

## **PREGNANT TEACHERS IN THIRD TRIMESTER DURING THE COVID-19 PANDEMIC**

The NASUWT is aware that there are a significant number of members who are pregnant and in the third trimester (more than 28 weeks' pregnant) who will be concerned about the workplace from September 2021, given the easing and withdrawal of various restrictions in relation to the COVID-19 pandemic.

In light of this, the Union has revised its advice and guidance to ensure that members who are pregnant and in the third trimester are aware of their rights and entitlements and supported during this time.

It should be noted that this advice and guidance should be considered in conjunction with the comprehensive advice, health and safety checklists and other associated guidance produced by the NASUWT, including that specifically addressing issues related to pregnancy and maternity leave during the COVID-19 pandemic, which can be found at: [www.nasuwt.org.uk/Covid19AdviceWales](http://www.nasuwt.org.uk/Covid19AdviceWales).

In addition, the Union has produced a specific pregnancy health and safety risk assessment to assist and support those who are pregnant or new mothers. This can be accessed at: [www.nasuwt.org.uk/ThirdTrimesterDuringCovidWales](http://www.nasuwt.org.uk/ThirdTrimesterDuringCovidWales).

### **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 teacher in the third trimester.

### **The Health and Safety at Work Act 1974 (HASAW)**

The Health and Safety at Work Act (HASAW) 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, especially pregnant teachers in the third trimester. 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.

Indeed, advice and guidance referenced by the Welsh Government emphasises the importance of conducting a risk assessment for those who are pregnant and in the third trimester.

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 and in the third trimester, including clear plans which demonstrate that there will be compliance at all times with the measures identified to manage the overall risk posed by COVID-19.

As appropriate, this may involve discussions with occupational health to best ensure your health and safety in the workplace.

**The Workplace (Health, Safety and Welfare) Regulations 1992** provide additional protections for pregnant teachers as they require 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 and in the third trimester to lie down.

This becomes even more important during the third trimester, given it is likely there will be issues associated with mobility.

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

The risk assessment must be produced and any options fully discussed with you in advance of any return to work and should be kept under review throughout your pregnancy, particularly during the third trimester, and as Government advice and guidance changes.

### **‘Clinically vulnerable’/‘clinically extremely vulnerable’**

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

This is because pregnancy can alter how the body handles severe viral infections and because some viral infections, such as flu, are worse in pregnant women.

The advice and guidance referenced by the Welsh Government advises 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 Obstetricians and Gynaecologists (RCOG), including using this as the basis for a risk assessment.

### **A ‘more precautionary approach’ for those 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), advice and guidance produced by the UK Government expects all employers to take a ‘*more precautionary approach*’, particularly as 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.

Those who are pregnant and in the third trimester should therefore still take care to minimise contact with others from outside their household and should only return to the workplace if it has been demonstrated that it is safe to do so.

Whilst advice from the Welsh Government advises that pregnant teachers who are clinically vulnerable can follow the same guidance as everyone else, there is an expectation that schools adopt the ‘*more precautionary approach*’ referenced above as part of any risk assessment for those who are pregnant and in the third trimester.

This includes consideration of how best to redeploy teachers who are pregnant and in the third trimester, including adapting duties and looking at how to maximise the potential for working flexibly from home/homeworking.

Schools and colleges should explain to you the measures they are putting in place to reduce risks, particularly how these protective measures support the ‘*more precautionary approach*’ referenced above.

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 are 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-19 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, and 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, for those who are pregnant and in the third trimester, consideration should be given to issues to do with mobility and this should play a significant part of an evolving risk assessment.

Mitigations 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.

In addition, women who are pregnant, including those in the third trimester, are advised to keep mobile and hydrated to reduce the risk of blood clots in pregnancy.

This could 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.

School leaders will need to be cognisant of the need to adopt a '*more precautionary approach*' for those who are pregnant and in the third trimester, 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;
- suspending you on full pay (if there is no suitable alternative work).

### **The significance of social distancing in the third trimester**

Although the easing and the withdrawal of various restrictions in relation to the COVID-19 pandemic have 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 and in the third trimester. 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 recommends that pregnant women, including those in the third trimester, who work in a public-facing role, such as teachers, can continue to do so if the risk assessment is able to make the appropriate arrangements to sufficiently minimise your risk, and you are unable to work from home.

This is set against a background where the 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 by paying attention to the '*more precautionary approach*' advocated by the UK Government in respect of those who are pregnant and in the third trimester.

### **The role of the 'competent person'**

Pregnant teachers 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 teacher in the third trimester are addressed.

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 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, and 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 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, particularly given the fact that COVID-19 can cause severe illness, especially during the third trimester.

It should be noted that schools and colleges are still obliged to undertake a risk assessment for pregnant teachers in the third trimester, whether or not they have been vaccinated.

### **Contingency planning for a COVID-19 outbreak**

Schools in Wales are expected to follow the advice and guidance from the Welsh Government for schools from the autumn term which details the steps to be taken if there is an outbreak in the school. This should include considerations around pregnant women including a review of the risk assessment 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.

### **Supply teachers who are pregnant and in the third trimester**

Supply teachers working through an agency or umbrella company who are pregnant and in the third trimester are entitled to the same provisions as school employees when they are on a placement with a school (referred to as the 'end user' or 'client' in legislation), as the school must ensure the safety of its temporary workers in the same way as it does that of its own employees.

The Health and Safety at Work Act 1974 (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, including those who are pregnant and in the third trimester. This includes identifying and assessing risks to health and safety, and steps to reduce or eliminate these risks. This applies to COVID-19 in the same way as it would to any other hazard.

There is a joint responsibility between the provider (i.e. the supply agency) and the end user with regard to the health and safety of agency workers, including supply teachers, who are pregnant and in the third trimester. Supply staff who are pregnant and in the third trimester must therefore be treated exactly as permanently employed teachers with regard to health and safety during the COVID-19 pandemic.

This applies equally if you are supplied via an umbrella company, as they are legally your employer. The umbrella company would therefore have the responsibility for your health and safety and taking steps to address this, as you are their employee.

If your employer refuses to undertake a risk assessment and/or provide you with suitable alternative work, then you should [contact the NASUWT](#) for advice and support.

Members should be consulted on the risk assessment and any member who has concerns about the provision of the risk assessment or its contents should [contact the NASUWT](#) for advice and support.

### **The Equality Act 2010**

The provisions under the Equality Act 2010 and corresponding Public Sector Equality Duty (PSED) apply to supply teachers in the same way as any other employee. 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;
- 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.

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