



# Critical worker status in further education in Wales

## GUIDANCE FOR MEMBERS AND BRANCHES

### WHAT IS A CRITICAL WORKER?

Who in Wales is categorised as a 'critical' worker is set out in government guidance which was published on 14 December 2020.

It is local authorities who ultimately decide who is a critical worker for the purpose of such workers being able to access a school place for their children during school closures as a result of Covid-19.

Local authorities have to have regard for a list provided by the Welsh government in deciding who is a critical worker and they are also advised to reflect on types of employment and associated impacts in their area.

Government advice is clear that the law only requires one parent to be a critical worker for the obligation to make arrangements (for a school place to be available) to apply.

The government list includes further education (FE) lecturers, support staff in FE settings such as catering, cleaners, caretakers, maintenance staff and all those involved in the operation of FE institutions. The list also includes learning support staff.

The full guidance can be found at: <https://gov.wales/identifying-children-critical-workers-guidance>

### WHAT DOES BEING A 'CRITICAL WORKER' MEAN?

The government guidance is concerned with access to school places for children of parents who are regarded as critical workers.

At the current time only children of critical workers and vulnerable children and young people should attend school or college. All other pupils and students will receive remote education.



*Being a critical worker means only that you should be able to access a school place for your children. It does NOT mean that you have to send your children to school.*

This is set to be reviewed on 29 January but unless rates of community transmission in Wales reduce significantly by 29 January, most students in schools and colleges will continue working remotely until the February half term.

However, being included on the government list does not mean children of all workers in these categories can or will be able to continue to send their children to school.

The government advice is that every child who can be safely cared for at home should be.

Local authorities are advised that priority for school/college places should go to the children of parents/carers whose work is critical to the COVID-19 response or is in a key sector such as health and social care and the child/children cannot be kept safely at home.

Being a critical worker means only that you should be able to access a school place for your children. It does NOT mean that you have to send your children to school.

It is also important to stress that being regarded as a critical worker should not, in any sense, be conflated with a requirement to work on site/campus or deliver face-to-face teaching/services.

### **ARE FE STAFF 'CRITICAL WORKERS'?**

FE lecturing staff, support staff on FE campuses, those critical to FE institutions operations and learning support staff are included in the government list that local authorities need to consider when determining who is a critical worker able to access a school/college place for their child/children.

However, it is clear that being on the list alone will not guarantee a school place.

It is for local authorities, supported by their legal advice, to assure themselves they have regard for the government regulations (and the list). It may well be interpreted differently within each local authority and, if challenged, they would need to be able to defend their decisions.

Whether or not FE staff are categorised as critical workers, the overriding advice from the government is that people should stay home and everyone who can work from home should do so.

### **FE STAFF WITH SCHOOL-AGED CHILDREN**

Only those staff regarded as critical workers will be able to access a school place for their children.

However, we also note the government acknowledgement that not everyone on their list will be able to continue to send their children to school and that children who can be cared for safely at home should be.

Even when a member of staff is regarded as a critical worker there should be no obligation on them to send their children to school if they do not wish to do so.

Critical workers who do not wish to send their children to school and those who are not classed as critical workers should be offered appropriate working arrangements to allow them to undertake home-schooling. This may range from flexible working and reduced workloads to offering paid special leave/furlough (on full pay) to such staff where requested.

Employers cannot expect parents of school aged children to work 'normally' during school closures. Branches should seek to reach agreement with their employer to facilitate such arrangements, ensuring that those who make such requests are fairly treated when they are considered, and do not suffer a career detriment as a result, since this could be a breach of the Equality Act 2010.

Staff who believe they do meet the definition of critical worker AND wish to access a school place for their children should talk to their employer about providing the required evidence for their local authority confirming their critical worker status.

All staff working from home (with or without children) should be provided with the necessary equipment to do so safely and workloads should be reasonable providing for regular breaks in accordance with the Display Screen Equipment regulations (see: <https://tinyurl.com/y5rta5uq>)

Workloads need to be managed in light of these new ways of working and it is not acceptable to simply transfer in-person timetables to remote working situations.

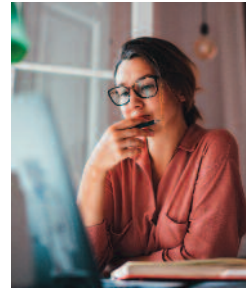
## WORKING ON SITE

All staff should work from home wherever possible, both in line with government advice and with employers' duty to minimise the health and safety risks their staff are exposed to.

Any requirement to work on site should be solely on the basis that the work is essential and cannot be performed remotely, not simply on whether a member of staff can be categorised as a critical worker for the purpose of accessing a school place for their children.

All government guidance makes clear that the most important thing everyone can do is 'Stay Home' because this will limit transmission of COVID-19 and help to get the virus under control. Government guidance also makes clear that leaving home is only permitted in very specific circumstances, attending work being one of them, but only if work cannot reasonably be done from home. In colleges the vast majority of work can, and should, be done remotely/from home.

Up until at least mid-February, we would expect that the only teaching staff required to attend College premises would be those essential to teaching vulnerable students and those of critical workers who are attending the college in person or to deal with learners undertaking essential exams and assessments. UCU branches should be consulted on



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*If you have any concerns about your health and safety (including those arising from an unreasonable workload), you should raise it directly with your manager and make sure your local UCU branch representative is copied in.*

the levels of staffing required and how such staffing will be sought (by voluntary means wherever possible).

Where it is essential that you attend work (ie. it is impossible for your work to be carried out at home) then:

- The employer should have carried out a revised generic and personal risk assessment taking into account the new variant of the virus (see <https://tinyurl.com/yxp3uh3m>).
- Personal risk assessments should include travel to and from work, and relevant personal circumstances.
- All control measures should be in place before any member of staff is required to attend work.
- Adequate cleaning regimes must be in place.
- PPE should be provided where necessary.

If you have any concerns about your health and safety (including those arising from an unreasonable workload), you should raise it directly with your manager and make sure your local UCU branch representative is copied in.

See also the Thompsons Solicitors briefing on employer and employees' responsibilities in the wake of coronavirus - <https://tinyurl.com/y2oparcx>

### **I DO NOT FEEL SAFE ATTENDING THE WORK SITE. WHAT SHOULD I DO?**

In addition to the guidance on collective approaches to address COVID-19 health and safety concerns individual members may also have particular concerns about the safety of a return to onsite work and / or face-to-face activities. This may be due to inadequate controls put in place by the employer or particular individual circumstances.

UCU has produced a series of template letters for use by members who reasonably believe that a request or demand that they return to on site working would place them in serious danger from Covid-19, in order to raise their concerns directly with their manager.

The letters are drafted for use by members in different circumstances; the relevant template will need to be tailored to the circumstances of an individual member and branches may need to support members to assist them in completing their letter. The template letters can be found here - <https://www.ucu.org.uk/covid19letters> - you will need your UCU member log in details to access them.