

ADVICE TO MEMBERS ON DEALING WITH OCCUPATIONAL HEALTH

ARU is referring some employees, who have identified themselves or members of their family as being at very high/high risk or have expressed health and safety concerns at returning to campus, to its Occupational Health Service (OHS). UCU offers the following advice to members who may face such a referral.

- 1) An employee does NOT have to agree to undergo an OHS assessment. However, in the context of the COVID-19 outbreak, such an assessment may be seen as a 'reasonable step' taken by the University towards fulfilling its duty to ensure the health and safety of its employees at work. Employees are required to cooperate with such health and safety provisions. Members may find themselves in a difficult position if they decline a 'reasonable' request to undergo an OHS assessment. Whether the request is a 'reasonable' one may depend on individual circumstances, but there would have to be some connection between the need for an OHS assessment and the employee's physical or mental ability to perform his/her job. An OHS assessment may, in many cases, be advantageous to the employee.
- 2) The University does not appear to have a general OH policy, so it is not clear what the rules are about when or in what circumstances OHS assessments can be carried out or what they can be used for. In the absence of such a policy, the general principle that will apply is that the focus of any OHS assessment must be on a) how the employee does his/her job; b) how doing that job in that way may affect the employee's health; and c) what steps can be taken to eliminate, or failing that, minimise the effects on the employee's health.
- 3) An OHS assessment does not normally carry with it a right to be accompanied by a family member, friend, colleague, or Trade Union representative. If, however, you are concerned about the assessment and would like to be accompanied by someone, you should make this known to the OHS. It is unlikely that a reasonable request to be accompanied would be refused, especially if this may alleviate any anxiety felt about the assessment.
- 4) The aim of an OHS assessment is to look at what the employee needs to address any problems that could cause any, or any continuing, health or absence issues. It is NOT to assess whether the employee is 'fit' or 'healthy' enough to return to campus teaching or to assess the level of 'risk' they have of vulnerability to COVID-19. OHS are not epidemiologists or virologists, nor do they possess any other qualifications to make such assessments.
- 5) When undergoing an OHS assessment, employees are under no obligation to disclose health or medical conditions, unless s/he chooses to do so. If an individual's condition may be considered a disability for the purposes of the Equality Act 2010 [a physical or mental impairment that has a substantial and long term negative effect on the ability to do normal day to day activities], it

may be advisable to disclose this, as the University is under a duty to make reasonable adjustments only for those disabilities of which it is, or ought to be, aware.

- 6) Employees are under no obligation to disclose any treatment history.
- 7) OH advisers may ask employees undergoing assessment about concerns they have about returning to work. Employees only need to discuss this to the extent that it is relevant to ascertaining the steps the University should take to alleviate the employee's concerns. However, when discussing your concerns about returning to work, you should look at the 'bigger picture' of what is involved in returning to campus, such as your travel arrangements and where you are expected to go during breaks between teaching sessions, rather than just physical presence in a classroom.
- 8) Try to be as specific as possible about what your concerns are and avoid suggestions that it is 'just a feeling' or similar vague phrases. The purpose of any discussion with OHS is NOT to ascertain whether your concerns are genuine or are based on reasonably held beliefs.
- 9) The discussion with OHS should be about the individual employee's own health and safety and concerns they have for their own health and that of their families. You should avoid being drawn into discussion about the adequacy of any general measures the University may have put in place in response to the COVID-19 outbreak – the point of the exercise is to establish what the University can do to ensure YOUR safety.
- 10) If the OH adviser asks for further information from your doctor, this can only be sought with your consent, it can only be required to judge the extent to which an employee is medically fit to do their job (i.e. teach generally, not teach in a specific way), and the employee has the right to see the doctor's report before it is sent to the OH adviser. Consent can be withdrawn before the doctor's report is disclosed.
- 11) The final report by the OH adviser can only be disclosed to the University with your consent.
- 12) If an employee is unhappy with the way the OHS report is used after disclosure, this may form the basis of a grievance through the normal University grievance procedure.

If you are asked to undergo an OHS assessment, and you do have concerns about the process and practice of such an assessment, please contact your UCU Faculty Rep or Dr John Hogan (Branch chair)/ Dr Andy Noble (casework coordinator).

Dr John Hogan

Chair, University and College Union, Anglia Ruskin University Branch