could ensure this by conducting regular risk assessments to identify COVID-19 related risks and implementing appropriate measures to control that risk and review them on an ongoing basis. They should also communicate these measures clearly to their employees.

**Employees** also have legal responsibilities. They must take reasonable care of their own and others' health and safety. They must also cooperate with their employer to help them meet their duties.

Further, under articles 68 and 132 of the **Employment Rights (Northern Ireland) Order 1996**, employees are protected from detriment and unfair dismissal in relation to health and safety from the first day they begin employment. Article 68 states: "*in circumstances of danger which the employee **reasonably believed** to be **serious** and **imminent** and which he could not reasonably have been expected to avert, he left (or proposed to leave) or (while the danger persisted) refused to return to his place of*

*work or any dangerous part of his place of work or took steps to protect himself*". This gives an employee a right to refuse to attend work if they have a reasonable belief of a serious and imminent threat.

## **Though shielding is going to be paused, I still do not feel safe going to work. What can I do?**

What is reasonable for you to do will depend on a wide range of factors, such as:

- How vulnerable you are (i.e. whether you are classed as 'extremely vulnerable' or 'vulnerable')
- How you commute to work
- The type of work you do
- What safety measures your employer has put in place to protect you and mitigate the risks of the disease spreading

The first step we would recommend is to talk to your employer, outlining your concerns and enquiring what safety measures/ mitigating factors they have put in place in the workplace. You could also discuss options such as flexible furlough, working some days from home and some days at the workplace (if appropriate), and/ or modifying your role or duties.

After assessing the mitigating factors, and if you still have a reasonable belief that returning to work would be a serious and imminent threat to your health and safety, you may be able to refuse to attend work. This is a significant step to take and should be considered based on your individual risk assessment.

If your employer disciplines you for failing to attend work due to health and safety concerns, this may amount to disability discrimination. If you would like further advice about discrimination, please contact the Equality Commission for Northern Ireland on 028 9050 0600. In addition, a disciplinary action which leads to termination of your employment, may constitute an unfair dismissal.

Every case is different and should be assessed on its own merits. To gain a better understanding of what our advice might be in different circumstances, [please see our fictional scenarios below](#).

## What should my employer do to make my workplace as safe as possible?

It should be remembered government advice still recommends home working where possible. The guidance states that you should only return to your workplace if you cannot work from home and your employer has taken steps to put measures in place to reduce the risk of transmitting Covid-19.

To ensure your workplace is as safe as possible, your employer should do the following:

- **Review their Health and Safety Risk Assessment**

Employers must carry out risk assessments to identify potential hazards. During the pandemic, they must carry out assessments of the specific risks posed by Coronavirus, to ensure they put in place appropriate measures.

- **Support and encourage all staff who can work from home to do so**

Official guidance is to work from home wherever possible. Doing this will help to limit the number of people in the workplace at any given time and will help to encourage social distancing.

- **Put in place special hygiene and social distancing measures**

Employers must put in place special measures to ensure the safety of employees, customers and visitors to the workplace/ premise. This might include erecting screens, putting in place new nightly deep-clean procedures, providing personal protective equipment (PPE), spacing out workstations or staggering employee shift patterns. What measures are put in place will be specific to each workplace, but it is important that employers do everything they can reasonably be expected to do to protect health and safety of their staff.

If you do not think your employer has put in place sufficient protections against the virus, you can raise a grievance with your employer or report them anonymously to the Health and Safety Executive for Northern Ireland. Reports can be sent via email to [mail@hseni.gov.uk](mailto:mail@hseni.gov.uk) or you can use [HSENI's online form](#).

## Fictional scenarios

We've created a number of scenarios below and outlined what our advice might be in each case. Each of the fictional individuals below has been shielding for several months or has been caring for someone who was shielding.

### Scenario 1

*John works in a call centre, answering queries from members of the public. Though he has been shielding, he has been able to work from home during this period, taking calls on his mobile and logging them on a work laptop.*

*When the CMO announced a pause in shielding, John's boss got in touch to arrange a virtual meeting to discuss whether John can come back into the office from the start of August. John isn't sure that he wants to come back into the office, as he believes this will leave him more vulnerable to Coronavirus than he would be at home.*

#### **Law Centre Advice**

In this scenario, there is no reason for John to return to the office. Official NI Executive advice is that he should continue to work from home – because he has already been doing so, it is clear that this can continue. Until that advice changes, John should continue to work from home.

If his employer insists he comes into work, John should raise his concerns with his employer. It may be possible to reach a compromise, for example he could attend work a few days a week (if it is safe to do so) and work from the home the remainder of the time. Alternatively, if he has a reasonable belief that there is a serious and imminent threat to his safety after completing a risk assessment of the situation, he should inform his boss of his position, discuss mitigating factors and request to continue working remotely.

## Scenario 2

*Gráinne works in a café, serving drinks and food to customers. She has been shielding for several months due to her heart condition, but her employer wants her to start work again once the shielding programme ends. She is concerned about the steps her employer has taken to ensure employee and customer safety. Her employer wasn't able to provide her with a copy of a risk assessment or the steps they have taken to ensure health and safety. Additionally, space in the café is very limited and Gráinne thinks it will be difficult to ensure appropriate social distancing.*

### Law Centre Advice

In the first instance, it is advisable for Gráinne to discuss her concerns with her employer and ask what measures they have put in place to ensure her safety. If they still cannot provide her with this information, it may be appropriate for Grainne to refuse to attend work due to a reasonable belief of a risk to her health & safety. This will depend on the stage of the pandemic, how she commutes to work, how vulnerable she is and whether her employer put in place anything to mitigate the risks. In addition, she could report her employer anonymously to the Health & Safety Executive in Northern Ireland and raise a grievance with her employer about the issue. [Please see more information regarding grievances here.](#)

If Gráinne's employer disciplines her for absence at work, this may amount to disability discrimination and/ or unfair dismissal (if she is ultimately dismissed). If you would like further advice about discrimination, please contact the Equality Commission for Northern Ireland on 028 9050 0600.

## Scenario 3

*William works in a large manufacturing plant. His employer has undertaken a risk assessment and put in place some new measures to ensure the safety of employees at the plant. However, William believes that his asthma means he is still very vulnerable and is reluctant to come back into work.*

### Law Centre Advice

In William's situation, it will depend on what the current Public Health advice is and whether William is classed as 'vulnerable' or 'extremely vulnerable'. William should consider the new measures his employer has put in place and identify where the dangers to his health still lie. For example, if William's asthma is mild, he cycles to work, and his employer has put in place social distancing and a deep-cleanse of the premises every night, it may not be reasonable for William to refuse to attend work. On the other hand, if he has severe asthma, gets the train to work and few mitigating measures have been put in place by his employer, it may be reasonable for William to refuse to attend work.

### Scenario 4

*Magdalena works in a pharmacy. She lives quite a distance from her work and the only way she can get there is by taking the bus. Though she is satisfied with the steps her employer has taken to protect employees and customers in the pharmacy, she is worried that she may be exposed to the virus while commuting.*

### Law Centre Advice

During the pandemic, it is reasonable to take Magdalena's commute into account when assessing if it safe for her to come to work. Measures like wearing a mask on public transport should be considered in order to lessen the risks. She could also consider whether she could cycle to work – if this is possible, her workplace could assist with a 'Cycle to Work' scheme. However, if this is not suitable in her situation, she may be able to refuse to attend work due to her commute.

### Scenario 5

*Fiona works in a local betting shop. She also cares for her elderly mother, who has multiple health conditions and is very vulnerable. Since the start of the outbreak, her employer has furloughed Fiona, so she didn't have to come to work. However, with the end of shielding, her employer is proposing to take her off furlough and bring*

*her back into work. Fiona is concerned that this may mean exposing her mother to an increased risk of being exposed to COVID-19.*

### **Law Centre Advice**

The first step Fiona should take is to talk to her employer about her concerns and explain the situation with her mother. At the discretion of her employer, Fiona could remain on furlough or be placed on the Flexible Furlough Scheme, allowing her to work part time and remain on furlough part time as a compromise. Fiona should also consider the stage the pandemic is at, the rate of infection, what safety measures her employer is putting in place and the Public Health guidance. Only when she has considered this, can she make an informed decision about whether it is safe to return to work or not.

If Fiona's employer disciplines her for absence at work, this may amount to associative disability discrimination. If you would like further advice about this type of discrimination, please contact the Equality Commission for Northern Ireland on 028 9050 0600.

### **Disclaimer**

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