

## The Fit Note

### Background

The Dame Carol Black Review into the Health of Britain's Working Age Population in 2008 made a number of recommendations around the health and well-being of population. Amongst other recommendations is one that calls for a change to the way sick notes are issued. The recommendation states '*The paper-based sick note should be replaced with an electronic fit note, switching the focus to what people can do and improving communication between employers, employees and GPs.*'

The new medical statement or **Fit Note** will come into effect on **6<sup>th</sup> April 2010**. The old sick notes said whether a person should be off sick or was able to return to work whereas, the new Fit Note states **a) Whether the person should be off work** or **b) If they may be fit to do some work if certain changes made**. The full review can be read here <http://www.workingforhealth.gov.uk/documents/working-for-a-healthier-tomorrow-tagged.pdf>

### What's New?

The new form will list four types of alterations which the GP can tick (see below) including providing further information on the person's health condition and how it may affect what they do. These are:

- **A phased return to work:** this is where the employee is suffering from an illness that has left them fatigued or has been away for a long period of time and is not confident about returning full-time. Or, when an employee has an injury where the doctor believes that their strength has to be built up gradually.
- **Altered hours:** where the recommendation is that the pattern of working hours is changed i.e. avoiding rush hour traffic.
- **Amended duties:** if the employee cannot fully do their former work but may be able to do their job if some duties are avoided or changed.
- **Workplace adaptations:** if the GP believes some physical adaptations would help in the return to work. i.e. change location of workstation if employee is unable to use stairs.
- **Or other recommendation that would assist the rehabilitation of the employee.**

In some of the above options recommended by your GP, your employer may well seek professional advice from their occupational health provider.

An example of the new Fit Note is at the end of this briefing.

If the employee is disabled and covered by the Disability Discrimination Act, the new Fit Note procedures do not alter the duty on the employer to make reasonable adjustments regardless of what a GP recommends.

### **What's not changing?**

There will be no change to the basic purpose of the medical statement and it will still be used by employees as confirmation of illness if claiming sick pay. The following remains unchanged:

- **A sick note will still be needed after 7 days for Statutory Sick Pay**
- **The note will still give a brief indication of the condition**
- **In most cases it will still simply say the person is not fit for work**
- **The sick note will still be given to the patient and not directly to the employer**
- **It will still be given to the patient in paper form and not e-mailed**
- **In the vast majority of cases the patient will notice no difference**

It is good practice for your employer to do the following if your GP makes recommendations:

- **Ensure that the employee is involved in discussions on how any changes will be introduced, with the provision for trade union representation if requested**
- **Seek specialist advice and assistance from an occupational health provider**
- **Undertake a new risk assessment if any changes are made**

### **Possible areas of concern**

The new Fit Note raises a few areas of concern, partly because of its quick implementation and lack of time allocated for GPs and employers to be trained in its implementation, misunderstandings may arise. Some of these concerns are addressed in further detail below.

#### **GPs do not always understand the workplace and may not be able to give appropriate advice.**

Unless the GP or health advisor has access to your place of work and understands fully the nature of business and what your duties are, they will not be in a position in which to give appropriate advice on what type of adaptations or adjustments you may need in order to perform your duties.

#### **Most employers do not have access to occupational health advice and will not know what to do with any recommendations.**

Unfortunately, many employers do not have an occupational health provider. The TUC reports that 80% of employers do not have access to occupational health services and may not be competent enough to understand what adaptation actually means.

## **Employees may feel forced back to work before they are ready.**

Employees may feel pressured to return back to work early due to pressures in meeting targets and the fear of redundancies. This will only worsen their condition further, especially in cases where the condition is not physical such as stress and is not advisable.

## **The employer does not take the recommended action**

It is envisaged that this is the main concern many employees will raise with their representatives. Regardless of the recommendations made on the Fit Note by a GP, it is important to understand that **the employer does not have to accept it**. The status of the Fit Note is that it is non-binding advice and is only legal in terms of Statutory Sick Pay payments.

As the changes are relatively new, the TUC has compiled the following questions that may assist with any further queries you may have. You should contact your safety rep or other branch representative if you have any further queries.

### **1. What if the employee does not agree with what is in the medical statement?**

The statement should not contain any unnecessary medical information beyond a simple diagnosis, as at present. Ideally the employee should have discussed any concerns with their GP but if that has not happened, or the employee has concerns at a later date then they should go back to their GP. If the GP is unwilling to change what is written then, in some circumstances, the patient may want to seek a second opinion. Alternatively, if they cannot get the statement changed the employee may raise their concerns with their employer, but they should also be encouraged to discuss the issue with their union representative. Often the concerns will be down to a person's genuine lack of confidence in making the return to work after a long illness and the worker may need considerable support from both the union and their line management. The bottom line is that it is not in anyone's interests to force an employee back to work before they are ready.

### **2. What if the employer does not take action?**

If the employer does not take action then **the employee should not return to work**. This is likely to be one of the most common problems. The Government advice says clearly that if the employer cannot make the changes then the employee should be considered to be unfit for work until they are fully recovered or the changes are made. Sometimes the employer will refuse to make the changes because of cost, but sometimes it will be because they do not understand the process or are unsure about how to implement the proposals made in the medical statement. Union representatives can play a key role in ensuring that workers do not go back until the recommendations on the statement are in place. If workers do go back to work without the recommended changes being made, there is a very good chance that the employee will have to go off on sick leave again, possibly for an even longer period of time.

### **3. What happens if the employer makes changes but the employee does not agree with what is proposed?**

It may happen that an employee will be happy with what a GP recommends but disagree with how this is interpreted by their employer. An example may be that the GP recommends reducing high pressure work but the employer only removes some duties, leaving others intact. In cases like this the employee should be able to pursue a grievance, with support from their union.

The union should argue that the employee should not have to return to work until they are satisfied that the recommendations have been fully implemented.

**4. What happens if the employer takes action which the employee agrees with but after a while the illness or injury is getting worse?**

In the first instance the employee should go back to the GP and explain that their condition has got worse even with the changes which were recommended. The GP may then either issue a new statement saying the worker is not fit for work, or revise the recommendations on the statement by possibly recommending further changes.

**5. What happens if the employer says that the employee can come back at reduced duties but at reduced pay?**

An employer cannot simply change the contract of an employee and reduce their pay. The employee should be employed under the same conditions as before they went on sick leave, but with modifications to assist their transition to work. Where an employer does seek to use recommendations in a medical certificate to alter a person's pay or conditions their representative should seek advice from their union. If a person is on statutory sick pay, reduced sick pay, or benefits and they return on reduced hours you should seek to ensure they are no worse off as a result.

**6. Do sickness absence procedures need to be changed?**

It is unlikely that many changes will be needed to sickness absence policies, but these policies should be reviewed to make sure they mention the new arrangements and make it clear **who is responsible for implementing changes recommended by GPs, make it clear that it is a process based on consensus and ensure that the grievance procedures can be used to deal with any disputes.** Unions may want to take the opportunity to review their sickness absence policies generally to make sure they comply with good practice.

**7. What are the implications for occupational sick pay schemes?**

Normally there will be no implications for occupational sick pay but, in some cases, where a person returns on a part time basis or returns and then goes off sick again then the scheme may not be clear about what happens to them. That is why all occupational sick pay schemes need to be reviewed and renegotiated to ensure that there is a **"no detriment"** clause. This should ensure that anyone who does return part time is no less off than if they were still on sick leave. In addition occupational sick pay schemes should make it clear that a person who is back at work on reduced duties or altered hours is no longer counted as being on sick leave for that period.

**8. What are the implications for SSP or benefits?**

**The regulations on SSP will not be changed.** If a doctor recommends that a person may be able to return to work subject to certain alterations and these are not made, then the worker should still receive SSP. However, if a person returns to work on reduced hours and receives only part-time wages they may be worse off if they are no longer be eligible for SSP and, if they have been on long-term sick leave, may lose other benefits. If in doubt the member should seek advice from a benefits advisor or advice bureau. Again unions should seek to negotiate a "no-detriment clause" to ensure that no-one is worse off by having to return to work or work reduced hours.

## Contact UCU Health & Safety Advice

UCU Health & Safety Advice is provided by the Greater Manchester Hazards Centre, and is available for 3 days each week during extended term times. The contact person is **John Bamford** ([jbamford@ucu.org.uk](mailto:jbamford@ucu.org.uk)) (t) 0161 636 7558.

### Further information:

**TUC advice**  
**Advice to employees and patients**  
**Department of Work and Pensions**

[www.tuc.org.uk/extras/fitnote.pdf](http://www.tuc.org.uk/extras/fitnote.pdf)  
[www.direct.gov.uk](http://www.direct.gov.uk)  
[www.dwp.gov.uk/fitnote](http://www.dwp.gov.uk/fitnote)

### New-Fit Note: Sample

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

Patient's name

I assessed your case on:

and, because of the following condition(s):

I advise you that:  you are not fit for work.  
 you may be fit for work taking account of the following advice:

If available, and with your employer's agreement, you may benefit from:

<input type="checkbox"/> a phased return to work	<input type="checkbox"/> amended duties
<input type="checkbox"/> altered hours	<input type="checkbox"/> workplace adaptations

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

Sample

This will be the case for

or from  to

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

Med 3 04/10