

Testing for Covid -19

July 2020

Widespread testing for COVID-19 is being suggested as an effective tool to prevent the spread of the virus. UNISON is calling for further testing of the population as part of a safe return to work. This would mean the routine testing of workers without any symptoms to ensure that those who feel fine but are carrying the virus do not spread it. Whilst this may play a part in controlling the outbreak and a return to more normal working, a widespread testing regime does raise a number of issues members and stewards should be aware of.

The test can be intrusive and in order to be effective would have to be carried out regularly. If testing becomes compulsory then this could conflict with people's rights to refuse a medical procedure. This could also have serious implications for members' livelihoods if they are prevented from carrying out their jobs if they refuse a test.

There is a balance to be struck between individual rights and public safety. Governments are allowed to restrict human rights if there is a legitimate public health challenge. This epidemic has seen a range of measures put in place which substantially limit our freedoms, including only leaving our homes for an hour a day. The issue that has not yet been tested regarding compulsory testing is whether that would be proportionate and reasonable.

A key issue for branches will be the consequences of refusing the test. There are also potential consequences for those that any member refusing a test will be in contact with. Refusing a test may also have employment implications.

Members may also have concerns about privacy regarding access to their medical records. It is therefore vital to ensure that there are GDPR protocols in place.

Branches may encounter members who refuse a test and members who don't want to work with other staff/clients/pupils who refuse tests. There will also be a range of responses from employers to testing and to any member of staff who refuses a test. Some employers will be happy redeploy staff to another area and agree to maintain and wages etc others may not be so flexible. The following provides a framework for branches to negotiate any testing regime with employers. Detailed support is available from your Regional Organiser.

Key points

- Controlling infection is a legitimate aim, but the policy must be proportionate.
- Although there are other tests, a key part of ECHR compliance is to weigh the public health gains against the degree of interference with human rights and assess whether the public benefit is "proportionate".

- In its worst conceivable form, mandatory testing could compel workers to undergo repeated, intrusive procedures along with repeated sharing of sensitive personal data, all compelled by the threat of disciplinary action and the loss of human rights associated with work. The combined effect of a bad policy would be hard to justify.
- To achieve proportionality and ECHR compliance the policy would need careful drafting. Lawful implementation requires:
 - full consultation with workers and their representatives
 - equality impact and ECHR assessment at planning, development, implementation and review stages
 - effective testing linked to effective public controls
 - measures to review the efficacy of the testing and controls
 - targeting at specific occupations and work settings with an obvious public health impact
 - strict controls on duration and frequency of testing
 - periodic review of the continued need and justification for testing
 - defined criteria that permit the exclusion of specific categories of workers from mandatory testing (e.g. medical grounds)
 - measures to protect workers from economic loss if they refuse to test but agree to redeployment, home working or paid leave of absence
 - Strict GDPR controls that limit privacy intrusion to the minimum required for infection control
 - Periodic review of the entire policy and process during its applications

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