

May 2010

Employment Briefing Note

Fit notes and contractual arrangements

As most employers will now be aware the Government has replaced the MED3 'sick note' used by GPs with a new Statement of Fitness for Work known as a 'fit note'. Many employers will have seen their first fit note by now.

Whilst it is natural to be cynical we must remember that the objective of the change is to focus on what an employee is capable of doing as a means of encouraging an earlier return to work.

Key Features:

- The two options of 'not fit for work' or 'fit for work' are replaced by 'not fit for work' or 'may be fit for work' taking account of the following advice'
- The 'fit for work' option has been removed
- There are tick boxes for the doctor to suggest common ways to facilitate a return to work such as phased return to work, altered hours, amended duties and/or workplace adaptations
- There is space on the new form for a GP to provide

How does the change impact employers?

Employers should be aware of the practical implications of the introduction of fit notes and should ensure their practices and policies reflect the spirit and the purpose of the new regime, namely to facilitate employees' return to work.

Ideally, a fit note should enable an employer to consult with an absent employee's GP and seek advice on steps which can be taken to speed up their return to work from the GP, or by referring to a specialist occupational health expert. Certainly it should encourage the employer and employee to discuss the GP's suggestions. But, as critics have identified, there is scope for this process to break down.

Potential issues include:-

- Impracticable and unworkable recommendations from a GP
- Reluctance from GP to get involved in further discussions
- Extra cost involved in implementing recommendations
- Potential impact on other employees
- Reluctance from employer to accept an employee who 'may be fit for work' ; and
- Reluctance from employees to enter into consultation with the employer and GP

The last of these issues represents a particular concern to employers as reluctance from employees could defeat the effectiveness of the consultation process all together.

For this reason, it is sensible for employers to review their current contractual and policy arrangements dealing with sickness absence. For example, an effective policy would provide that employees who unreasonably refuse to comply with their GP's recommendations, or refuse to discuss those recommendations with their employer, may be subject to disciplinary action and may find their entitlement to any contractual sick pay is withdrawn.

If you are concerned that your current contracts of employment or policies are now out-of-date please contact the Employment Team at Spearing Waite on 0116 262 4225. We are happy to provide practical advice as to how sickness absence can be managed in light of the recent change or alternatively, will amend all relevant documentation to ensure your business has a reliable practice in place.

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information on how the employee's condition will affect what they do and suggesting ways in which they may be able to return to work

- The 'not fit for work' box is still an option and is likely to remain the most commonly-used feature, certainly for short-term absence
- A fit note issued in the first 6 months of a medical condition cannot last more than 3 months (reduced from 6 months)

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