

From 6th April a 'Fit note' replaces the traditional sick note from your GP

Will this end the 'sick note culture' in the UK?

By Philip Landau
Employment Law Solicitor

From 6th April 2010, the traditional doctor's sick note was replaced by the 'Statement of Fitness for Work', also known as the 'fit note'. The purpose of the new system is to reduce the current 'sick-note culture', as absence from work due to illness costs the British economy £100 billion each year, according to a report conducted by Dame Carol Black in 2008.

What are the changes?

Under the reforms, which apply to employees who are off sick for 7 days or more, GPs will still be able to state an employee is 'not fit for work', but now they can also state that they 'may be fit for work taking account of the following advice'. This new option allows GPs to state how an employee's illness will affect their ability to work. There will be a shift of focus onto the tasks that an employee can perform, rather than what they cannot do. Moreover, GPs will be able to suggest simple adjustments to the workplace to enable employees to return to work earlier (such as a phased return to work, amended tasks and flexible working).

Whilst the GP's advice is not binding, it will place a responsibility on the employer to discuss with the employee whether they can return to work in light of the recommendations, and whether any changes will need to be made to support the return to work.

The aims of the reforms

The reforms are intended to be in the interests of employers and employees alike.

They should prove beneficial for employers by helping them to retain their workforce and improve productivity, as in some cases, employees who would otherwise have been signed off work may still be able to undertake some duties. Furthermore, the cost to businesses of sickness absence and sick pay will be reduced.

For employees, research has shown that working can be good for your health and speed-up recovery, whereas long periods of sick-leave can hamper recovery and mean that you are less likely to return to work.

The pitfalls

However, a lack of awareness and understanding of the new system could mean that it will run into problems early on. In particular, employers may be uncertain about what adjustment exactly they should make to the workplace, and how to deal with knock on effects with other employees. They will also have to shoulder any costs incurred as a result of this, which could be difficult for smaller companies to bear. The issue of adjustments could also lead to conflict between employers and employees, for example, in relation to the nature of any adjustments to be made and whether or not they are sufficient to enable the employee to return.

From an employee's perspective, if their GP states that they 'may be fit for work', there may be an inclination to return before they have fully recovered, possibly to the further detriment of their health.

This is compounded by the fact that employees may be reluctant to take sick-leave during this time of economic uncertainty, for fear of losing their job.

There is further scope for conflict arising from the fact that before the reforms were introduced, the system was clear-cut – an employee was either fit or unfit to work. If an employee did not feel well enough to return to work, GPs often preferred to err on the side of caution and sign them off, rather than risk sending an ill employee back to work which could worsen their condition. This approach fuelled the 'sick note culture'.

In order to be successful therefore, the new system will require a shift in attitude by GPs' from the belief that employees have to be completely fit to return to work. In addition, although GPs will have more responsibility and a greater role in an employee's health, they may not be sufficiently well-informed about an employee's work situation in order to make appropriate judgments about what an employee can still do, let alone make suggestions about changes. Remember also, they are only getting the employee's version of events.

Conclusion

The reforms are potentially very significant and whilst an overhaul to the system was needed, if the GP, employer and employee cannot agree between them on a course of action, the new system may not be successful in reducing levels of sickness from work. Indeed, it may simply serve to introduce more uncertainty in this area.

For further information please contact Philip by telephone on 020 7357 9494 or email:

Philip Landau pl@lzwlaw.co.uk