

**ABSENCES FROM WORK AND FIT NOTES**

**ADVICE NOTE**

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**Employment**

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The "Sick Note" has now been replaced by a "Statement of fitness for work" known as the "Fit Note".

Under the old Sick Note rules doctors had two options; they could either prescribe that an individual was "not fit for work" or "fit for work".

Under the new Fit Note rules doctors options are to say that an employee is "not fit for work" or that they "may be fit for work taking account of the following advice".

Doctors can also now suggest options to facilitate an employee's return to work (for example by suggesting that the employee's hours and/or duties are altered). They can also provide information on how the employee's condition will affect what they do.

Doctors can no longer use their note to force the employee to return to work and their advice is not binding on an employer.

The full implications of this change are still unknown, and, in particular, the consequence of not implementing the doctor's advice.

The fit note will be evidence of incapacity for Statutory Sick Pay purposes and this will need to be paid where either; the employee is identified as not being fit for work; or where the employee may be fit for work but the employer is not able to implement any of the proposed suggestions.

Employers may need to review their sickness policy to identify whether the policy gives the required flexibility in order to allow an employee to return to work.

In addition, employers need to consider any associated problems of allowing employees to return to work, for example, issues concerning health and safety and public liability insurance. These will inevitably require appropriate risk assessments to be carried out regarding the employee's work, their workplace and any further support required.

There could also be issues if the employee is "disabled" within the meaning of the Disability Discrimination Act (DDA).

Failure to implement a doctors recommendation could also result in a disability discrimination claim for failing to make "reasonable adjustments" to which there is no defence.

Ideally, the Doctor will make clear recommendations that will assist employers in complying with its obligations under the DDA. In practice, some may be nervous if they are not expert in the particular field of the employee's condition/disability and may therefore leave advice on specific recommendations to an appropriate consultant.

If you would like further advice on this or any other employment issue then please contact our Employment Team on 01306 880110 or 01483 861848.