



## **Preparing for the new “Fit Note”. Guidance for union representatives**

From 6<sup>th</sup> April 2010 a number of changes were made to the sick note, or medical statement, that employees get from their GP to certify sickness absence.

Previously a sick note simply stated whether a doctor believed that a person should or should not be in work. The new medical statement will either indicate that a person is not fit for work, or that they might be fit for work under certain circumstances. The doctor will also be able to suggest changes that would assist a return to work. There is no requirement for the GP to write anything apart from that the person is not fit for work and how long the person is “signed off” for, and in most cases the patient and employer will see no change in the information that the medical statement gives.

In addition, in the future, the note will be completed and stored electronically by the GP rather than handwritten, although it will still be given directly to the worker to send to the employer.

There will be no change to the basic purpose of the medical statement and it will still be used by employees as confirmation of illness if claiming sick pay.

The new form can be found at the end of this guidance.

### **Background**

The key to reducing long-term sickness absence has three components. The first is prevention of injury and illness, both in the workplace and out with. Secondly, early access to treatment and, if appropriate rehabilitation. Thirdly, good return to work policies which are worker-centred and which aim to support the worker in the transition back to work.

The idea that a person is either too ill to work at all, or well enough to fulfil their full duties does not reflect the real experience of those who are

recovering from a long-term illness who would often like the opportunity of returning in a phased or supported way.

In practice many unions have negotiated sickness absence policies that aim to ensure that those on long term sickness absence are given the opportunity to have a graduated supported return to work. These policies also recognise however that the main barrier to a return to work after a lengthy absence is not necessarily physical, but can be psychological.

Unions have always seen return to work as being more than a medical issue, but instead a partnership between the GP, the HR department, the line manager, the worker and their representative. The principles behind the changes will therefore be welcomed by unions, although there is concern that GPs may not know enough about either occupational medicine, or the workplace to be able to make an accurate judgement of what tasks a worker could perform if they go back to work before they are fully recovered. Also many employers do not have sufficient occupational health advice to implement the recommendations of the GP. That is why union workplace representatives such as safety representatives and stewards will have a key role in supporting people where the doctor recommends an early return to work may be possible.

## **The new process**

The new medical statement will still be evidence that an employee cannot work due to injury or illness, and normally will not be required until after the 7<sup>th</sup> calendar day of sickness.

The present arrangements for Statutory Sick Pay (SSP) and any occupational sick pay scheme that you may have will not be changed. As at present, the form is advice that is given to the worker to use to give to the employer as evidence of illness for the purposes of sick pay and is not binding.

The changes will be:

- The form will now have two options. That the patient is “not fit for work” or that the patient “may be fit for work taking account of the following advice.”
- There will be four types of alterations listed which the GP can tick. These are:
  - A phased return to work
  - Altered hours
  - Amended duties
  - Workplace adaptations
- There will be space for the doctor to provide more information on the condition and how it may affect what they do.

In most cases there will be nothing to recommend and, as at present, the worker will go back to work once the GP feels they are ready to. There will not

however be an option for the GP to say that a person is “fit for work”. The doctor will simply not issue a new medical certificate.

The doctor should only recommend a return to work if the person is not fully recovered after discussing it with the patient and making sure they are fully aware of what is being suggested.

The doctor is likely to propose a **phased return to work** where someone is suffering from an illness that has left them fatigued, or has been away for a long period of time and is not confident about returning full-time. It may also be used if a person has an injury where the doctor believes that their strength has to be built up gradually. Often a phased return to work may be proposed along with other changes such as amended duties.

**Altered hours** is slightly different. Here the doctor will recommend that the pattern of working hours is changed. This may be recommended if the GP feels that the person may not be able to travel in rush hour public transport, or if shift working should be avoided.

The GP should recommend **amended duties** where they believe that an employee cannot fully do their former work but may be able to do their job if some duties are avoided or changed. This could include not doing any kind of lifting if recovering from a back injury, or avoiding any work with the public if a person is recovering from workplace stress.

**Workplace adaptations** may be recommended if the GP believes that some physical adaptations are needed to help the person return to work. An example of this could be moving someone’s desk to the ground floor of a building if they have trouble with stairs.

In each of these cases the GP should base the recommendations on what the patient has told them about their workplace and should discuss the proposals and the implications fully with the patient.

The medical statement will then be given to the patient, as at present. The patient should then send it to the employer. It is good practice for the employer to then discuss the proposals with the employee and agree what changes will be made. If they disagree then the employer should not force the employee to come back until they feel comfortable with the changes proposed.

If in doubt the worker should ask their trade union for advice and support.

In many cases, employers will have to get professional advice to help them decide on what action to take in relation to adaptations. Where they have no access to an occupational health service the employer may feel that they do not want to make the changes, or will not know who to go to for advice. The new national Occupational Health advice line pilot for small businesses will provide occupational health advice from qualified healthcare professionals

(see resources). In many instances this will resolve the issue but if further information is required the employer will be signposted from the adviceline to the appropriate local or national agency.

Unions should always make sure that the employer seeks professional advice before proceeding with any adaptations.

The employer does not have to accept the advice on the medical statement, but if they do not do so then the statement should be treated as though the doctor has advised “not fit for work”. Many employers will try to say that the employee is ready to come back and is no longer “signed off”. This is not the case and the government advice on this is clear. However union representatives will have to make sure that employers do not ignore the GP’s advice and still expect the employee to come back to work.

The employer also must do a **revised risk assessment** if they make any adaptations or changes to an employee’s duties to ensure that these do not introduce new risks.

In addition, if the employee is disabled and covered by the Disability Discrimination Act then the new “fit note” procedures do not alter the duty on the employer to make adequate adjustments regardless of what a GP recommends.

There are certain other groups where the medical statement cannot over-ride an employer’s responsibilities not to allow a person back to work when ill, even if a GP recommends this. This includes some workers in safety critical jobs and some transport workers where there are separate regulations.

Employers and workers know the workplace and what a job entails far better than a GP, and if there is any possibility that allowing an employee to return before they are fully fit, then the employer should put the safety of the workforce before any recommendation on a medical statement.

## Questions

### **What if the employee does not agree with what is in the medical statement?**

The statement should not contain any unnecessary medical information beyond a simple diagnosis, as at present. Ideally the employee should have discussed any concerns with their GP but if that has not happened, or the employee has concerns at a later date then they should go back to their GP. If the GP is unwilling to change what is written then, in some circumstances, the patient may want to seek a second opinion. Alternatively, if they cannot get the statement changed the employee may raise their concerns with their employer, but they should also be encouraged to discuss the issue with their union representative. Often the concerns will be down to a person’s genuine lack of confidence in making the return to work after a long illness and the

worker may need considerable support from both the union and their line management. The bottom line is that it is not in anyone's interests to force an employee back to work before they are ready.

### **What if the employer does not take action?**

If the employer does not take action then the employee should not return to work. This is likely to be one of the most common problems. The Government advice says clearly that if the employer cannot make the changes then the employee should be considered to be unfit for work until they are fully recovered or the changes are made. Sometimes the employer will refuse to make the changes because of cost, but sometimes it will be because they do not understand the process or are unsure about how to implement the proposals made in the medical statement. Union representatives can play a key role in ensuring that workers do not go back until the recommendations on the statement are in place. If workers do go back to work without the recommended changes being made, there is a very good chance that the employee will have to go off on sick leave again, possibly for an even longer period of time.

### **What happens if the employer makes changes but the employee does not agree with what is proposed?**

It may happen that an employee will be happy with what a GP recommends but disagree with how this is interpreted by their employer. An example may be that the GP recommends reducing high pressure work but the employer only removes some duties, leaving others intact. In cases like this the employee should be able to pursue a grievance, with support from their union. The union should argue that the employee should not have to return to work until they are satisfied that the recommendations have been fully implemented.

### **What happens if the employer takes action which the employee agrees with but after a while the illness or injury is getting worse?**

In the first instance the employee should go back to the GP and explain that their condition has got worse even with the changes which were recommended. The GP may then either issue a new statement saying the worker is not fit for work, or revise the recommendations on the statement by possibly recommending further changes.

### **What happens if the employer says that the employee can come back at reduced duties but at reduced pay?**

An employer cannot simply change the contract of an employee and reduce their pay. The employee should be employed under the same conditions as before they went on sick leave, but with modifications to assist their transition to work. Where an employer does seek to use recommendations in a medical certificate to alter a person's pay or conditions their representative should seek advice from their union. If a person is on statutory sick pay, reduced sick pay, or benefits and they return on reduced hours you should seek to ensure they are no worse off as a result.

### **Do sickness absence procedures need to be changed?**

It is unlikely that many changes will be needed to sickness absence policies, but these policies should be reviewed to make sure they mention the new arrangements and make it clear who is responsible for implementing changes recommended by GPs, make it clear that it is a process based on consensus and ensure that the grievance procedures can be used to deal with any disputes. Unions may want to take the opportunity to review their sickness absence policies generally to make sure they comply with good practice.

### **What are the implications for occupational sick pay schemes?**

Normally there will be no implications for occupational sick pay but, in some cases, where a person returns on a part time basis or returns and then goes off sick again then the scheme may not be clear about what happens to them. That is why all occupational sick pay schemes need to be reviewed and renegotiated to ensure that there is a “no detriment” clause. This should ensure that anyone who does return part time is no less off than if they were still on sick leave. In addition occupational sick pay schemes should make it clear that a person who is back at work on reduced duties or altered hours is no longer counted as being on sick leave for that period.

### **What are the implications for SSP or benefits?**

The regulations on SSP will not be changed. If a doctor recommends that a person may be able to return to work subject to certain alterations and these are not made, then the worker should still receive SSP. However, if a person returns to work on reduced hours and receives only part-time wages they may be worse off if they are no longer be eligible for SSP and, if they have been on long-term sick leave, may lose other benefits. If in doubt the member should seek advice from a benefits advisor or advice bureau. Again unions should seek to negotiate a “no-detriment clause” to ensure that no-one is worse off by having to return to work or work reduced hours.

## **Checklist**

Union safety representatives and stewards should act now to make sure that they have procedures in place to deal with any issues that arise as a result of the changes to the medical certificate. You should:

- Inform your members about the changes and ensure that your employer also knows about them.
- Seek agreement that any disputes over changes to work or working time proposed as a result of a medical certificate can be dealt with by the grievance procedures.
- Make sure that, where necessary, your employer’s sickness absence arrangements are updated to take account of the proposed changes.
- If you have an occupational sick pay scheme, seek to negotiate a “no detriment” agreement. Otherwise seek an agreement that no-one will lose out financially through losing SSP or other benefits.

The bottom line is that the new arrangements are no substitute for a good sickness absence policy. Where employers use the additional information on the revised medical certificate to work to facilitate an early return to work for

those employees who want this, and give them the support they need, then it will help to reduce sickness absence.

However if employers see it as a green light to try to force workers back to work before they are well enough to return, in the long run, it will only lead to increased sickness absence and increased conflict.

## **Resources**

UNITE sickness absence pages

[http://www.Unite.org.uk/h\\_and\\_s/index.cfm?mins=438](http://www.Unite.org.uk/h_and_s/index.cfm?mins=438)

HSE guidance for safety representatives

<http://www.hse.gov.uk/pubns/web02.pdf>

HSE sickness absence pages

<http://www.hse.gov.uk/sicknessabsence>

DWP advice for employers on the new “fit note”

<http://www.dwp.gov.uk/fitnote>

Health for Work Adviceline England

0800 077 8844

[www.health4work.nhs.uk](http://www.health4work.nhs.uk)

Health at Work Advice Line Wales

0800 107 0900

[www.healthyworkingwales.com](http://www.healthyworkingwales.com)

Healthy Working Lives Adviceline Scotland

0800 019 2211

[www.healthyworkinglives.com](http://www.healthyworkinglives.com)

## **Contacts**

Unite Health and Safety Unit

[healthandsafety@unitetheunion.org](mailto:healthandsafety@unitetheunion.org)

TUC

[www.tuc.org.uk](http://www.tuc.org.uk)

**Statement of fitness for work  
For social security or Statutory Sick Pay**

Patient's name

I assessed your case on:

and, because of the following condition(s):

I advise you that:  
 you are not fit for work.  
 you may be fit for work taking account of the following advice:

If available, and with your employer's agreement, you may benefit from:  
 a phased return to work       amended duties  
 altered hours       workplace adaptations  
Comments, including functional effects of your condition(s):  
  
**Sample**

This will be the case for

or from  to

I will/will not need to assess your fitness for work again at the end of this period.  
*(Please delete as applicable)*

Doctor's signature

Date of statement

Doctor's address

Med3 04/10