11th June 2020

GMB BULLETIN: NHS & AMBULANCE SERVICE
COVID-19 HEALTH & SAFETY ISSUES

Many GMB members working in the NHS have contacted us during Covid-19 regarding their health & safety at work concerns. There is a lot of Coronavirus health and safety information in the GMB Coronavirus hub that can be accessed here:

https://www.gmb.org.uk/support/coronavirus

The Reporting of Injuries, Diseases and Dangerous Occurrences (RIDDOR) Regulations (2013)

Reporting requirements relating to cases of, or deaths from, Covid-19 under RIDDOR apply only to occupational exposure, that is, as a result of a person's work. It is the responsibility of the employer to report.

RIDDOR reporting requirements were not designed with a Pandemic in mind, therefore they have proven difficult to interpret and understand their responsibilities with regards reporting Covid-19 incidents. The Health & Safety Executive have published more detailed guidance to assist employers.

The employer should report under RIDDOR if one of the following circumstances apply:

- An accident or incident at work has, or could have, led to the release or escape of Coronavirus (SARS-CoV2). This must be reported as a '**Dangerous Occurrence**'.

- A person at work (worker) has been diagnosed as having Covid-19 attributed to an occupational exposure to Coronavirus. This must be reported as a '**Case of Disease**'.

- A worker dies as a result of occupational exposure to Coronavirus. This must be reported as a '**Work related death due to exposure to a biological agent'.**

The reporting of a dangerous occurrence.

This does not require a complex analysis, measurement or test, but rather a reasonable judgment to be made as to whether circumstances gave rise to a real risk or had the potential to cause significant harm.

Incidents are assessed on a case by case basis. It does not include treating a patient who is not known at the time to be Covid-19 positive. It does not include being deliberately spat at or coughed on by a person with unknown Covid-19 status.

GMB believes that this would only be applicable when there is an outbreak with a number of people who have been working together catching Covid-19 or a clear link to a worker coming into contact with someone who is known to be Covid-19 positive. Clear failings in procedures could also be a cause, for example – no risk assessment, inadequate control measures, no training or inadequate communication of control measures.

The Reporting of a Case of Disease.

The employer makes a judgment based on information available as to whether or not there is reasonable evidence that a work related exposure is the likely cause of the disease.

Incidents are assessed on a case by case basis. There must be reasonable evidence linking a person's work with the increased risk of exposure. There are some general principles which can assist in the making of this judgement:

- Does the nature of the workers work activities increase the risk of exposure to Covid-19?
- Were there any specific, identifiable incidents leading to the increased risk of exposure?
- Did their work bring them into contact with the virus hazard without effective control measures set out in Public Health England guidance, such as Personal Protective Equipment or social distancing?

The above is not an exhaustive list of considerations but it should be more likely that the source of exposure to Covid-19 was through a person's work and not societal exposure.

The reporting of a work related death.

There must be reasonable evidence that work related exposure caused the worker's death. Medical evidence such as death certificates are likely to be an important consideration when determining whether a report is required. This judgement should be made on the basis of the evidence available.

The enforcing authority should be reported without delay and a report submitted within 10 days.

Further guidance can be accessed at:

https://www.hse.gov.uk/news/riddor-reporting-coronavirus

https://www.hse.gov.uk/news/riddor-reporting-further-guidance-coronavirus.htm#work-death-reasonable

Health & Safety Reps should be consulted on accidents and cases of ill health caused by work, especially those which lead to RIDDOR cases, in order to find out how it happened and work out ways to stop it happening again.

Risk Assessments

Employers are required by law to protect their employees and others from harm.

The Management of Health & Safety Work Regulations 1999 states as a minimum:

- Identify what could cause injury or illness in your business (hazards).
- Decide how likely it is that someone could be harmed and how seriously (the risk).
- Take action to eliminate the hazard, or if not possible, control the risk.

GMB expects that Health & Safety Representatives should be consulted on all risk assessments carried out.

The GMB Risk Assessment Checklist can be accessed at:

https://www.gmb.org.uk/make-work-safe/risk-assessment-checklist

The Health & Safety at Work Act 1974 and the Regulations mentioned above require employers to do risk assessments. The law covers direct employees, as well as contractors and agency staff.

Risk assessments must be carried out, stored and reviewed by employers. GMB believes that mental health risks should also be included.

Failure to perform a risk assessment is a breach of the Regulations and needs to be reported to the Health & Safety Executive using the escalation process, detailed below. The details should also be added to the GMB Risk Register (information below) to highlight failings and ensure we have a record.

Evidence now suggests that people from Black, Asian and Minority Ethnic (BAME) backgrounds are being disproportionately affected by the coronavirus pandemic. This is of significant concern, particularly as people from these communities make such a significant contribution to our NHS and care services.

The Welsh Government created an expert advisory group to urgently investigate why BAME communities are at higher risk and to create a tool that can aid risk assessments in NHS and social care settings. This tool – The All Wales COVID 19 Workforce Risk Assessment Tool – has now been published and should be used when carrying out risk assessments to help assess those who are vulnerable or at risk of contracting coronavirus, including people from BAME backgrounds. This is a good tool for everyone, not just those who live and work in Wales. It is designed so that you can complete the self-assessment and then use this to discuss your level of risk and help your employer to put in place actions to ensure you are protected as far as possible. These may include additional protection, changing working practices or working from home.

Further information has been published by NHS Employers in England, which includes principles from health trade unions, including the GMB to be considered. These can be accessed at:

https://www.nhsemployers.org/covid19/health-safety-and-wellbeing/risk-assessments-for-staff

Further guidance can be accessed:

https://www.hse.gov.uk/news/working-safely-during-coronavirus-outbreak

https://www.hse.gov.uk/simple-health-safety/risk/index

https://www.gmb.org.uk/make-work-safe/returning-work-risk-assessment

https://gov.wales/written-statement-all-wales-covid-19-workforce-risk-assessment-tool

Health & Safety Executive – Escalation Process

GMB has a direct line for GMB concerns to be raised with the Health & Safety Executive. We will prioritise complaints that involve absolutely clear breaches of duty, especially regarding:

- Social distancing and no risk assessments.
- Personal Protective Equipment – inadequate / insufficient.
- No risk assessment for vulnerable people, specific tasks and refusal to carry them out.

Contact your Local GMB Representative, Regional Officer and Regional Health & Safety Officer to raise an issue. More details on this process and the form to complete to escalate breaches can be accessed at:

https://www.gmb.org.uk/raising-issues-employers-hse/covid-19-escalation-process-hse

GMB Risk Register

NHS key workers have been let down by the Government at all key points during the Coronavirus Pandemic – on Pay, on Personal Protective Equipment (PPE), on Testing.

The GMB has been championing the vital roles of our key worker heroes in the NHS and ensuring your voice has been heard at all levels – both nationally and regionally – with Government, politicians and your employers.

We were successful in getting Public Health England to amend their guidance to improve the level of PPE that should be worn in certain circumstances (although issues remain with access, quality and supply) and we were successful in getting the Government to extend the right to testing to all health care staff (although issues remain with access).

However, there is no doubt, that our members working in the NHS have been put in harm's way of contracting Covid-19 due to these failures. Therefore, GMB has set up a Covid-19 Risk Register so that members, workplace representatives and officers can record where things have gone wrong with employers' responses to the Covid-19 Pandemic.

Individual Risk Register: Individuals can complete this form to record their concerns about what has happened to them. As with GMB's historic Asbestos Register, this Covid-19 Risk Register will put on the record members' concerns so there can be no dispute in the future about the level of risk they faced.

Workplace Risk Register: Likewise, GMB reps and officers can register concerns about particular employers or workplaces using the dedicated form. We will be putting on record how GMB approached employers to improve the safety of their workforce and what responses employers made. There will be no hiding place for employers who have failed to adequately address the safety concerns of their employees and their union.

GMB encourages all of our members who have been affected to complete the forms mentioned above and they can be accessed at https://www.gmb.org.uk/covid-19-risk-register

Not a GMB Member? Join today at www.gmb.org.uk/join

Want more information about being a GMB Health & Safety Rep in your Workplace?
Email NHS@gmb.org.uk