

Covid19: Your Rights



This pack offers UNISON Scotland vital health and safety advice and some tools to organise and advise members.

It is general advice that applies equally in homecare, residential care, council departments and hospitals. It is particularly intended to counter the confusion around our members' rights to self assess their safety following the Chief Nursing Officer's departure from agreed UK guidance.

Pages 2-4 describe how to raise safety concerns. Starting with guidance and discussion with the employer.

Pages 5 to 7 have a checklist for members to record any concerns that are not addressed by the employer.

Pages 8-17 have model letters for use with employers.

Workplaces cannot be centres of infection if we are to stop the spread. Worker's rights are also public health rights. Safety first.

The core advice is to use the official safety guidance, seek solutions.

Try to get members to work collectively in any dialogue with the employer.

Only escalate when necessary. Always seek advice.



Promoting Safe Work & Tackling Unsafe Work

Stopping the spread

Safe workplaces are crucial to protect the wellbeing of essential workers and to prevent workplaces contributing to the spread of the disease. This guide sets out the steps that stewards, safety reps and groups of members can take to promote health and safety at work during the pandemic. This is the guide for branches and organisers. There is a shorter guide for members.

Our Message

- In a global pandemic, safety rights are public health rights.
- Unsafe work spreads the virus.
- Our members have the right to self assess their safety at work, particular in a care at home context

Should you be at work?

This issue should have been resolved. If still disputed, the guidance on "shielding" and "isolating" is set out on the [UNISON Scotland website](#). It covers the rights of workers with health conditions, and the rights of workers who live with someone shielding or isolating. This pack contains a checklist to help members assess whether they should be at work, and model letters for use with employers.

Is my work safe?

The official guidance on safety in the face of coronavirus varies according to occupation and work setting. In a home care setting it may vary from client to client. As a result, UNISON attaches the highest importance to workers' self assessment of their own safety, minute by minute, hour by hour.

There are links to Scottish guidance on the [UNISON Scotland website](#). However, fundamentals of health and safety still apply and the [UNISON website](#) provides key Health and Safety materials.

Hazards should be assessed and protective measures put in place. Bottom line, members have a legal right to self assess the risk they face and step back if absolutely necessary (see below). The right to step back only applies if workers believe they face serious and imminent danger, that belief is reasonable, and they have acted appropriately to avert the danger. The region will support branches in assessing such situations.

UNISON's PPE Alert

Some workers may not feel confident to be identified with any challenge to working conditions. To meet this need, and to ensure that issues are still brought to the attention of politicians and the wider public, UNISON has set up a confidential reporting system called [UNISON PPE Alert](#) where workers can leave anonymous accounts of their experience.

How do I challenge unsafe work?

Where groups of workers, or individuals, wish to challenge unsafe work this is done through a 3 Stage process for keeping people safe:

- **Stage 1: Guidance & Dialogue**
- **Stage 2: Challenge**
- **Stage 3: Action**

There is also an option for accelerated action in extreme or urgent situations.

Stage 1: Guidance & Dialogue

All essential workers are covered by national guidance. There is generic national guidance and specific guidance for NHS, local government and other public services. UNISON Scotland shapes this guidance in daily dialogue with employers and Government. These commitments are minimum standards and must be applied. The right to self assessment of PPE is particularly key.

Most work arrangements are being addressed and resolved through dialogue with employers around existing guidance. However, if members are concerned about the application of the guidance to their workplace they should use the checklist below, work collectively with colleagues and seek support from the branch and region where required.

Checklist

Where members have questions or concerns, there is a checklist below to help them work with colleagues to ensure that relevant guidance is being followed. This covers use of risk assessments, access to PPE, provision of hand sanitisers, compliance with social distancing and much more. When they complete the checklist they receive their answers in a PDF file attached to an email. To receive individual advice the member must email the PDF file to UNISON. Checklists will be forwarded to the branch and copied to organisers. All this is explained to members as they complete the checklist.

If the Checklist reveals risks that are not resolved through dialogue members may want help in moving to Stage 2. The member leaflet steers them to their branch with the region as an alternative contact.

Stage 2: Challenge

Where the checklist reveals the need for action on safety, and members want to make a complaint, UNISON will formally notify the employer and call for specific action on safety. The content will vary depending on the specific action needed in the workplace. The letter or notice will explain our concerns (identified using the checklist) and set out our members' right to safety at work and legal protection when raising safety issues. **See Model Letter 4**

As always, the aim at Stage 2 is to solve problems, protect workers, stop the spread of the virus and keep services running. Our focus is safety first. Workplace and community.

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If a formal challenge to unsafe work does not secure improved arrangements, the members may need further assistance. Please record stage two cases in case management systems and mark for follow up if unresolved.

Stage 3: Action

In extreme situations there are legal rules that enable workers to withdraw from unsafe situations. If this occurs, we will use the relevant guidance, the checklist, and the employer's response at Stage 2 to assess whether workers are legally protected if they choose to withdraw from work on safety grounds. There are escalation options within workplace procedures. Unless there is an imminent risk of serious danger that cannot be averted we will work within the stages of agreed procedures. When advice is issued it is essential that members stick to the precise wording of the advice. **See Model Letter 5 to be sent by the Regional Office**

Urgent cases of extreme danger

In urgent cases of extreme or imminent danger we will seek to fast-track the checklist process and urgently assess the need for protective action. As with all organisations combating Covid19, we are working under extreme pressure.

Escalating issues nationally

Some individual cases raise issues not covered by current guidance or are of wider importance than one workplace. When this occurs it is important that such cases are shared with branch leadership, service group leads and copied to SMT so they can be raised at a national level where appropriate.

Contacts

All contact with the region is shared with the branch. For information, this is the contact information contained in member communication.

Contact your branch in the first instance. Branch contacts are provided on branch websites, social media or through the [UNISON Branch Finder](#).

Alternative contacts for UNISON Scotland:
membershipassistancescotland@unison.co.uk

Glasgow 0141 34 22899 Aberdeen 01224 620624 Inverness 01463 715891

UNISON Safety Checklist

Covid19 and your safety rights



[CLICK OUR ONLINE CHECKLIST HERE](#)

Members are encouraged to complete the checklist online where possible. If they are excluded from online contact they can use the regional contacts to arrange a telephone interview.

Are you safe at work?

If you are working and you are concerned about safety you can use this checklist to assess your rights. By completing the checklist you consent to this data being used as aggregate and anonymous survey data to campaign for greater safety and improved working conditions for all UNISON members, and you consent to future contact from the union in relation to the issues raised in the survey

Your name	
Your address	
Your mobile number	
Your email	
Your UNISON number	
Your employer	
Name and address of workplace	
Briefly describe the work done at your workplace	

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Do you have contact with Covid19 patients?	
If so, please describe the frequency and nature of the contact with Covid19 patients	
Do you believe you have the correct PPE?	
What type of PPE do you need?	
Is PPE available to you?	
If so, what type of PPE is provided?	
Are there measures in place to advise and enforce social distancing?	
Do you know if the risk assessment has been updated for Covid19?	
Was the union consulted about risk assessment and the implementation of safety measures?	

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Have you been told about measures adopted after risk assessments?

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Have individual risk assessments been conducted for disabled workers?

--

Are there notices displayed to highlight measures adopted to manage covid19 risks?

--

State the name and contact details for your union rep

--

Are there any other issues or concerns UNISON should be aware of?

--

Model Letter 1 - Shielding

To be used by members with severe health risks who believe they should be shielding

COMPLETE THE CHECKLIST & SEEK UNION ADVICE BEFORE SENDING

[insert date]

[insert addressee]

[Insert Member Name and workplace]

We refer to the above named person. This individual is both a member of UNISON and, we understand, an employee of your organisation. Our member has been advised by the relevant medical authorities that they are extremely vulnerable and should shield. We are supporting our member in that process and have advised that they should follow Government advice without experiencing financial detriment. The legal explanation for that position is set out below.

In writing this letter we are very mindful of the pace and intensity of recent events and the impact on employers. Our experience is that the position of workers required to shield can be resolved informally. While we have advised our member that they can rely on their legal rights we also hope and expect this can be resolved within our normal channels of positive employment relations.

We would be grateful if you would confirm to us in writing that the above member will both not be required to work throughout this period and, in line with Government policy, they will continue to receive their normal salary.

Yours sincerely,

Legal Note

We would like to draw your attention to the following obligations:

1. Recent guidance from both the Scottish and UK governments in relation to the measures employers are now required to take in order to assist combating the spread of the COVID-19 virus.
2. Various obligations you are subject to as employer, including your obligation not only to carry out, but **to keep up-to-date assessments** of the risks your employees are exposed to whilst at work (reg.3, Management of Health and Safety at Work Regulations 1999 (“the 1999 Regs”)), your obligation to ensure that your employees are provided with suitable personal protective equipment (“PPE”) in order to adequately control those risks (reg.4, Personal Protective Equipment at Work Regulations 1992 (“the PPE Regs”)) and arrange workplaces so that they are suitable for your employees

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to undertake the work that is likely to be done there (reg.11, Workplace (Health, Safety and Welfare Regulations 1992 (“the 1992 Regs”)).

3. The duty of care you owe towards your employees at common law and the separate duty to provide a safe and suitable working environment that is implied into every contract of employment (“the implied term”).
4. The various statutory protections that exist for employees who either reasonably believe that their employer has failed to discharge one or more of the above duties, or who absents themselves from work on the basis of this belief. In our view, these include:
 - a) The right not to be unfairly dismissed, including constructive dismissal for breach of the implied term, in terms of s.94 of the Employment Rights Act 1998 (“ERA”);
 - b) The right not to suffer a detriment because the employee has absented themselves from work because they reasonably believed that they were facing circumstances of serious and imminent danger in terms of s.44, ERA; and
 - c) The right not to be dismissed because the employee has absented themselves from work because they reasonably believed that they were facing circumstances of serious and imminent danger in terms of s.100, ERA.
5. Our member has been advised by their relevant medical professional to shield. According to the official government guidance, shielding is “a measure to protect extremely vulnerable people by minimizing interaction” between that individual and other people. In particular, the guidance strongly advises shielding individuals not to leave their homes and to minimize non-essential contact with other members of their household.
6. As our member is shielding, they will not attend work. This decision has been taken on the basis of medical and government advice. Employers of individuals who are shielding are entitled to apply for a grant of up to 80% of that individual’s salary up to £2,500. We support and encourage employers who we work with to use all available Government guidance and support to enable vulnerable people to shield without financial loss thereby protecting themselves and relieving strain on the NHS.

[ENDS]

Model Letter 2 - Vulnerable Health

To be used by members who believe they are vulnerable on health grounds although not classed by NHS as at a "Severe Health Risk"

COMPLETE THE CHECKLIST & SEEK UNION ADVICE BEFORE SENDING

[insert date]

[insert addressee]

[Insert Member Name and workplace]

We refer to the above named person. This individual is both a member of UNISON and, we understand, an employee of your organisation.

Our member has advised us that they have a medical condition or conditions that would cause them to be vulnerable in the event of their contracting COVID-19.

Based on information we have been provided with from our member, we are concerned that aspects of their working arrangements leave them exposed to avoidable contact with Covid19. Given our member's medical position, the consequences are potentially very serious. Government guidance advises our member to self assess the risk they face at work and follow government guidance. Our member's assessment is that they should isolate to reduce the risk of infection.

In writing this letter we are very mindful of the pace and intensity of recent events and the impact on employers. Our experience is that the position of workers with underlying health problems can be resolved informally. While we have advised our member that they can rely on their legal rights we also hope and expect this can be resolved within our normal channels of positive employment relations. That said, we have taken the precaution of setting out their legal rights in a Legal Note attached to this letter.

We would be grateful if you would confirm to us in writing that the above member will not be required to work throughout this period and, in line with Government policy, they will continue to receive their salary.

Yours sincerely,

Legal Note

We would like to draw your attention to the following:

1. Recent guidance from both the Scottish and UK governments in relation to the measures employers are now required to take in order to assist combating the spread of the COVID-19 virus.

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2. Various obligations you are subject to as an employer, including your obligation not only to carry out, but **to keep up-to-date assessments** of the risks your employees are exposed to whilst at work (reg.3, Management of Health and Safety at Work Regulations 1999 (“the 1999 Regs”)), your obligation to ensure that your employees are provided with suitable personal protective equipment (“PPE”) in order to adequately control those risks (reg.4, Personal Protective Equipment at Work Regulations 1992 (“the PPE Regs”)) and arrange workplaces so that they are suitable for your employees to undertake the work that is likely to be done there (reg.11, Workplace (Health, Safety and Welfare Regulations 1992 (“the 1992 Regs”)).
3. The duty of care you owe towards your employees at common law and the separate duty to provide a safe and suitable working environment that is implied into every contract of employment (“the implied term”).
4. The various statutory protections that exist for employees who either reasonably believe that their employer has failed to discharge one or more of the above duties, or who absent themselves from work on the basis of this belief. In our view, these include:
 - a) The right not to be unfairly dismissed, including constructive dismissal for breach of the implied term, in terms of s.94 of the Employment Rights Act 1998 (“ERA”);
 - b) The right not to suffer a detriment because the employee has absented themselves from work because they reasonably believed that they were facing circumstances of serious and imminent danger in terms of s.44, ERA; and
 - c) The right not to be dismissed because the employee has absented themselves from work because they reasonably believed that they were facing circumstances of serious and imminent danger in terms of s.100, ERA.
5. Our member has been advised by their relevant medical professional that they have underlying medical problems and that they are vulnerable. According to the official government guidance, isolation is a measure to protect vulnerable people by minimising interaction between that individual and other people.
6. As our member is isolating, they will not attend work. This decision has been taken on the basis of medical and government advice. Employers of individuals who are isolating are entitled to apply for a grant of up to 80% of that individual’s salary up to £2,500. We support and encourage employers who we work with to use all available Government guidance and support to enable vulnerable people to isolate on health grounds without financial loss thereby protecting themselves and relieving strain on the NHS.

[ENDS]

Model Letter 3 - Other vulnerable person

To be used for members providing personal care to someone they live with who is shielding due to severe health difficulties

COMPLETE THE CHECKLIST & SEEK UNION ADVICE BEFORE SENDING

[insert date]

[insert addressee]

[Insert Member Name and workplace]

We refer to the above named person. This individual is both a member of UNISON and, we understand, an employee of your organisation.

Our member has advised us that either someone within their household or someone they provide informal but necessary care for has been advised by a relevant medical professional to shield. According to the official government guidance, shielding is “a measure to protect extremely vulnerable people by minimizing interaction” between that individual and other people. In particular, the guidance strongly advises shielding individuals not to leave their homes and to minimize non-essential contact with other members of their household.

Because our member has a non-work commitment to personal care it is particularly important that our member is safe at work so as to avoid onward infection to the vulnerable person with whom they have contact.

Based on information we have been provided with from our member, we are concerned that aspects of their working arrangements leave them exposed to contact with Covid19. Given our member's unavoidable contact with someone who is shielding, our member's assessment is that they should isolate to reduce the risk of onward infection.

In writing this letter we are very mindful of the pace and intensity of recent events and the impact on employers. Our experience is that the position of workers with underlying health problems can be resolved informally. While we have advised our member that they can rely on their legal rights we also hope and expect this can be resolved within our normal channels of positive employment relations. That said, we have taken the precaution of setting out their legal rights in a Legal Note attached to this letter.

We would be grateful if you would confirm to us in writing that the above member will not be required to work throughout this period and, in line with Government policy, they will continue to receive their salary.

Yours sincerely,

Legal Note

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We would like to draw your attention to the following:

1. Recent guidance from both the Scottish and UK governments in relation to the measures employers are now required to take in order to assist combating the spread of the COVID-19 virus.
2. Various obligations you are subject to as an employer, including your obligation not only to carry out, but **to keep up-to-date assessments** of the risks your employees are exposed to whilst at work (reg.3, Management of Health and Safety at Work Regulations 1999 (“the 1999 Regs”)), your obligation to ensure that your employees are provided with suitable personal protective equipment (“PPE”) in order to adequately control those risks (reg.4, Personal Protective Equipment at Work Regulations 1992 (“the PPE Regs”)) and arrange workplaces so that they are suitable for your employees to undertake the work that is likely to be done there (reg.11, Workplace (Health, Safety and Welfare Regulations 1992 (“the 1992 Regs”))).
3. The duty of care you owe towards your employees at common law and the separate duty to provide a safe and suitable working environment that is implied into every contract of employment (“the implied term”).
4. The various statutory protections that exist for employees who either reasonably believe that their employer has failed to discharge one or more of the above duties, or who absents themselves from work on the basis of this belief. In our view, these include:
 - a) The right not to be unfairly dismissed, including constructive dismissal for breach of the implied term, in terms of s.94 of the Employment Rights Act 1998 (“ERA”);
 - b) The right not to suffer a detriment because the employee has absented themselves from work because they reasonably believed that they were facing circumstances of serious and imminent danger **to themselves or to others** in terms of s.44, ERA; and
 - c) The right not to be dismissed because the employee has absented themselves from work because they reasonably believed that they were facing circumstances of serious and imminent danger **to themselves or to others** in terms of s.100, ERA.
5. Our member has advised us that either someone within their household or someone they provide informal but necessary care for has been advised by a relevant medical professional to shield. According to the official government guidance, shielding is “a measure to protect extremely vulnerable people by minimizing interaction” between that individual and other people. In particular, the guidance strongly advises shielding individuals not to leave their homes and to minimize non-essential contact with other members of their household.
6. As our member is isolating to protect someone who is extremely vulnerable, they will not attend work. This decision has been taken on the basis of medical and government advice. Employers of individuals who are isolating are entitled to apply for a grant of up to 80% of that individual’s salary up to £2,500. We support and encourage employers who we work with to use all available Government guidance and support to enable vulnerable people to isolate on health grounds without financial loss thereby protecting themselves and relieving strain on the NHS.

[ENDS]

Model Letter 4 - First Formal Escalation of Complaint over Unsafe Working Conditions

[insert date]

[insert addressee]

[Insert Member Name and workplace]

We refer to the above named person. This individual is both a member of UNISON and, we understand, an employee of your organisation. UNISON has been in dialogue over safety concerns listed below. These concerns are continuing and have not been resolved by dialogue. We are now required to formally notify you of the following:

- The specific hazards giving rise to concern
- The adequacy or inadequacy of measures deployed to protect our members; and,
- The legal rights and obligations that protect our members and compel their employer to take effective action to avert what we consider to be a serious and imminent danger to their health.

In writing this letter we are very mindful of the pace and intensity of recent events and the impact on employers and employees. We are particularly mindful of widely reported national problems in the sourcing, supply and distribution of PPE. However, our duty is to protect the health and safety of our members and, in that context, we have to be clear about the measures available to our members when they believe, as they do now, that they face a serious and imminent danger to their health that is not adequately averted by workplace health and safety practice.

Our experience is that, despite the intense pressure on us all, these situations can often be resolved through dialogue. The hazardous situations giving to our members cause for serious concern are listed below along with a summary of the legal provisions we rely upon. We urge you to engage with UNISON urgently to address this situation. **In the absence of effective action it may be that we are required to advise members of their legal right to withdraw from situations where they face a serious and imminent danger to their health.**

We hope this situation can be resolved immediately and look forward to your urgent response to what is a critically important situation.

Yours sincerely

1. Note on Current Workplace Hazards Creating Serious & Imminent Danger

[INSERT CHECKLIST DATA ON HAZARDS]

2. Legal Note

We would like to draw your attention to the following rights and obligations:

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1. Recent guidance from both the Scottish and UK governments in relation to the measures employers are now required to take in order to assist combating the spread of the COVID-19 virus.
2. Various obligations you are subject to as an employer, including your obligation not only to carry out, but **to keep up-to-date assessments** of the risks your employees are exposed to whilst at work (reg.3, Management of Health and Safety at Work Regulations 1999 (“the 1999 Regs”)), your obligation to ensure that your employees are provided with suitable personal protective equipment (“PPE”) in order to adequately control those risks (reg.4, Personal Protective Equipment at Work Regulations 1992 (“the PPE Regs”)) and arrange workplaces so that they are suitable for your employees to undertake the work that is likely to be done there (reg.11, Workplace (Health, Safety and Welfare Regulations 1992 (“the 1992 Regs”))).
3. The duty of care you owe towards your employees at common law and the separate duty to provide a safe and suitable working environment that is implied into every contract of employment (“the implied term”).
4. The various statutory protections that exist for employees who either reasonably believe that their employer has failed to discharge one or more of the above duties, or who absent themselves from work on the basis of this belief. In our view, these include:
 - a) The right not to be unfairly dismissed, including constructive dismissal for breach of the implied term, in terms of s.94 of the Employment Rights Act 1998 (“ERA”);
 - b) The right not to suffer a detriment because the employee has absented themselves from work because they reasonably believed that they were facing circumstances of serious and imminent danger **to themselves or to others** in terms of s.44, ERA; and
 - c) The right not to be dismissed because the employee has absented themselves from work because they reasonably believed that they were facing circumstances of serious and imminent danger **to themselves or to others** in terms of s.100, ERA.

Model Letter 5: Unsafe Workplace And Notice Members are Stepping Back from Hazard

To be used for members proposing to withdraw
in face of serious & imminent danger

COMPLETE THE CHECKLIST & SEEK UNION ADVICE BEFORE SENDING

[insert date]

[insert addressee]

[Insert Member Name and workplace]

We refer to the above named person. This individual is both a member of UNISON and, we understand, an employee of your organisation. We wrote to you on [insert] and this further letter reflects our members' continuing concern that they face a serious and imminent danger that has still not been averted by effective workplace safety measures. The list of hazards our members face is attached below.

You will no doubt be aware of recent guidance from both the Scottish and UK governments in relation to the measures employers are now required to take in order to assist combating the spread of the COVID-19 virus.

We would also remind you of the various obligations you are subject to as employer, including your obligation not only to carry out, but to keep up-to-date assessments of the risks your employees are exposed to whilst at work (reg.3, Management of Health and Safety at Work Regulations 1999 ("the 1999 Regs")), your obligation to ensure that your employees are provided with suitable personal protective equipment ("PPE") in order to adequately control those risks (reg.4, Personal Protective Equipment at Work Regulations 1992 ("the PPE Regs")) and arrange workplaces so that they are suitable for your employees to undertake the work that is likely to be done there (reg.11, Workplace (Health, Safety and Welfare Regulations 1992 ("the 1992 Regs"))).

In addition to these specific duties, you will no doubt also be aware of both the duty of care you owe towards your employees at common law and the separate duty to provide a safe and suitable working environment that is implied into every contract of employment ("the implied term").

Finally, we would draw your attention to the various statutory protections that exist for employees who either reasonably believe that their employer has failed to discharge one or more of the above duties, or who absents themselves from work on the basis of this belief. In our view, these include:

1. The right not to be unfairly dismissed, including constructive dismissal for breach of the implied term, in terms of s.94 of the Employment Rights Act 1998 ("ERA");

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2. The right not to suffer a detriment because the employee has absented themselves from work because they reasonably believed that they were facing circumstances of serious and imminent danger in terms of s.44, ERA; and
3. The right not to be dismissed because the employee has absented themselves from work because they reasonably believed that they were facing circumstances of serious and imminent danger in terms of s.100, ERA.

Based on information we have been provided with from our member, we have reason to believe that the organisation is in default of one or more of the above mentioned duties. Our member believes that there are measures that your business could put in place in order to mitigate the risk of individuals becoming infected with the virus in your workplace. These particular measures are detailed below. We understand that you are currently failing to adopt these measures.

[insert checklist information]

Our member believes that the failure by you to take these measures has created a serious risk to their health and safety. Further, existence of serious and imminent danger in this workplace has broader public health implications because of the apparent risk of onward infection. Our member therefore believes that the provisions of ss.44(1)(d) and (e), and 100(1)(d) and (e), ERA are engaged.

Accordingly our member believes that they will benefit from the statutory protections contained within these legal provisions in the event they refuse to attend their place of work until such time as the appropriate measures have been adopted by your organisation. **In the absence of an adequate response to concerns listed in this and previous correspondence it is now our member's intention to withdraw until such time as the workplace is made safe.**

We would be grateful if you would provide your urgent response to the issues raised above.

[ENDS]