

New 'Fit Notes' – TUC & DWP Guides

Introduction

Many will be aware from reports in the media that from 6th April 2010 there will be a number of changes to the sick note, or medical statement, that employees get from their GP to certify sickness absence. Under the new arrangements GPs will be able to assess an individual worker's suitability to return to work, and where appropriate, suggest a return to a certain type of work, even if it's not to do their original job. Obviously this has possible implications for lay reps. Reps may be involved in discussions on changes to company procedures that may arise and/or disagreements that may arise between members and employers under the new arrangements.

This bulletin is to draw attention to two new guides published in the run up to the introduction of the new requirements namely:

- ❑ 'Sick Note to Fit Note – Statement of Fitness for Work – A guide for employers' (Department for Work & Pensions)
- ❑ 'Preparing for the new "Fit Note" – Guidance for union representatives' (TUC)

This bulletin also advises reps of the need to take care that employers do not use the introduction of the new arrangements as an excuse to worsen existing provisions and of the need to prepare in advance of the new ones coming into force. This may be a particular concern at a time when the economy is crawling out of recession and members are worried about their

jobs. It is important, therefore, to consider the impact on the arrangements currently in place in your workplaces and what needs to be done.

Department for Work & Pensions Guidance for Employers

This 24 page guide includes:

- ❑ A summary
- ❑ Explains what's changing and what stays the same
- ❑ Explains how the new arrangements can help a business
- ❑ Explains why the arrangements are changing
- ❑ Sets out the basics of 'fit for work'
- ❑ Contains a sample of the new certificate and a detailed description of this form
- ❑ Return to work tick boxes and examples of phased returns, altered hours, amended duties and workplace adaptations
- ❑ Explanatory flowchart of what to do in response to a 'may be fit for work' statement and three case studies
- ❑ Frequently asked questions:
 - What should I do if the doctor has indicated 'may be fit for work'
 - Is the advice on the Statement binding?
 - Will I still be covered by my Employers' Liability Compulsory Insurance (ELCI)?
 - Is it going to cost me more?
 - How does this affect the Disability Discrimination Act?
 - How long do any amended duties or workplace adaptations have to last for?

- Can I request a Medical Statement advising that my employee is 'fit for work'?
- What should I do if an employee wants to return to work before the end of a 'not fit for work' statement?
- What should I do if I offer support to an employee to aid them to return to work and they disagree?
- What should I do if I do not understand the advice on the Statement?
- What do I need to do if the doctor has recommended an occupational health referral for my employee?
- How does this affect Statutory Sick Pay(SSP)?
- What is a risk assessment?
- Where to go for more information and support?

The DWP guide is available at:
<http://www.dwp.gov.uk/docs/fitnote-employer-guide.pdf>

TUC Guide

The TUC advice was issued to complement guidance to employers published by the DWP. There are particular concerns that employers may not be able to deal with any recommendations that the GP makes. This nine page guide includes:

- Background (from a trade union perspective)
- Explains the new process, including the four types of alterations listed (A phased return to work/ altered hours/ amended duties / workplace adaptations)
- Questions:
 - What if the employee does not agree with what is in the medical statement?
 - What if the employer does not take action?
 - What happens if the employer makes changes but the employee

does not agree with what is proposed?

- What happens if the employer takes action which the employee agrees with but after a while the illness or injury is getting worse?
- What happens if the employer says that the employee can come back on reduced duties but at reduced pay?
- Do sickness absence procedures need to be changed?
- What are the implications for occupational sick pay scheme?
- What are the implications for SSP benefits?

This guide also includes a checklist for union reps advising them to 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. Reps should:

- Inform members about the changes and ensure that the 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, the employer's sickness absence arrangements are updated to take account of the proposed changes
- If there is 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 benefit

The TUC guide says that the bottom line should be that the new arrangements are no substitute for a good sickness absence policy. Where employers use 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 should help them 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.

The TUC guide is available at:

<http://www.tuc.org.uk/extras/fitnote.pdf>

Trade union concerns on new 'Fit Notes'

At the launch of its guide (February 2010) the TUC called on employers to work closely with unions to ensure that the Government's soon to be introduced 'fit notes' work to the benefit of the thousands of workers in the UK who are made ill or injured every year as a result of their jobs. TUC General Secretary Brendan Barber said: *'Good employers already assist their workers who are on long-term sick leave to return to work on a phased or a supported basis. The new 'fit note' arrangements will hopefully lead to more workers being given the support they need to return after an illness or injury. But GPs may not have a detailed enough knowledge of where someone works to be able to make realistic recommendations for changes to an individual's workplace or duties to allow the worker to have the confidence to return before they are able. Similarly many employers lack the occupational advice support needed to act on a doctor's recommendations. That's why we've produced this guide to get employers and unions working together to get round any problems the changes could create. If employers use the additional information on the revised medical certificate to work with individuals who want to get back to work, and give them the support they need, this could help reduce sickness absence. But if*

employers see the changes as a green light 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 unnecessary conflict.'

Reps Action

Reps should familiarise themselves with the new provisions and discuss the issue with TSSA Senior/Regional Organisers with a view to raising the issue at the relevant level within the employer's machinery if necessary.

Acknowledgements / Further information

This Bulletin is based on information in the DWP and TUC guides on this issue:

- ❑ Sick Note to Fit Note – Statement of Fitness for Work – A guide for employers' (Department for Work & Pensions)
<http://www.dwp.gov.uk/docs/fitnote-employer-guide.pdf>
- ❑ 'Preparing for the new "Fit Note" – Guidance for union representatives' (TUC)
<http://www.tuc.org.uk/extras/fitnote.pdf>

Further information available from

- ❑ TUC sickness absence pages
http://www.tuc.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

- ❑ Health at Work Advice Line Wales
0800 107 0900
www.healthyworkingwales.com
- ❑ Healthy Working Lives Adviceline
Scotland 0800 019 2211
www.healthyworkinglives.com

The information given here is for general guidance only and should not be regarded as a complete or authoritative statement of the law. Further help and advice may be obtained from the TSSA Helpdesk – 0800 328 2673.