

Fit to work or not fit to work? OH advice is still the right answer

The Government released its response to the consultation on “Reforming the Medical Statement” in January along with a revised version of the new medical certificate. The so-called fit note will replace the old GP sick note as of 1st April this year as an initiative to reduce the high number of working days lost due to sickness absence.

Promoting recovery in the workplace

The recommendation for reviewing the sick note system was put forward by Dame Black in the document “Working for a healthier tomorrow” (2008). The rationale behind the new fit note is to move away from the old mentality of refraining from work completely during illness and toward a more proactive attitude that promotes recovery in the workplace.

GPs to consider fitness to work

In addition to the familiar “not fit for work” assessment the new fit note provides

GPs with the option “may be fit for work”, subject to restrictions detailed by the doctor. The default options list the most common adjustments applied by employers to accommodate an early return to work: a phased return; altered hours; amended duties; and workplace adaptations.

However, following the consultation on the fit note and the experts’ concerns about the GPs’ expertise in Occupational Health as well as the limited time available for GPs to discuss the patient’s work role and duties, the government has withdrawn from the position that GPs could declare the employee “fit to work”. Dame Black herself is concerned that the new certificate will amount to little more than a sick note if GPs don’t specify what duties the patient is fit to undertake.

Occupational Health excluded from default recommendations

The government response states that it is the employer’s responsibility to carry out risk assessments prior to employees’ return to work as GPs cannot make definitive assessments on this. The revised fit note also excludes the default option to recommend Occupational Health (OH) advice so as not to offer the GPs an easy opt out that could lead to “doctors being seen as not

having considered or discussed with their patient what would help a return to work”.

More uncertainty and disputes about fitness to work?

The main concern of HR experts and employers alike is that the new system will result in confusion on the employers’ part as to what the employee is fit to do. This may lead to disputes regarding both what the employee can be asked to do and what constitutes reasonable adjustment.

The GPs won’t have the in-depth knowledge of the workplace and possible adaptations which is required to properly advise on a phased return to work. This leaves the employer in an uncomfortable situation with responsibility over the employees’ safety at work but with limited medical advice as guidance.

Fit note won’t beat expert OH advice

It is of course true that OH provision is not universally available and in part that is why OH advice doesn’t form part of the default recommendations of the fit note. Nevertheless, experts in the field remain strong advocates of seeking OH advice to minimise risk of disputes and tribunals. Malene Nielsen, MD of AbsenceCare, has discussed the implications of the fit note with both

Occupational Physicians and GPs, and believes this is a positive change in as much as it will give a higher profile to Occupational Health and make GPs think about the occupational perspective of their patient’s illness or time off work.

“However”, Ms Nielsen argues, “in practice the fit note will have little impact on GPs’ involvement in ‘managing’ sickness absence because of the GPs concerns that this will interfere with their relationship with their patients. It will remain in the employers’ interest to ensure that they have a relationship with a good OH provider.”

The focus should be on identifying a provider that offers a high quality professional service including:

- Definitive reports with clear advice on adjustments and suitable duties
- Fast turnaround times
- Interventions geared at facilitating a return to work

The expert advice of an OH Physician leaves no uncertainty as to the employee’s fitness to work and remains the best tool to support recovery in the workplace.

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