

Moving on from COVID

28 April 2022

Presented by:

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Today's presenters



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Antonio joined Brachers in 2017 having acquired 10 years' prior experience as an employment law specialist.

He has a particular interest in the education sector and supports clients with third party complaints, admission appeals and other matters of education law in addition to providing them with support with employment law, HR and data protection. Antonio is a trustee of ACE Learning.



Louise Brenlund | Senior Associate, Brachers LLP
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Louise advises on all aspects of employment law, mainly acting for employers but also taking on complex, high-value employee claims work.

Louise supports education clients with a diverse range of advice and provides relevant training and updates. Louise is also part of the firm's Education Sector team.

She sat as a school governor between 2017 to 2021 and recently commenced a new role as trustee at the Rivermead Inclusive Trust.



Today's session

- 01** **Recent changes and impact on staffing**
- 02** **Future strategies**
- 03** **Long COVID sufferers**
- 04** **Other problem areas**

April changes

- Free testing for the general public ended
- Most specific guidelines withdrawn for education and childcare settings
- Increase in recognised symptoms
- Some free limited symptomatic testing available for those living or working in some high risk settings
- New updated guidance for people who are symptomatic
- Anyone with a positive test should “try” to stay at home for five days and avoid contact with other people

April changes

- Asymptomatic testing very restricted, largely to staff in some NHS, care home and prisons
- Regular, asymptomatic testing is no longer recommended in any education or childcare setting including SEND and other alternative or social care provisions save for in limited cases for residential settings (e.g. outbreaks)
- Settings no longer able to order test kits
- UKHSA advice service for schools decommissioned but DfE COVID-19 helpline still accessible
- No longer explicitly required to refer to COVID in health and safety risk assessments

April changes

- Vaccination for 5 – 11 year olds now approved and being rolled out
- Spring boosters for most vulnerable
- Increase in living/minimum wage rates
 - Age 23+ £9.50 p/h
 - Age 21-22 £9.18 p/h
 - Age 18-20 £6.83 p/h
 - Age 16-17 £4.81 p/h
- Small adjustments to minimum levels of statutory sick pay and family related pay
- Social care levy introduced (1.25% increase in national insurance contributions)

Where does this leave schools?

- Increase in recognised symptoms + no testing = potentially more absences if staff follow the current government guidelines
- No firm 'stay at home' rules + staff concerns about pay and/or absence levels = staff more likely to come in when positive
- Staff not wanting to appear to be 'letting the side down' coming in whilst symptomatic
- Hay fever, colds etc. also likely to be prevalent
- Staff unease likely to increase, particularly whilst COVID levels are high

Where does this leave schools?

- Still under 'normal' obligations to provide a safe working environment for staff and a safe learning environment for pupils
- Consideration for individuals' particular circumstances
- Very difficult balance to strike in terms of the messages going out to staff generally
- Costs of employing staff continue to increase and further uncertainty and ill health will exacerbate this in a number of ways

Where does this leave schools?

- Keep your ear to the ground
- Try to maintain less impactful measures (e.g. carbon dioxide monitoring, good ventilation)
- Allow staff to do what makes them comfortable wherever possible (e.g. wear masks in corridors if they wish, position themselves near windows if possible)
- Provide clear messaging to staff around how absence will be viewed and applicable guidelines in place from time to time

Future strategies

- Some general guidance and rules will inevitably continue to be available to schools but a greater emphasis is likely to be placed on individual schools' particular circumstances
- Consider what are the school's greatest needs and/or particular problem areas?
- Increased need for flexibility around working practices will continue
- Balanced against the need for clear rules that staff understand

Future strategies

- Staff wellbeing and morale likely to continue to be affected
- Potential for greater conflicts among staff, particularly if no clear rules are in place and individual opinions and risk appetites vary
- Continue to review and build on wellbeing strategies to ensure that staff have access to support and other resources
- Promote culture of tolerance of different opinions whilst ensuring work is undertaken
- Consider potential means of conflict resolution where problems arise

Future strategies

- As always – communication is key
- Keep back up plans in place
- Refresh previous strategies and risk assessments where possible to ensure that they can be rolled out quickly if necessary
- Keep policies and procedures under review
- Be ware of your ongoing obligations from a health and safety perspective

Long Covid

- ONS estimates 1.5 million have long Covid

Most common in:

- i. 35 – 49 year olds
 - ii. Women
 - iii. People with underlying conditions which limit activities
 - iv. Those working in health, social care or education
- Symptoms that continue for more than 12 weeks which cannot be explained by another cause.

Long Covid – A disability?

- A physical or mental impairment that has a substantial and long-term adverse effect on an individual's normal day to day activities.
- **'Long -term'** = Has lasted or is expected to last for more than 12 months.
- **'Substantial'** = More than minor or trivial
- **Adverse affect on day-to-day activities** – ONS reported adversely affected 1.1 million people
- TUC called for automatic recognition as a disability under Equality Act 2010.
- Potential for indirect discrimination

Long Covid – Ill-health retirement

- The NAHT has raised concerns – how do you judge if long Covid is ‘permanent’ under the scheme regulations?
- The TPS provides for two tiers of benefits and eligibility is decided entirely by TPS medical advisors:

Tier 1 – permanently unable to teach but capable of undertaking other gainful employment. Pension based on accrued service at retirement (no actuarial reduction)

Tier 2 – permanently unable to teach or undertake any other gainful employment. Pension enhanced by 50% of service or pension that would have been accrued between date of retirement and normal pension age.

Clinically extremely vulnerable (CEV)

- UKHSA and DHSC have updated their guidance for people previously considered CEV.
- It now states most people who were CEV are no longer at a substantially greater risk than the general population and are advised to follow the same guidance as everyone else.
- Those previously CEV are encouraged to get vaccinated.
- Separate guidance is available for people whose immune system means they are at a higher risk.

“Covid-19:guidance for people whose immune system means they are at higher risk”

Other tricky areas- Sick Pay

- Coronavirus workforce fund for schools
- Changes to SSP and 'deemed incapacity' from 25 March 2022; how does this affect sick pay due to staff?
- Unison's position is that staff with NHS Covid symptoms or who test positive without symptoms should be supported to stay at home on full pay.
- If Covid no longer considered an 'infectious disease' do the Burgundy and Green book provisions still apply?
- Potential breach of contract issue?

Other tricky areas – Pregnant Staff

- DHSC Guidance – “Coronavirus (COVID-19): advice for pregnant employees” was withdrawn on 1 April 2022.
- Now pregnant women are strongly advised to get vaccinated.
- Follow existing legal frameworks for employees and breastfeeding mothers. In particular, health and safety requirements which still mean the need for a risk assessment.

Other tricky areas – Flexible Working

- As always – communication is key
- DfE flexible working ambassador schools
- What are the benefits?
- Remember potential for discrimination.



Any questions?

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About Brachers' Education Sector team

Brachers is proud of the specialist expertise we have built in the education sector and are privileged to have supported many different educational establishments through times of change, innovation and opportunity.

We have been ranked in the top tier of leading legal directory Legal 500 for our work in the public sector, including education.

Many of our Education Sector team are also school governors, giving us in-depth sector knowledge which enables us to deliver enhanced legal support that meets our clients needs.

This also means we have a detailed understanding of the specific challenges that educational establishments face on the ground, as well as appreciating the key role of governance and challenges that governors can face, knowledge that informs our work and enables us to deliver more valuable legal and business advice.

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