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1) Fit for Work service guidance issued

Originally called the Health and Work Service, now renamed Fit for Work, the DWP has finally published its guidance for employers, employees and GP's. It is expected that the service will be fully operational by May this year, but we will see. See our May and September 2014 issues of H&S News for earlier information about this – at

http://www.ucu.org.uk/media/pdf/c/3/Health_and_Safety_News_77_September_2014.pdf and

http://www.ucu.org.uk/media/pdf/p/9/Health_and_Safety_News_75_May_2014.pdf. Remember that this service is not being introduced in Northern

Ireland at all, and that in Scotland, it is being provided by the NHS. For specific information for Scotland see <http://fitforworkscotland.scot> and

http://fitforworkscotland.scot/fit-for-work_assessment/guidance-for-employees/ for employee's guidance.

In England and Wales, Health Management Limited, the UK subsidiary of US public service and private sector health provider Maximus is running the scheme; they have also taken-over the Work Capability Assessments for those applying for Employment and Support Allowance, from the failed provider ATOS.

<https://www.gov.uk/government/collections/fit-for-work-guidance>

The TUC has also (15 January) published its own guide to the FFW initiative, available from a link on this page

<http://www.tuc.org.uk/Fit%20for%20work%20guide>

Fit for Work includes telephone-line advice Monday – Friday 8:30am – 6:00pm. For England & Wales the number is 0800 032 6235, (6233 for Welsh language), and 0800 019 2211 for Scotland. Web-based information is at www.fitforwork.org or www.fitforworkscotland.scot. UCU health & safety advice is not particularly impressed by the website content, but recommends that you look at it yourself. If

there are specific occupational health matters you feel you need more information about, the helpline is available, it's paid for by us, so give it a try.

Branches and LA's need to watch what employers are doing. The primary responsibility is for GP's to refer their patients, but in cases where they don't (for whatever reason) the employer can assume that responsibility. There is nothing in the guidance that suggests employers should contact GP's to discuss this – presumably GP's would have a good reason for non-referral.

Remember that this initiative is not about helping workers recover from illness or injury, however caused, but is about getting employees back to work (promoted as saving the employer money, but importantly, avoiding claims for state benefits) using a return-to-work plan to achieve this. It is interesting that the government specifically avoids compulsion in any part of this process – perhaps someone has told them that in a democratic society you cannot quite compel people who may still be ill to go back to work; but this dual opportunity can impose considerable pressure on individual workers to achieve that end. What do we need to watch out for?

The employer's guidance reminds employers they may need to amend their sickness absence policy and procedures in the light of the guidance and the Fit for Work procedures. It is important that Fit for Work is not taken as an opportunity to undermine existing sickness pay arrangements – employer-provided contractual sickness provision has already come under attack, with employer proposals to reduce sick pay entitlement considerably.

The government say that the Fit for Work service is intended to complement, rather than replace, an employer's existing occupational health provision, but some employers may see this as an opportunity to undermine or reduce existing occupational health provision to save money, even though Fit for Work isn't a proper occupational health service, despite the web-based information and the telephone advice line.

On page 6 of the employer's guidance, in very small print below the table on eligibility, it notes that "Employees must provide consent at all stages of the assessment process. Consent must be explicit, informed and freely given". Similar information is given on Page 18 of the guidance for employees. That means we need to challenge any attempt by employers to include mandatory references to Fit for Work assessments, or link failure to give "explicit, informed and freely given" consent to threats of disciplinary action, or threats to withdraw sick pay. One thing that may undermine enthusiasm for consent is that individuals may be reluctant to discuss their health or personal problems with a stranger over the telephone and, even if they do, it is not anticipated that the assessor will have access to the employee's medical records, so the effectiveness of the assessment could be limited.

Where GP's don't make a referral, then the employer can, but again employee consent is needed. This has the possibility to undermine patient-GP relationship, GP's clinical diagnosis and professional opinion, and can also allow employers to put pressure on workers unreasonably.

In cases where workers do engage with this process, then return-to-work plans may help us argue a case for 'reasonable adjustments'; but again, there is no compulsion on employers to accept such plans. It will be for employers to decide if return-to-work plans are reasonable and affordable, but how effective will the return to work plan be if employers are not involved in the discussions from the start?

UCU may issue further guidance to Branches and LA's shortly; we'll circulate more information as necessary.

Specific HSE guidance on OH in tertiary education was withdrawn last year, but this leaflet appears to have survived <http://www.hse.gov.uk/pubns/misc743.pdf> This originated from the 2005/06 HSE initiative to get employers to use the (then) newish stress management standards, but that initiative effectively collapsed shortly afterwards. It refers to a report from De Montfort University that the unions challenged and got the HSE to withdraw from its website, with an apology. It seems the situation with occupational health, generally and in the sector, seems pretty downbeat all round.

Please let us know if your employer proposes using the Fit for Work service, and what happens.

2) Risk of stress-related illness arising from disciplinary proceedings

An interesting case reported on the Personnel Today website. The author points out that there may be a case against an employer where that employer pursues disciplinary action against a worker which cause the victim to develop a stress-related illness. He relies on the case of *Yapp v Foreign & Commonwealth Office*, where the Court of Appeal pointed out that a stress-related injury claim could succeed where the employer's conduct was so devastating in its unfairness that even a person of ordinary robustness, with no prior vulnerability, may develop a depressive illness as a result. See the report from the chambers that represented Mr Yapp at <http://www.oldsquare.co.uk/news-and-media/cases/john-yapp-v-foreign-and-commonwealth-office-fco>

How much more likely is harm to be caused where an employer acts against someone who is already vulnerable? There have been many cases where employers pursue someone in order to get them to leave, for example where discipline is linked to capability and an employee is already under pressure.

The article goes on to suggest ways that employers can minimise the risk of claims. These include ensuring they get occupational health advice; provide adequate advance notice of an investigation meeting and of the substance of matters to be discussed; conduct some preliminary investigation of allegations; avoid “knee-jerk” reactions; consider what employees say before making decisions or taking action; and provide an employee with the option of being accompanied to meetings throughout the disciplinary process. While these recommendations are ones that unions would always make, they do seem, in this article, to be aimed specifically at ensuring employers protect themselves from claims of unfairness.

3) Open plan office space

The debate around open-plan offices continues to attract attention. A workplace survey by architecture firm Gensler, reported in Dezeen magazine in 2013, found that new office technologies and a move towards collaborative, open-plan offices were damaging the performance of employees. Now, a further survey of 10,500 workers in Europe, North America and Asia has found that 54% would prefer to work in separate offices, and 65% said that a lack of natural light impacted negatively on their mood. The findings add weight to data collected by Ipsos and Workspace Futures Team of Steelcase in September that found 95% of respondents thought working privately was important to them, yet only 41% had the option to do so and 31% had to leave the office to do so.

Open plan offices save employers money on operational cost, but against this saving, subsequent loss of productivity is currently estimated to cost American companies up to \$550 billion and UK companies up to £70 billion a year. And some of that cost comes in adverse health effects on staff.

Working in such close proximity with others can make open plan offices a breeding ground for infections, especially around this time of year. Stress caused by an invasion of personal space or by frequent distraction can also take its toll on workers’ psychological wellbeing. A Canada Life survey found that employees who work in open plan spaces took over 70% more sick days than those who worked from home.

Dezeen styles itself as one of the world's most popular and influential architecture and design magazines, and the winner of numerous awards for journalism and publishing.

4) Using the HSE’s Safety Representatives “concerns” form

We reported in the September 2014 issue (No 77 - see link above) on the HSE’s new safety reps ‘concerns’ form. Since then, we have had a number of enquiries about employer’s failure to undertake suitable and sufficient risk assessments, and have been asked if reps should use the form to make a formal complaint to HSE.

The answer to that is 'Yes', provided we have raised the issue with the employer, and failed to get a satisfactory response or reason.

Our general advice is that UCU safety reps need to press the employer to ensure all risk assessments meet the legal standard of 'suitable and sufficient', are properly undertaken with UCU safety rep involvement, information is given to the members of staff to whom the assessment applies, and that the main points of the assessments are recorded in a place that allows safety reps to access them. Main points includes the hazards identified, people at risk, the degree of risk established, when information was given to workers, and the measures taken to protect workers from the risks.

Where risk assessments are not in place, the employer should be able to justify why that is the case. We are aware, for example, of one institution where HR continues to insist that they only need to conduct a risk assessment for stress factors when someone is driven to illness and absence; how wrong can they be in that perversity? Even in cases where the level of risk was found to be insignificant or negligible, then that information needs to be recorded as such, and given to staff members covered by the assessment. Without proper records, an officer of an enforcing authority will be unable to determine whether-or-not the assessment meets the 'suitable and sufficient' legal standard.

All the information you need to use the 'safety representatives concerns' form is here <http://www.hse.gov.uk/involvement/hsrepresentatives.htm>. If you do, please let us know, and tell us about the outcome.

5) Looking for trouble

Sister union Unite has launched a health and safety campaign entitled "Looking for Trouble", aimed at ensuring that Unite health and safety representatives are aware of their rights and functions and the obligations on employers, and are confident enough to use these to tackle workplace problems. A nice 'double entendre' of a title, the campaign slogan is "look for it; find it; fix it." Given the number of enquiries made of UCU H&S Advice, there is plenty to look for and discover.

Unite reported this campaign to the TUC H&S Specialists meeting in November, and a number of unions expressed the view that this kind of approach could also benefit them. It is important that all unions within the FE and HE sectors work together, so find out what Unite reps in your institution are doing with their latest campaign; and see what scope there is for some joint activity.

6) Out to lunch

Despite the well-known importance of midday nutrition, many workers find it's not always easy to get half an hour away from their desk to refuel.

A recent study of 2,000 full-time workers conducted by healthcare group Bupa reports that almost two-thirds (64 per cent) do not take a proper lunch break when working six hours or more. (That's the minimum standard in the Working Time Regulations). Almost half (45 per cent) of the respondents said they didn't leave the workplace during a break, while almost a third ate lunch at their desk. The report says that not only does this impact on the physical health and general wellbeing of employees, it heightens the risks of underperformance, lower productivity levels and compromises the opportunity to develop social connections. The weight of a workload should never justify going a full working day without any form of respite. Despite Napoleon's oft-quoted maxim "An army marches on its stomach", part of the problem appears to stem from managerial behaviour, and the tendency for staff to follow the example of their boss – 24% said they see their boss not taking lunch and feel pressure to do the same. Of those who don't eat properly, almost a third reported feeling unwell later-on.

We know that in many colleges and universities, things like staff common rooms and similar areas are no longer provided, so our members often have little choice about eating at their desk if they are to avoid the students, crowds and noise in the refectory or cafe; and the legal framework doesn't help us resolve that problem. Neither do the limited protections of the Working Time Regulations help us much; we would argue that poverty of statutory provision has been one factor driving down our long-established standard of an hour for lunch.

It's interesting that Patrick Watt, corporate director at Bupa, commented on the report: "It's worrying that some employers are not encouraging their staff to take time out of the working day to relax and recharge. Not only does this affect productivity levels, but it can have far wider implications on business performance." What a shame that these comments always seem to emphasise the benefit to the employer, rather than any real concern for workers health and welfare. Dame Carol Black can't be happy that her public health-related messages haven't been picked-up by employers even now.

For more information, and a pleasing photograph of a full English breakfast, see http://www.thehrdirector.com/business-news/employment_law/dont-do-a-gekko-take-a-lunch-break/

John Bamford

UCU Health & Safety Advice

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: (e) jbamford@ucu.org.uk (t) 0161 636 7558