

Coronavirus Fair Work Joint Statement

Equality Impact Assessment Results

May 2022



Scottish Government
Riaghaltas na h-Alba
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Equality Impact Assessment - Results

Title of Policy

Coronavirus Fair Work Joint Statement

Summary of aims and desired outcomes of Policy

The purpose of the Coronavirus Fair Work Joint Statement was to set out our Fair Work expectations as we transitioned out of lockdown, supporting workers and employers as the economy re-opened. The statement encourages employers, workers and trade unions to continue working in partnership to ensure the right decisions about workplace issues are reached.

The statement is part of our broader Fair Work agenda, which contributes to multiple National Outcome indicators, including:

- Work place learning
- Skill shortage vacancies
- Skills underutilisation
- Employees on the living wage
- Pay gap
- Contractually secure work
- Employee voice
- Gender balance in organisations
- Work related ill health

Directorate: Division: Team

Directorate for Fair Work, Employability and Skills: Fair Work and Labour Market
Strategy Division: Fair Work Policy and Delivery Unit

Executive summary

The Coronavirus Fair Work Joint Statement, initially published in March 2020 was intended to provide a set of principles to guide employers approaches in response to the initial crisis, to support workers to follow the public health guidance and protect workers from financial hardship. In July 2020, it was updated to support the transition out of lockdown, and in December 2020, it was updated to encourage employers to support workers to get vaccinated. The purpose of the statement, as set out in the headline, is to set out “a joint statement on fair work expectations during the transition out of lockdown.”

The Statement was published jointly, in partnership with the STUC, CoSLA, SCVO, the IoD and SCDI, outlining the shared commitment to Fair Work in Scotland.

Background

As employment legislation is reserved, the statement cannot be enforced. Instead, it provides a set of guiding principles. It is relevant to all workers across the Scottish economy. It could be considered more relevant to essential / key workers, who were unable to work from home, and may have had a higher exposure to risk from COVID as a result of their attendance at work during the pandemic and as such may be disproportionately impacted by COVID.

When the first iteration of the statement was published in March 2020, there was not yet the available the body of evidence to appropriately assess the equality impact outcomes. As we have learned from the pandemic response, we now have an opportunity to ensure the Fair Work statement fully considers the impacts, intended or unintended, on those with protected characteristics.

The Scope of the EQIA

This impact assessment will allow us to understand what impacts the statement has had on the protected characteristics under the Equality Act (2010).

The statement contains a set of guiding principles, and it is for individual employers to consider how to apply these in their workplace, but the high level principles of the statement should be assessed as fully as possible.

In developing this statement we have been mindful of the three needs of the Public Sector Equality Duty (PSED) - eliminate unlawful discrimination, harassment and victimisation, advance equality of opportunity between people who share a protected characteristic and those who do not, and foster good relations between people who share a protected characteristic and those who do not. We are also mindful that the equality duty is not just about negating or mitigating negative impacts, as we also have a positive duty to promote equality.

It is also important that in assessing the statement that we are mindful of the intersectionality of protected characteristics. For example, an older ethnic minority woman with a disability is likely to be impacted by the Age, Sex, Disability and Race protected characteristics, and as such may experience compounding equality impacts.

Key Findings

We undertook desk-based research to provide an initial evidence base, consulting with analysts where appropriate. We then undertook framing workshops with relevant Workplace Equalities policy colleagues, Equalities Unit colleagues, and analysts.

Initial findings demonstrated that the Covid pandemic disproportionately affected people with one or more of the protected characteristics. The public health crisis created an economic challenge which included access to fair and inclusive work, and a disproportionate impact was more likely to be faced by disabled and older workers, women, minority ethnic and younger workers concentrated in public-facing sectors.

We then sought input from equality groups, and Glasgow Centre for Inclusive Living, Close the Gap, Flexibility Works and RSJ Equality Consultancy provided substantive feedback which was incorporated into our findings.

A summary of our key findings can be found below:

Age

- Younger workers are more likely to be employed in public facing roles which are less likely to be suitable for working from home, such as retail, and accommodation and hospitality. This means they are more at risk of Covid transmission.
- There is increasing evidence around older workers leaving employment into economic inactivity, citing ill health as the reason for leaving employment.

Disability

- The employment rate of disabled people (47.2%) still remains much lower than that of non-disabled people (80.6%), meaning a disability employment gap in Scotland of 33.4 percentage points.
- Disabled people are more likely to be severely affected than non-disabled people by the impacts of Covid, including health outcomes, caring responsibilities, and access to healthcare.
- Research from the TUC found that before the pandemic, over four in 10 (45%) of disabled workers who asked for reasonable adjustments failed to get any or only got some of the reasonable adjustments they asked for put in place and one-fifth (20%) who had identified reasonable adjustments had not asked for them. This means that more than half of disabled workers (55%) who identified reasonable adjustments were not getting all the reasonable adjustments they needed.
- During the pandemic over half of disabled workers (53%) reported they worked from home, with only around one in eight (13%) having done so before this point. This resulted in many disabled workers needing new reasonable adjustments, for example access to speech-to-text for web-based meetings.
- Disabled workers who were able to work from home reported that it had had a positive impact on them and their working lives:
 - Nearly two-thirds (63%) said that it gave them greater control over their working hours
 - Just under half (47%) said they had been able to change their work routines
 - Two in five (40%) said that it reduced their tiredness and fatigue
 - More than a quarter (26%) said their mental health had improved
- More than one in five (21%) said that working from home had helped them better manage their caring responsibilities

Sex

- Young (aged 18 and under) women's labour market participation has been adversely affected by Covid job disruption. Analysis by Close the Gap has found that young women were more likely to have been furloughed at the start of the crisis; are more likely to work in a shutdown sector; and have been more impacted by increases in unpaid care.
- Young women are also particularly likely to be employed in low-paid jobs and sectors and are also more likely to be in precarious work. Indeed, sectors where young women's employment has been particularly impacted during the crisis, such as retail and hospitality, are notoriously low paid and characterised by job insecurity.
- Women also accounted for the majority of key workers in Scotland (79%) and were therefore concentrated in sectors where demand for labour increased as a result of the pandemic (e.g. social care, essential retail, cleaning etc.)
- Such roles are also more likely to be low-paid and undervalued. Research by WBG found that women accounted for 98% of key workers earning 'poverty wages'.
- Additional childcare responsibilities fell to women during the beginning of the pandemic, making it more difficult to carry out paid work from home. During the first weeks of lockdown (28 March to 26 April 2020), across the UK women were carrying out on average 2/3 more of the childcare duties than men.

Pregnancy and Maternity

- A high number of pregnant women surveyed by the TUC reported that health and safety rights are being routinely disregarded, leaving them feeling unsafe at work or without pay when they are unable to attend their workplaces.
- Research by the University of Oxford has found that women with Covid during pregnancy were over 50% more likely to experience pregnancy complications (such as premature birth, pre-eclampsia, admission to intensive care and death) compared to pregnant women unaffected by COVID. Encouraging working from home may therefore benefit this group by reducing exposure risk.
- Research by Pregnant then Screwed found that 57% of working mums believe that managing childcare during Covid has damaged their career prospects. 49% of working mums feel they forced to send their children back to nursery because of their jobs.
- 78% of working mothers have found it challenging to manage their paid work alongside of childcare. 25% of these mothers said their employers have not shown them any flexibility when trying to manage their jobs with childcare.

Race

- ONS data suggests that minority ethnic individuals are over-represented in jobs with increased exposure risks to Covid (19.2% of workers in health and social care were from minority ethnic groups) and 14% of key workers overall (broader than just health and social care) are from minority ethnic backgrounds.

- The impact of the Covid outbreak was particularly damaging for the distribution, hotels and restaurants industry in Scotland due to restrictions on social interaction and travel. A higher share of the 16+ ME population in employment are employed in this industry compared with the white population (27.4% vs 17.9%), so minority ethnic groups have been particularly exposed to job losses, reduced hours and reduced pay
- ME groups are more likely to be unemployed and in precarious work than their white counterparts. A report from the UCL Institute of Education (IOE), Carnegie UK Trust, and Operation Black Vote revealed that BAME millennials are 47% more likely to be on a zero hours contract. They are also 4.17% less likely to have a permanent contract than their white peer group.
- There is evidence to suggest that minority ethnic communities are more likely to experience digital poverty and a lack of reliable and affordable broadband, therefore reducing their ability to efficiently work from home.

Sexual Orientation and Gender Reassignment

- Research by Stonewall found that some LGBT people are experiencing difficulties which are magnified by factors such as not being “out” in the home in which they are living (particularly for young people), and therefore feeling deeply uncomfortable, distressed or unsafe while working from home.
- LGBT Youth Scotland have also highlighted increased pressures on young LGBT people, highlighting particularly the impact on trans and non-binary young people of lockdown where their home environment is not supportive of their gender identity. While we are no longer under lockdown restrictions, a sustained period of working from home may exacerbate these issues for young trans and non-binary workers

Religion or Belief

- Engagement with faith and belief communities over the course of the pandemic have not identified any specific barriers directly affecting religion in terms of the workspace. Religious groups may also fall into under other protected characteristics, such as minority ethnic communities.

Marriage and Civil Partnership

- No evidence of a differential impact identified at this time.

Recommendations and Conclusion

The EQIA has identified potential positive impacts of the Coronavirus Fair Work Joint Statement, should employers implement policies consistent with the principles of the Statement. Positive impacts were identified on women and disabled workers in particular, due to the emphasis on flexible working options such as working from home (although in this current phase of the pandemic recovery our position now emphasises hybrid working.) However, we are mindful of the potential negative impact such a position may have had on LGBT youths who do not live in a supportive home environment.

Positive impacts were also identified for those who work in public facing roles, primarily women and ME women. The statement strongly encourages employers to protect the health and safety of all workers and to support workers to follow public health guidance. So by employers implementing the appropriate workplace policies in accordance with the statement, workers who faced an increased risk of Covid transmission would be positively impacted.

The EQIA has not uncovered any evidence to suggest the Coronavirus Fair Work Statement is discriminatory under the Equality Act.

It should be noted that throughout the pandemic, the Statement's focus has been supporting health protection measures and preventing transmission of Covid-19 in the workplace. As currently drafted, the Statement continues to make clear the expectation that:

- no worker should be financially penalised for following medical advice, and
- absences relating to Covid-19 should not affect future sick pay, holiday or accrued time entitlements or be part of formal absence management.

The statement was published before there was a clinical definition of 'Long-Covid' (commonly describes signs and symptoms clinically referred to as "on-going symptomatic" if symptoms last between 4-12 weeks and "post-Covid syndrome" if symptoms last beyond 12 weeks), therefore this has not been a consideration. Whilst not explicit in the Statement, the 'no detriment' referred to was not intended to cover absence due to long-term illness.

In conclusion, the Coronavirus Fair Work Statement provided a high level set of principles to shape employer's responses to workplace issues arising from Covid-19. While this EQIA has been undertaken retrospectively - the initial statement was published as an immediate response to workplace issues arising due to lockdown, and as such there wasn't a body of evidence available yet – this exercise has provided useful evidence which will inform our Fair Work priorities going forward as we move into the pandemic recovery phase.

This EQIA will therefore help us to develop Fair Work policies which benefit workers, businesses and society. We are now undertaking work to refresh our suite of Action Plans that support our Fair Work policy, i.e. the Fair Work Action Plan, Gender Pay Gap Action Plan and Disabled People's Employment Action Plan, with a view to publishing a single cohesive action plan, taking an intersectional approach to workplace equality issues, and to be complemented by our new ethnicity pay gap strategy. The single refreshed Fair Work Action Plan will be published in Autumn 2022, and will be informed and supported by the following impact assessments:

- Equality Impact Assessment
- Fairer Scotland Duty
- Business and Regulatory Impact Assessment
- Island Communities Impact Assessment



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