

Fit Notes

26 MARCH 2010

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CATEGORY:

ARTICLE

The Problem

Millions of working days are lost each year as a result of sickness absences, costing billions of pounds. Following a Government review, the new 'fit note' system will be up and running from 6 April. According to Lord McKenzie, the Department for Work and Pensions Minister: 'The fit note will reduce the costs employers often have to bear when people are off sick for a long time.'

So, what will change?

The Law

The 'fit' note will replace the current 'sick' note. It is designed to move from focusing on what an individual cannot do, to what they can do.

Under the new system, GPs will be asked to state whether individuals are 'unfit to work' or 'may be fit for work taking account of the following advice'.

The fit note will contain a short list of frequently recommended changes that could be made to facilitate an individual's return to work – i.e. a phased return to work, altered hours, amended duties and workplace adaptations. If a doctor wishes to suggest something that is not on the list, they will be able to provide comments.

The maximum period a fit note can cover will be three months (reduced from six months) during the first six months of a health condition. This should encourage more frequent review of an individual's state of health.

Unlike the sick note, the general 'fit for work' option will no longer be available. If an employee presents themselves as fit for work, it will be the employer's responsibility to carry out a risk assessment in appropriate circumstances.

Rules on statutory sick pay and terms in employment contracts relating to sickness will not be affected by the new scheme.

Expert Advice

The advice on a fit note is not binding. It is intended to stimulate discussions about what an employee can do at work despite their illness or injury and, ultimately, enable them to return to work earlier. However, it is easy to see how disputes could arise, particularly following a 'may be fit for work' statement.

Employers should be proactive. They should discuss the GP's advice with the employee, consider how it affects their job and the workplace, and assess any actions that might assist a return to work.

If a return to work is possible, the employer should agree a return date with the employee, as well as any changes to be made to the employee's job or working environment, and what support to provide. They should also continue to monitor the situation thereafter.

If an employer cannot make adjustments to enable an employee to return to work, they should explain the reasons for this to the employee and set a date to review the matter. The employer's reasons may well be challenged unless they are well thought through and balanced, taking into account both the employer's and employee's circumstances.

It is worth remembering that the employee's GP is unlikely to be an expert in occupational health and might be relying heavily on what the employee tells them. Employers who are concerned that they do not have the full picture should try to obtain a full report from an independent doctor on the employee's condition, treatment and prognosis. A well-drafted employment contract should contain provisions allowing the employer to do this – if not, an employer may still seek a report, but needs to be especially careful in the process it follows.

Further guidance on fit notes is available from The Department for Work and Pensions (see: www.dwp.gov.uk/fitnote/).

Checklist

Employers should:

- discuss the fit note with the employee;
- consider fully any suggestions for job / workplace adjustments;
- review the situation, whether or not the employee returns to work; and
- consider obtaining an independent doctor's opinion.

Beware!

Irrespective of what is stated on the fit note, if an employee has a disability under the Disability Discrimination Act, the employer has a duty to make reasonable adjustments for the employee's benefit.

This article was first published in Caterer and Hotelkeeper magazine

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