

Lifting of restrictions - what this means for employers in the higher education sector

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Please note: the information contained in this legal update is correct as of the original date of publication.

In this article we look at the recently published guidance on the lifting of restrictions in the context of staff working in the higher education sector. This article does not deal with aspects that specifically apply to students.

19 July 2021 marked the lifting of many restrictions within England including the cessation of the need for social distancing, the removal of the legal requirement for face masks, and the end of required homeworking. There are no longer restrictions on the approach to teaching and learning in higher education (HE) providers as a result of Covid-19. There is no requirement for social distancing or other measures within in person teaching. Providers are therefore able to shape their courses without restrictions to face-to-face provision. As a result, higher education (HE) reflects the easing of restrictions in wider society which took place on 19 July 2021. However, with Covid cases still high, concerns have been raised as to the impact of removing these restrictions, with views remaining polarised, particularly over the continued use of face masks. Here, we take a look at what the changes will mean for employers in the HE sector.

The Government has published its [Higher education Covid-19 operational guidance](#) (the Guidance) which needs to be read in conjunction with guidance on [working safely during the Covid-19 outbreak](#). This latter Guidance contains a [Step 4 overview](#) and specific guides for different types of work that may be relevant to campus activities. These include:

- [Events and attractions](#);
- [Hotels and guest accommodation](#);
- [Offices, factories and labs](#);
- [Restaurants, pubs, bars, nightclubs and takeaway services](#); and
- [Shops, branches, and close contact services](#).

The Guidance reflects new Government workplace [guidance](#) for moving into 'Step 4' which has been published for employers generally. Please note that the Guidance does not apply to further education providers who offer HE qualifications, for whom [separate guidance](#) applies.

Whilst the Guidance emphasises that HE providers should continue to make efforts to reduce the risk of transmission where possible, it also made clear that they should not put in place measures which limit the teaching and learning outcome for students, or significantly limit the wider activities they offer.

Managing risks

The Guidance stresses the importance (and responsibility) placed on employers for managing risks within their workplace.

Cleaning and keeping occupied spaces well ventilated continue to be emphasised.

Whilst the Government has confirmed that the legal requirement for face masks was removed with effect from 19 July, it is nevertheless advising that face masks should continue to be worn in crowded, enclosed spaces. The Guidance does however, make clear that in the HE sector face coverings are no longer advised for students, staff and visitors either in teaching rooms or in communal areas, although the Government 'expects and recommends' that face coverings are worn in enclosed and crowded spaces where people may come into contact with people they don't normally meet including on public transport. Even where staff have been double-vaccinated, given that the primary purpose of face masks is the protection of others, face masks may well be viewed as a necessary precaution in some settings to protect those not yet vaccinated or otherwise vulnerable. Care should be taken to ensure that consideration is given to making reasonable adjustments for those with disabilities.

Risk management includes reducing the contact between individuals. Consideration should therefore be given to who should be encouraged back into the workplace (with the Government advocating for a gradual return), and then how contact between those at work can be reduced. For this latter risk, suggestions include using fixed teams or partnering, and the use of screens. Whilst social distancing is not proposed, employers may well view social distancing (where possible) and continuing homeworking for all those able to work effectively in this way as being the best ways that they can effectively manage and reduce the risk of Covid-19 being passed in the workplace.

Communication with staff remains key at this transitional time. Employers need to be clear on what the requirements will be and the reasons why they believe any restrictions are necessary to try to avoid arguments from employees that their "freedoms" being promised by the Government are being unfairly impinged upon. Open dialogue will help employers become aware of any particular difficulties or challenges being faced by their staff – such as concerns about feeling isolated working at home – to enable steps to be taken to balance risks and address concerns.

Employers will also need to be mindful about how an increase in cases will affect resourcing levels, particularly in areas where there are spikes in transmission levels. As the proposed changes to the isolation regime for those who are double-vaccinated are not due to come into effect until mid-August, there will clearly be a period where an increase in cases has a corresponding impact on the isolation requirements for close contacts and employers will need to have plans in place for how to cover staff absences whilst maintaining service delivery levels.

Employers may need to consider how their staff get to work. Some employees who are reliant on public transport may have concerns about how safe their journeys to and from work will be with the combination of no social distancing, no obligation to wear face masks, and rising Covid cases. While announcements have already been made to confirm that masks will still be required on some public transport (for example in London), it remains uncertain whether they will be mandatory in other areas. Employers may find employees seeking to argue that their journey would now present them with circumstances of serious and imminent danger, particularly if they are at a higher risk, or are in close contact with someone at higher risk from Covid-19 (see our earlier briefing on [health and safety in the workplace](#) for further details). Employers may wish to explore whether there is scope to adjust working hours to allow for off-peak travel, or whether assistance can be given with other means of transport.

Lastly, there are clearly strongly held differing views between those who believe all restrictions should be lifted and those who believe they should remain in place – and a vast spectrum of beliefs in between this range. Employers may wish to remind staff about respectful communications within the workplace to try to avoid disagreements over the best approach to dealing with the pandemic spilling over into workplace disputes.

Should you wish to discuss the implications of the lifting of restrictions on your workforce, please feel free to contact [James Tait](#) or [Bettina Rigg](#).

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