

10-20

April 2010

To all APSE contacts in the UK and with particular interest for those service managers with responsibility for sickness absence monitoring and controls and HR professionals

Sick note to fit note

Key issues:

- From 6 April 2010 the 'sick note' has changed to become a 'fit note'
- Doctors may now advise if a person may be fit to work providing that they get suitable support from their employer
- The 'fit note' replaces the current 'sick note'
- This briefing explores the implementation of the new process and what employers should now consider on receipt of a 'fit note'.

1. Introduction

Sick notes or 'Medical Statements' are the forms issued by doctors to people when they are ill or injured and therefore unable to work. They are used by employers as evidence that an employee cannot work for sick pay purposes (for both occupational and statutory sick pay purposes).

However, sick notes have been viewed as being too restrictive in that they do not provide employers with enough information, about whether an employee might be fit for work, with some support from the employer.

Under the new scheme doctors can advise if an employee is either

- Unfit for work or
- May be fit for work

If an employee is too ill for work the doctor will advise of this just like the former sick note. A sample of what the new 'fit note' looks like is attached to this briefing at Appendix 1.

2. The main changes

The new fit note will allow a doctor to provide more detailed information on an employee's condition and how they might be able to return to work and how that will affect what an employee is able to do. They also contain some helpful tick

boxes for doctors to suggest common ways that an employer might help an employee return to work with support. The tick boxes are:-

- A phased return to work
- Amended duties
- Altered hours
- Workplace adaptations
- General comments box (where the doctor may wish to make other suggestions)

The form will 'stay the same' in that:-

- It will still be used as evidence that an employee cannot work due to illness or injury
- It is still not required until after the 7th calendar day of sickness
- The information on the form is still advice to the employee and is not binding on employers
- The requirements for Statutory Sick Pay (SSP) have not changed
- Employer's obligations under the Disability Discrimination Act (DDA) have not changed.

3. May be fit to work tick boxes and meaning

Where a doctor has advised that an employee 'may be fit to work' they will include comments on their patient's condition and where appropriate tick one or more of the four boxes on the fit note. Details of these are as follows:-

Phased return to work: This would be used where a doctor believes that a gradual increase in the intensity of work duties or working hours will help an employee return to work.

Phased return examples: *An employee with back or shoulder problems whose job involves lifting gradually increases the quantity or intensity of their work to allow them to rebuild their capacity for manual work or an employee may be provided with an option to start later or leave earlier, or work only a few days a week as opposed to coming back to work full time. A phased return to work might not be less hours but working normal contractual hours differently.*

Altered hours: A doctor will recommend this where they believe that an employee will benefit from a change to the hours that they work in order for them to return to work. This does not necessarily mean fewer hours though it might well mean that in many cases.

Altered hours example: *Allowing more flexible hours could help support someone, who is still receiving treatment, to return to work but attend for treatment during working hours, for example physiotherapy for a back condition.*

Amended duties: A doctor would recommend this where they believe that an employee may be able to return to work if their duties are amended to take into account their condition.

Amended duties example: *Removing heavy lifting from the job of someone with a back injury or removing customer facing duties such as dealing with complaints from someone who is off work due to stress.*

Workplace adaptations: A doctor might recommend this where an employee may be able to return to work if their workplace was adapted to take account of their condition.

Examples of workplace adaptations: *A ground floor workstation for an individual who may have difficulty going up and down stairs (e.g. arthritis or recovery from a broken limb) or arranging for a car parking space close to the workplace entrance for someone with limited mobility following surgery.*

Any employer considering advice on a fit note should also however consider the issue as to risk and may wish to carry out a risk assessment. The arrangements and the issue of risk should both be kept under review.

4. What should an employer do on receipt of a 'may be fit to work' note

If as an employer you receive a 'may be fit to work note' you must remember that this is not binding but it may provide greater flexibility in enabling an employee to return to work. Sickness absence is costly and in the current financial climate there is increasingly pressure to manage and monitor the cost of sickness absence.

The fit note should not however be used as a means to force people who are unwell back into work. The advice of the fit note is not binding and some of the suggested routes may be prohibitive; for example workplace adjustments when considered against the potential costs to carry out those adjustments may be too expensive or where adjustments for one employee might put unacceptable pressure on other employees. It must be a balanced consideration.

Employers should also presume that where they are **unable** to accommodate recommendations made in a 'may be fit to work' note then the note should be then read **as if the doctor has said 'not fit to work'**. There is no need for the employee to return to the doctor for a fresh note. Asking employees to do this unnecessarily will simply increase pressure on GPs.

Signing back to work?

It is a myth that employees need to be 'signed back to work'. Employees may feel fit to return to work before a 'not fit to work' note has expired and employees do not necessarily need to be 100% fit for work before they are able to return. For certain occupational groups there may be more stringent return to work arrangements in place e.g. DVLA rules for LGC/PCV drivers, but generally these

should be covered by internal policies within your local authority, police or fire authority.

Insurance and risk

It may be prudent to check any employer liability insurance issues but generally liability insurance should not restrict an employee returning to work on a 'may be fit to work' basis. If in doubt managers should check with HR or personnel advisers within the authority.

Disability Discrimination Act

Employers need to remember that the 'may be fit to work' note does not in any way absolve them of obligations under the DDA. The potential application of DDA should be considered alongside the 'fit note' issues.

Reviewing the situation

In general a 'may be fit to work' note will allow employees and employers to agree a resolution to enable an employee to return to work. In most cases this will not be an open ended arrangement but one where both parties envisage the end of some temporary arrangement once the employee has returned to full fitness. However for longer term absence, requiring a longer lead in period to normal working arrangements, it would be in the interests of both parties not to unduly fetter arrangements but to build in systematic and periodic reviews.

What if an employee disagrees with returning to work?

If an employee disagrees with an option to return to work, despite support being offered, in the first instance this should be discussed with the employee. This may help to establish if there are other reasons that they have for not feeling able to return to work. Help may also be sought from an occupational health specialist. In these cases authorities should consider the use of organisational policies for dealing with absence disputes and should ensure that the employee is able to seek advice from their trade union representative or other source of advice. Please note however that disputes as to payments of SSP are subject to a prescribed procedure (see www.hmcr.gov.uk).

What about sick pay?

SSP provisions have not changed under the new rules. Your authority's policies should therefore cover what will happen in pay terms to employees who may return to work, on a gradual basis, such as payment on full pay or partial payment plus sick pay for the hours worked or not worked. It is important that any occupational sick pay scheme accommodates arrangements for pay under the 'fit note' scheme.

Occupational health and risk assessments

Occupational health professionals may help both employers and employees decide on how best to implement a 'may be fit to work' arrangement. In most cases the doctor's recommendations may be a case of common-sense, affording employees, returning from a period of sickness absence, the ability to be supported by a sensible employer on their return. More complex conditions may however require more detailed and specialist support. It is likely that occupational health professionals will have a valuable role to play.

Occupational health assessments may also help to support the question of risk and evidence a risk assessment has been fully carried out where it is appropriate, and proportionate, to do so. For example, simply reducing hours but with an employee doing similar tasks to what they would normally do may not give rise to a need for a risk assessment, however changing a working environment, to accommodate amended duties, may be more complex and therefore give rise to a need to carry out a risk assessment.

APSE comment

APSE performance networks service shows positive evidence that the management of sickness absence within the public sector is increasingly effective. However as financial constraints on employers and employees have recently evidenced the critical role of paid employment is essential in both economic and in health terms. Those kept in paid work are likely to suffer less ill-health than those without paid employment. The speed with which people return to work from ill-health or injury is a dominant factor in sustaining people in employment.

Therefore measures that help employees remain in work and help employers manage the costs associated with sickness absence are to be welcomed. However the new 'fit note' scheme will require employers to consider options that they might otherwise not have considered. Equally employees will need to be mindful that whilst they may feel unable to return to normal work, whilst ill or injured, there may be alternatives to enable them to return to work. The measures should not however have a punitive effect on those that are genuinely unable to return to work. Doctors and employees should not feel pressured into making attempts to produce 'may be fit to work' notes where the employee is clearly very unwell and unable to attend work.

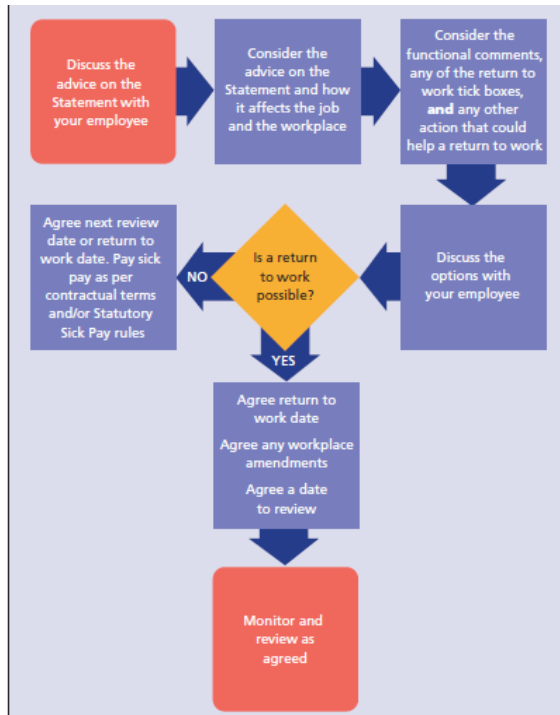
The attached flow chart at appendix 1 may assist employers in judging what action to take when an employee presents a new fit note.

This new process will be discussed at the next APSE employee relations advisory group meeting. If you are not registered to attend this group please email mbaines@apse.org.uk to register your interest.

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Principal advisor

Appendix 1 APSE briefing 10-20

DWP flow chart



Sample of new 'fit note' showing the tick boxes

**Statement of Fitness for Work
For social security or Statutory Sick Pay**

Patient's name ¹ Mr, Mrs, Miss, Ms

I assessed your case on: ² / /

and, because of the following condition(s): ³

I advise you that: ⁴ you are not fit for work.
⁵ 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 ⁶ workplace adaptations

Comments, including functional effects of your condition(s):
⁷

SAMPLE

This will be the case for ⁸ / /
 or from ⁹ / / to / /

¹⁰ 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 ¹¹

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