

Working together to prevent sickness absence becoming job loss

Practical advice for safety and other trade union representatives

On April 6 2010, the revised Medical Statement (the 'Fit Note') was introduced in England, Scotland and Wales.

The guidance contained here was first published in 2004 and therefore makes no reference to the Fit Note. We would ask readers of this guidance document to consider how the introduction of the Fit Note has impacted on the good practice contained in it.

To help readers in making this consideration, HSE suggests that they refer to the relevant guidance on the introduction of the Fit Note:

Employers <http://www.dwp.gov.uk/docs/fitnote-employer-guide.pdf>

Employees <http://www.dwp.gov.uk/docs/fit-note-employee-guide.pdf>

GPs <http://www.dwp.gov.uk/docs/fitnote-gp-guide.pdf>

OH providers <http://www.dwp.gov.uk/docs/fitnote-occupational-health-guide.pdf>

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Practical advice for safety and other trade union representatives



This leaflet has been put together by the Health and Safety Executive (HSE) to provide you, as safety and other trade union representatives, with information and practical advice on long-term sickness absence and return to work issues. It suggests ways in which you can work in partnership with employers and the workers you represent to help prevent illness, injury and disability leading to prolonged sickness absence and job loss.

The problem

Each week:

- one million workers take time off because of sickness and most return to work within days; but
- around 17 000 people reach their sixth week of statutory sick pay; and
- at this point, almost one in five people will stay off sick and eventually leave work.

Work is essential to health, well-being and self-esteem. When ill health causes long-term sickness absence, a downward spiral of depression, social isolation and delayed recovery make returning to work less likely.

Reducing long-term sickness absence helps maintain a healthy and productive business and safeguards everyone's jobs.

Working together to make a difference

This leaflet describes six ways you can work with your employer and the workers you represent to help prevent long-term sickness absence becoming job loss, by:

- 1 helping to identify measures to improve worker health and prevent it being made worse by work;
- 2 suggesting that your employer develops workplace plans and policies on sickness absence management;
- 3 helping to keep workers who are on sick leave in touch with work;
- 4 helping your employer to plan adjustments that will enable sick workers to return to work;
- 5 supporting sick workers to help them to return to work; and
- 6 helping to promote understanding of health conditions and disability in the workplace.

Did you know?

Did you know that, following illness, injury or the onset of disability:

- starting everyday activities again, like going to work, helps people to feel better;
- any remaining pain or discomfort can often be managed with the right adjustments at work;
- work that is well managed is good for your health but staying off work can make people feel worse;
- the barriers to returning to work often arise from personal, work or family-related problems, rather than the original health condition itself;
- early intervention by employers, working in partnership with safety and other trade union representatives, significantly increases the chances of people off sick returning to work.

Why your help is important

It is not in anyone's interest for people who are off sick to come back to work before it is safe for them to do so, but the longer someone is off work, the harder it becomes for them to return, particularly if they are left on their own to overcome barriers to return.

Practical interventions by employers, like adjustments to tasks or working hours, can make all the difference when the necessary action is identified at an early stage. Early intervention by employers is essential. Your knowledge and experience is valuable in helping employers to take a wider look at the problem and plan solutions that will assist workers to return before long-term sickness absence leads to job loss. You may also be able to help sick workers with steps they can take themselves to make their return easier.

What the law says

Under the Health and Safety at Work etc Act 1974 and related legislation, employers are required to protect the health, safety and welfare of their employees. This includes taking action to protect the health and well-being of employees after they return to work, if they have become more vulnerable to risk because of illness, injury or disability. Although there is no duty on employers to take such action before employees return from sick leave, in practice, it is often easier to do so, in consultation with the employees concerned and their representatives.

Disabled employees are protected by the Disability Discrimination Act (DDA) 1995. This means that employers have to make reasonable adjustments to their working conditions or arrangements to make sure that disabled people are not treated less favourably than other employees. Employees whose injury or poor health persists may become eligible for DDA protection.

The Health and Safety (Miscellaneous Amendments) Regulations 2002 require employers to ensure that doors, passageways, stairs, lavatories and workstations are suitably arranged to take account of disabled workers' needs, and that rest facilities cater for them. They also require employers providing personal protective equipment to take account of the health of people who may wear it, and when considering the risks of manual handling

operations, to take account of the physical suitability of the employee to carry out the operations.

If you are a safety representative, the Safety Representatives and Safety Committees Regulations 1977 give you a legal right to be consulted on health and safety issues at the workplace.

What you can do to help

1 Preventing health being made worse by work

As a safety representative your first priority will always be exercising your right to represent workers on matters that could affect their health and safety. You may also be able to identify work-related risks to health and prevent them from harming people at your workplace by using techniques such as body mapping.

However, most illness or injury is not caused by work, or by work alone. The most frequent causes of long-term sickness absence are common health problems like stress-related conditions, back, muscle or joint pain and heart trouble, all of which can have several causes or none that can be easily identified. Whatever the cause, workers returning after illness, injury or the onset of disability may be more vulnerable to risks to their health at work. They may also need adjustments to their work pattern or job tasks. By working with your employer and the workers you represent, you can help identify action that will help sick workers to return to work safely and at the same time may also benefit others in the workplace.

2 Workplace policies on return to work

Successful returns to work depend on constructive co-operation between everyone involved. A good foundation for this is a workplace plan or return to work policy. If your workplace does not have a return to work policy, suggest to your employer that one might be useful. The HSE guide *Managing sickness absence and return to work* provides further advice for employers about putting together a policy and facilitating the return to work of ill, injured and disabled workers as soon as is appropriate, based on partnership with the workforce.

Useful topics for discussion with your employer

- Is sickness absence recorded and regularly reviewed to identify people who may need help to return to work?
- Is sickness absence information used to inform wider workplace issues like preventing and identifying work-related ill health?
- Is sickness absence regularly reported upon and discussed at safety committee meetings?
- Are there agreed arrangements in place for keeping in regular contact with workers off sick?
- Do managers and workers know what is expected of them when sickness happens? Is there a need for training?
- Are return to work interviews routinely conducted? Do they enable managers and workers to discuss underlying problems constructively?
- Does everyone understand the rights of workers who are or become disabled?
- Do workers know what help they can expect if they become ill or disabled, for example time off to attend medical appointments or support to help them return to work?

- Do workers and managers know where to go for additional help on sickness and disability issues?

In very small businesses, all that is necessary may be a contingency plan for sickness absence and the kind of adjustments that could be made to help the sick worker to return to work. In larger companies a formal return to work policy, although not required by law, is a convenient way of setting down expectations, roles and responsibilities.

If someone is injured at work

In many cases involving injury at work, the worker's recovery and long-term quality of life would be improved by prompt assessment, treatment and provision of aids. Unfortunately, if the injured person is pursuing a claim for damages, consideration of blame can cause delays to that happening.

The insurance industry has recognised the need for action to address this. Does your employer know that some insurers now offer wider cover for employers liability insurance that includes services to help the claimant recover and if possible, get back to work? Insurance associations have issued a code of practice recommending that the claimant's solicitor and the insurer actively consider the use of rehabilitation services and early assessment of the claimant's needs. The aim is to treat the claimant's long-term well-being as being equally important as the payment of proper compensation.

3 Keeping sick workers in touch with work

Regular contact between employers and their workers who are off sick makes those workers feel valued and helps them to feel better. It is also an important way of enabling employers to consider what adjustments those workers may need and to plan for their return to work. However contact can be a sensitive issue for both sides. See if you can help by:

- taking part in discussions on how sick workers will be contacted;
- reassuring sick workers who may be worried about contact (see also 5 Helping to support and empower workers);
- being present during home visits or return to work interviews if the worker so wishes.

4 Adjustments to enable workers off sick to return to work

Workers at risk of long-term sickness absence are often people who experience common health problems like back pain and mental health conditions. In many cases, it is barriers at work that prevent or delay their return. Simple adjustments like shorter working hours over an agreed period, modifying tasks or access to work stations or providing equipment can make all the difference (see examples of adjustments listed below).

To identify and plan adjustments, employers need information from the worker, and can also benefit from ideas suggested by people like you, who have practical experience of the workplace:

- Use your knowledge and experience, when you can, to help suggest practical solutions to your employer and the worker concerned.

- Health is not the whole story. Job satisfaction and a well-managed working environment make common conditions such as joint pain or anxiety easier to cope with.
- Remember that employers cannot give you health information about an individual worker without that person's informed consent.

Examples of adjustments

The following examples are of adjustments that employers could introduce temporarily while the worker regains strength, mobility or capacity to work, or more permanently as reasonable adjustments to allow disabled workers to continue working.

Adjustments to working arrangements

- Phased returns to work to build up strength, for example building up from part-time to full-time hours over an agreed and appropriate period of time.
- Changes to individuals' working hours to allow travel at quieter times, or flexible working to ease work/life balance.
- Help with transport to and from work, for example organising lifts to work, or finding out what help may be available to a disabled worker through the Access to Work scheme.
- Home working (providing a safe working environment can be maintained).
- Time off during working hours for rehabilitation assessment or treatment.

Adjustments to premises

- Moving tasks to more accessible areas and closer to washing and toilet facilities.
- Adapting premises, for example providing a ramp for people who find steps difficult, improving lighting where sight-impaired people work, providing clear visual signs and alerts for deaf workers.

Adjustments to the job

- New or modified equipment and tools, including IT, modified keyboards etc.
- Modified workstations, furniture, and movement patterns.
- Additional training for workers to do their job, for example refresher courses.
- Modified instructions or reference manuals.
- Modified work patterns or management systems to reduce pressures and give the worker more control.
- Telephone conferences to reduce travel or if face-to-face meetings cause anxiety.
- Modified procedures for testing or assessment.
- Buddies, mentors or supervision for workers while they regain confidence back at work.
- Reallocating work within the person's team.
- Alternative work.

It is important that the worker understands the effect that adjustments in the form of reduced hours or alternative work could have on their pay before decisions are made.

Sometimes illness, injury or disability or the side effects of medication mean that a worker may become temporarily or permanently more vulnerable to risks at work. If this could be the case, employers need to review and possibly amend the risk assessment they are required to carry out under the Management of Health and Safety at Work Regulations 1999 to prevent people from being harmed by work activities. Amendments will only be necessary if existing control measures do not offer the worker adequate protection. New controls or adjustments should be aimed at modifying the task, work system or workload in a way that will enable the worker to return to work safely.

Employers also need to review risk assessments if they are introducing adjustments that could affect the health and safety of others, for example reallocating work. If you are a safety representative, your employer has to tell you about any risks they have identified, and any preventive measure or adjustments to combat these, and consult you on anything that could substantially affect the health and safety of the workers you represent:

Think about appropriate control measures that would protect the worker concerned and not endanger the health of other workers. Offer constructive suggestions if you can.

If a worker is or becomes disabled, employers are legally required to make reasonable adjustments to enable them to continue working (see the information on disabled worker's rights). This does not mean that all disabled workers will need permanent adjustments to help them work, many will not. If adjustments are needed, they may not differ much from those needed by workers who are in poorer health but not legally disabled. If your employer has access to an occupational health service, this should be able to provide good advice on adjustments and on whether the Disability Discrimination Act 1995 applies. Another source of advice on adjustments is HSE's Employment Medical Advisory Service. There will be circumstances where specialist advice or equipment is needed, for example from Disability Employment Advisers and the Access to Work scheme via Jobcentre Plus offices:

Consider whether there is any advice you or your trade union can offer to help a disabled worker to stay in work.

Everyone is entitled to the protection of their health and safety at work. Jumping to conclusions, without expert advice, about the impossibility of introducing controls that would enable disabled workers to stay at work would be discriminatory under the Disability Discrimination Act 1995. In most instances, health and safety responsibilities should not make it impossible for people with disabilities to continue working.

Disabled workers' rights

Since October 2004, the Disability Discrimination Act (DDA) 1995 applies to all employers whatever the number of people they employ. It covers all aspects of employment from recruitment and selection, through terms and conditions, training and career development, to retention and dismissal. Employers are required to make reasonable adjustments to the workplace or employment arrangements so that a disabled person is not at any substantial disadvantage compared to someone who is not disabled.

The DDA defines a person as disabled if they have:

‘a physical or mental *impairment* that has a substantial (not minor or trivial) and *long-term* adverse effect on their ability to carry out *normal day-to-day activities*.’

Impairments include mental illness, learning disabilities, dyslexia, diabetes and facial disfigurement, as well as conditions that affect the senses (eg blindness or deafness), or the loss of mobility or dexterity.

Long-term means it has lasted for (or is likely to last) more than 12 months, or for the rest of the disabled person’s life. This includes conditions like epilepsy, asthma or degenerative diseases.

Normal day-to-day activities are defined as:

- mobility;
- manual dexterity;
- physical co-ordination;
- ability to lift, carry or move everyday objects;
- continence;
- speaking, hearing or seeing;
- perception of the risk of physical danger;
- memory or ability to concentrate, learn or understand.

Harassment on account of disability has been expressly outlawed from October 2004. Employers can be deemed responsible for acts of harassment carried out by staff unless they can show they took reasonable steps to prevent it – like making it clear that it is a serious disciplinary matter.

Return to work plan

Once the employer has gathered information on what help the sick worker needs to enable them to return to work, the next step is the preparation of a return to work plan. Circumstances will vary but the best time for employers to start preparing a plan is three to four weeks into the absence. It is vital that the employer actively consults the person concerned, and gets the agreement of everyone else affected by the plan. If you are a safety representative, you have the right to be consulted on anything in the plan that could affect the health and safety of the workers you represent:

Ask yourself whether there are practical suggestions you can make to help ensure that the plan is workable and respected.

The return to work plan should set out:

- the goal of the plan (for example return to a modified job or building up to full-time working over a period of time);
- any adjustments to working arrangements;
- roles and responsibilities;
- any impact on the worker’s terms and conditions;
- the arrangements for checking how the plan is working.

Case study 1

College lecturer Donny Gluckstein, a union representative with Scottish teaching union EIS (Educational Institute of Scotland), lost his voice. Filling in for absent colleagues and running an intensive course 'made me hoarse to the point where even speaking gently was painful,' he said. His GP confirmed he had 'aphonia' due to work-related overuse.

Armed with a sick note, he asked for 'reasonable adjustments' to be made at work. 'Being a union health and safety rep and health and safety lecturer and getting advice from the EIS health and safety official was very useful,' he said. Management responded positively, but even with the aid of a radio mike, laptop and projector, his voice became too weak to speak. He continued teaching, silently, with the help of portable whiteboards and the laptop.

Donny's voice only started to improve when he finally got to see an ear, nose and throat specialist, who recommended exercise supervised by a speech therapist. He still uses the laptop and projector, has dropped intensive classes, and spreads his remaining classes over the week to avoid long periods of unbroken teaching. And he wanted to ensure others learn from his painful lesson. 'Our safety committee discussed voice care and management is already liaising with other local further education colleges,' he said. 'One teacher training college even asked me for advice on how to get voice training up and running. So the lesson is - don't suffer in silence. There is a duty of care and a lot that can be done for the most valuable tool in the teacher's toolbox - their voice.'

Case study 2

Soon after starting working at Rolls Royce Motors in 1973, Paul Smith, a skilled coach trimmer, began to experience numbness in his hands and other symptoms. These problems were intermittent and it was only much later that doctors told him he had multiple sclerosis. After a few years, Paul began to have difficulty walking. His employer provided a parking space close to his working area and allowed him to leave ten minutes ahead of his shift end. Working on large car seats became increasingly difficult for Paul, so he was switched to working on headrests and other smaller trimming work.

Some years later, the company was taken over and became Bentley Motors resulting in massive changes on site. The company Safety Committee (made up of safety representatives) contributed to site plans and made sure that Paul still had a parking space close to his work area, access was flat and wheelchair friendly and he was near to suitable toilet facilities.

Eventually, Paul found full-time work too exhausting. He remained off sick for 18 months and then went onto Incapacity Benefit. But then, because of his skill and enthusiasm for working with people, Paul's employers offered him a post working in the Bentley Sports & Leisure Club, which he accepted. The Access to Work scheme helped him to get an electric office wheelchair, which eased the transfer from car to work area. As it involved working only four hours a day, it was an ideal solution for Paul who thoroughly enjoys his work at the leisure club.

5 Helping to support and empower workers

After illness, starting everyday activities like going to work can speed recovery. Getting back to or staying at work helps people with disabilities keep their lives on track. There are several things that an ill, injured or disabled worker can do to help themselves get back to work. You can help by encouraging them to:

- talk to their doctor about going back to work, any adjustments to their work that may be needed on a temporary or permanent basis, and side effects of medication;
- talk to their employer (and to you) about any adjustments to their work that would help them return;
- ask to be referred to any occupational health adviser at the workplace;
- co-operate with their employer on a return to work plan;
- use the opportunity offered by a return to work interview to ask for help with work-related problems or other problems that make going to work difficult.

Other ways in which you can help include:

- keeping communications open with workers who do not want to speak to their managers or supervisors directly;
- offering any information you have about where to get further help or advice;
- reassuring them that details about their health cannot be given to others without their informed consent.

6 Understanding of ill health and disability

When someone returns to work following illness, injury or the onset of disability, a change to working arrangements that affects other workers may be necessary. Teammates and colleagues are more likely to accept such changes if they have a general understanding of why they are necessary. Employers and workers alike may lack knowledge or draw wrong conclusions about health conditions or disability and their effect on someone's capability to work. This is often the case with mental health conditions, although many people who experience ongoing mental health problems can work effectively with little or no support.

If you have had equal opportunity or diversity training, use your knowledge to help employers promote an awareness and understanding of health conditions and disability that will create a supportive environment for workers returning to work.

Need more information?

More detailed advice is available from HSE:

Managing sickness absence and return to work: An employers' and managers' guide
HSG249 HSE Books 2004 ISBN 0 7176 2882 5

Off work sick and worried about your job? Steps you can take to help your return to work Leaflet INDG397 HSE Books 2004 (single copy free or priced packs of 15 ISBN 0 7176 2915 5)

Managing sickness absence and return to work in small businesses
Leaflet INDG399 HSE Books 2004 (single copy free or priced packs of 20 ISBN 0 7176 2914 7)

Help and advice can also be found at: www.hse.gov.uk/sicknessabsence

Other useful sources of information

Managing sickness absence and rehabilitation

Trades Union Congress (TUC): www.tuc.org.uk

The TUC produces a range of publications and briefings on managing sickness absence and rehabilitation. These can be found in the health and safety section of the TUC website.

Bodily Injury Claims Management Association: www.bicma.org.uk

The Rehabilitation Code, Early Intervention and Medical Treatment in Personal Injury Claims

Rights at work advice

Department of Trade and Industry: www.dti.gov.uk

Individual Rights of Employees: a guide for employers and employees
PL716 (Rev 11) Department for Trade and Industry 2004

Disability rights advice

Disability Rights Commission: www.drc-gb.org

The Disability Discrimination Act 1995 Code of Practice Employment and Occupation

The Stationery Office 2004 ISBN 0 11 703419 9

Jobcentre Plus: www.jobcentreplus.gov.uk

Help for disabled people and the Access to Work scheme

Data protection advice

Information Commissioner's Office: www.informationcommissioner.gov.uk

The Employment Practices Data Protection Code
Information Commissioner 2002

Further information

HSE priced and free publications are available by mail order from HSE Books, PO Box 1999, Sudbury, Suffolk CO10 2WA Tel: 01787 881165 Fax: 01787 313995 Website: www.hsebooks.co.uk (HSE priced publications are also available from bookshops and free leaflets can be downloaded from HSE's website: www.hse.gov.uk.)

For information about health and safety ring HSE's Infoline Tel: 0845 345 0055 Fax: 0845 408 9566 e-mail: hseinformationservices@natbrit.com or write to HSE Information Services, Caerphilly Business Park, Caerphilly CF83 3GG.

This leaflet contains notes on good practice which are not compulsory but which you may find helpful in considering what you need to do.

HSE would like to acknowledge the assistance of the TUC in putting together this practical advice and in providing the case studies.

This leaflet is not available from HSE Books. It is only available online at: www.hse.gov.uk/pubns/web02.pdf

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