**Template letters for staff regarding returning to the workplace: employee with a mental health condition (HE)**

Dear [ ]

I am writing to register my concern about the proposal that I should resume working in the workplace instead of from home from [date] and to request that I be allowed to continue to work remotely and deliver my teaching online.

I have seen a copy of the university’s risk assessments for the buildings in which I am expected to work and I believe that this does not give adequate weight to my specific circumstances, which I will set out below.

I am also concerned that the 'Covid Age Tool' which the university suggests is used as a basis for discussions will line managers is not fit for purpose. Using this as a basis for decisions about in-person working does not take into account the range of limitations listed by the Association of Local Authority Medical Advisers, not least that "The tool is based on evidence that is evolving and is under constant review. As new scientific evidence becomes available, its estimates of vulnerability may change over time." (<https://alama.org.uk/covid-19-medical-risk-assessment/>). Emerging evidence of long-lasting effects of even initially 'mild' bouts of the virus are not addressed by the university's 'Covid Age Tool'. I also note that even where the 'Covid Age Tool' gives a 'Covid Age' of 'below 50' and 'low risk', the tool itself notes that 'Increased risk of infection may be accepted where there are no reasonably practicable means of reducing it further'. In the circumstances of my work, it is clear that there are 'reasonably practicable means of reducing' the risk further, as I can carry out all of the tasks required of my work from home.

**My circumstances**

I have mental health condition which is likely to be found to be a disability under the Equality Act 2010. My condition is [anxiety/depression] [or describe anxiety or depression-related condition]. Whilst the Coronavirus pandemic has caused worry and distress for many people, for me it has the potential to cause mental distress which is an aggravating factor for my condition.

**The applicable guidance**

I refer you to the guidance document, “Principles and Considerations: Emerging From Lockdown” issued by Universities UK to institutions, and the Appendix to that document which contains a jointly agreed statement between UCEA and the HE trade unions including UCU, of which I am a member. The guidance document states:

“**PRINCIPLE ONE**

**The health, safety and wellbeing of students, staff, visitors, and the wider**

**community will be the priority in decisions relating to the easing of Covid-19**

**restrictions in universities.**

**Consider….How to ensure risk assessments consider those who may be at increased risk,**

**including individuals who require shielding and those with underlying health**

**conditions.**

**PRINCIPLE FOUR**

**Universities will regularly review the welfare and mental health needs of students**

**and staff and take steps to ensure preventative measures and appropriate**

**support are in place and well communicated as restrictions are eased.**

**Consider…Reviewing the Equality, Diversity and Inclusion implications of the**

**institution’s approach to emerging from lockdown and the actions required**

**to mitigate the impact on specific groups of staff and students (e.g. vulnerable**

**groups such as those who are shielding, those whose family members are**

**shielding, care leavers, students with mental health problems, etc.)**”

The agreed statement between UCEA and the trade unions states,

“**6. Impact on staff**

**Universities will assess how the transition back to campus will affect different cohorts of staff**

**and take into account any equality considerations. HEIs will seek to identify reasonable**

**actions to mitigate possible adverse impacts on specific group/s including those, or those**

**living with, people who are shielding or vulnerable.**”

This guidance and statement therefore requires you to put the health, safety and well being of staff (and students) first when making decisions about returning to face to face working, to consider individual risk assessments that take into account staff’s individual characteristics, to protect staff’s mental health, and to factor equality considerations for people with different protected characteristics such as disability into decisions. I do not believe that the risk assessments for the institution which I have been shown has done this adequately.

[If wanted – pick up detailed issues from the RA about which the member is unhappy:-

**The issues**

I am particularly concerned about the following points from the risk assessment:

* ]

**The law**

**Health and safety at work**

You will be aware that under the Management of Health and Safety at Work Regulations 1999 the University is required as my employer to make a suitable and sufficient assessment of the risks to the health and safety of employees to which they are exposed whilst they are at work (Regulation 3). In order to manage my underlying mental health condition, outside the workplace I have of course been working from home, associating with a very small number of people and [mention any other relevant precautions eg getting someone else to do the shopping]. You therefore have a duty to assess this increased risk to me whilst I am at work and take preventative and protective measures. I request as such a measure that you allow me to continue to work remotely and deliver my teaching online.

As you are aware, you also have a duty under Regulation 8 to provide me with a procedure to follow in the event of serious and imminent danger to enable me to stop work in the presence of such a danger and proceed to a place of safety. I request that you fulfill this duty by allowing me to continue to work remotely and deliver my teaching online.

**Indirect discrimination**

Under section 19 Equality Act 2010, where an employer applies a provision, criterion or practice to employees which puts a group who share a protected characteristic under that Act at a particular disadvantage, this will be unlawful indirect discrimination unless it can be shown to be a proportionate means to a legitimate aim. Your proposal for staff to work in the workplace puts me and other staff with a disability like mine at the particular disadvantage of an increased risk of a deterioration in our mental health condition. This is potentially indirect disability discrimination. I do not believe that your proposal is proportionate when I have been working remotely with great success since [date] and I can deliver my teaching online.

**Negligence**

As my employer you have an actionable duty of care to guard against foreseeable harm to me as your employee. As set out above, there is a foreseeable risk of harm to me by way of serious risk of injury to my mental health if I have to return to working in the workplace and I believe that you would be in breach of your duty of care to require me to do so.

As evidenced by the UCEA guidance and its Appendix mentioned above, you are also aware of the risks to the mental health of staff. The proposal for me to resume working in the workplace in my circumstances has made me anxious and distressed, could exacerbate my mental health condition, and I will be consulting my GP about this if I feel it is necessary. I believe you would be in breach of your duty of care to require me to resume working in the workplace and that any harm to my mental health in these circumstances is foreseeable.

**Whistleblowing**

I would just remind you that I am protected by section 47B Employment Rights Act 1996 from any detriment on the grounds of having informed you about these potential breaches of your legal obligations and endangerment of health and safety.

I would be grateful to receive confirmation that I may continue to work remotely, or a full written response to my concerns as set out above, and in the meantime for your confirmation that I may continue to work remotely whilst I await this response.

Yours sincerely