

# **UNISON's Response to the Medical Statements Regulations Consultation**

## **General comments**

UNISON is Britain's largest public service trade union with more than 1.3 million members. Our members work in the public services, for private contractors providing public services, and in the essential utilities. They include frontline staff and managers working full or part-time in local authorities, the NHS, police service, schools, further and higher education, electricity, gas and water industries, transport and the voluntary sector. Of particular relevance are our members who work in the health care sector, some of whom will be required to issue the proposed fit notes.

We welcome the opportunity to respond to this consultation on reforming medical statements. However, we do have some concerns. Firstly, the consultation exercise appears very narrow and does not ask questions on the main changes proposed but instead is restricted to questions on specific details of the proposed changes. Secondly, it is worth making the point that the aim and role of the GP and other health care staff is to seek to improve the health of their patients and not to become gatekeepers of the nation's health on behalf of employers. It is therefore important to recognise that, in relation to the workplace, the GP's primary concern is for the patient and not the employer.

There will be circumstances when being at work will assist a person's recovery either physically or mentally. However, in general the GP aim will be to make their patient better rather than to get them back to work. In some cases that may mean encouraging an early return, but in other cases it may not. The criteria for the GP should be the medical outcome for the individual patient and the constructive role that occupational health staff can play should be better highlighted in this process.

UNISON believes that the most effective way to reduce long term sickness absence is to prevent injury and illness in the first place. This can be achieved, firstly, by ensuring that proper and meaningful strategies are put in place by employers to ensure that their undertakings do not cause or exacerbate health problems and re enforcing this by effective inspections by the regulatory authorities. Secondly, where staff do suffer ill health, either as a consequence of a work situation or not, mandating employers to have early access to treatment and rehabilitation in place as well as (good) supportive return to work policies with the primary aim of assisting workers in their transition back to work rather than penalising them which is all too often the case currently.

Notwithstanding the above, we accept that some changes are needed for Medical Statements to reflect the needs both of the sick employee and the employer. The idea that someone is either too ill to do any work or must be fully recovered to complete their full duties is not the experience of many

workers recovering from a long term illness. However, there will be exceptions to this.

Many people on long term sick leave would welcome the opportunity and support to carry out some work phased in over a period of time. A large number of employers recognise this and have included provisions for a phased return to work within their sickness absence policies. They have also recognised, as has the Health and Safety Executive, that one of the main barriers to returning to work after a long absence relates to physiological rather than physical factors. For this reason they see return to work as being greater than a medical issue, needing a partnership approach involving the GP, HR department, line manager, the employee and their representative.

We welcome proposals for occupational health advisors in GP surgeries, better training for all doctors and the development of GPs with an interest in occupational medicine. However, we do not believe that most GPs have the training or knowledge of the workplace to decide if a person will be able to carry out their work even with the recommended adjustments outlined in the form. Additionally, many employers will not have the knowledge or access to advice to be able to act on any recommendations. In addition to this it is hard to see where employers would be able to find resources to fund additional supernumerary posts for those returning to phased or protected work situations, without that, there would be enormous pressure on the employee to resume their full responsibilities which would likely be counter productive and in the worst case scenario lead to an increase in constructive dismissal cases. For this reason, we continue to call for all workers to have access to a national occupational health service, who could also be empowered to act as honest broker for both the patient and the employer. It is currently estimated that less than 20% of workers have access to basic occupational health and support and only 3% of employers provide access to a full service.

Had the process involved occupational physicians, the worker and the occupational health department of an organisation - the changes being proposed could be of use. Where these processes exist, the system does already work, which suggests that the need is not for changes to the medical statement but instead for greater access to occupational health support.

In practice many employers, particularly SMEs will lack the knowledge needed to implement the system fairly and will simply see the Med 3 as a way of getting workers back to work before they are ready. This could mean that in some cases workers returning to work who are not fully fit to do so will return for short periods before going off sick again. This will be a particular issue if the sickness relates to stress or other work related conditions where no new prevention measures have been introduced. In addition, it is also likely that temporary/casual workers' who are not diagnosed as fully fit will have difficulties in getting back to work.

UNISON is also concerned that the Med 3 when extended will include confidential medical information usually kept between the GP and their patient. This will be a cause of concern to those workers who prefer to keep

detailed information about their health outside of the workplace. In addition, more clarity is needed on the relationship between the Med 3 and the Access to Medical Reports Act. Under this Act workers must give their consent on the level and type of medical information that can be passed to a third party. However, under these proposals workers have no choice but to submit the Med 4 to their employer as they must do so to claim SSP.

Further guidance and a reminder is also needed for employers to ensure that the confidentiality of the increased medical information supplied and the Data Protection Act is not compromised.

One area missing from the proposals relates to advice on work related illness or injuries. It would be helpful if, whenever possible, GPs were able to indicate their opinion on whether an illness or injury has been caused or could become worse by work. This would help employers to identify and introduce better prevention measures to help prevent a recurrence of the condition and may also assist in getting workers back to work sooner.

It would be useful if the review could also be used as an opportunity to further develop records on trends in work related illness and injuries. One way of doing so would be to include details of the workers' job and the name and address details of the employer. The information could also be used to identify trends in particular industries and would help inform future prevention work. It will also ensure that the doctor actually asks this question of the patient, which is often not done.

We welcome the proposal for computer generated medical statements as there are clear advantages to them being stored electronically. However, we would wish to see the current system continued where a paper version is given to the patient rather than sent directly to the employer.

It would also be helpful if the DWP would use this opportunity to amend the regulations to allow GPs to print out two copies of the statement when necessary. This is currently forbidden but creates difficulties for employees who have more than one employer such as many part-time workers.

The proposal to add "may be fit for some work now" and "suggesting changes to the workplace or role" may present some difficulties. Many employers and some insurers will not allow a worker back to work until they have been signed off by their GP for fear of legal action if the person's health suffers as a result. Secondly, some workers who are absent from work for a long time may lose the confidence to return to work, or alternatively depression which often accompanies physical illness may remain after the physical illness has gone. Where this is the case, an employee will need support in returning to work.

Some employees will welcome the opportunity to do some work whilst ill if this will not make their condition worse. However, this may have an impact on any state benefits received. If the person is receiving benefits and returns to work on reduced hours, and reduced pay, this can have an effect on their

entitlement to state benefits. In other cases the employee may be recovering from a work-related illness. They will need to be confident that changes have been made to the workplace or workload before they can return to work.

The important factor here is that the employee does not feel they are being forced back to work but instead that they are in control or form part of the process.

The relationship between the medical statement and Statutory Sick Pay or employers sick pay schemes is not addressed in the proposals. What are the consequences if someone comes back part time or on considerably reduced duties and reduced pay? Will SSP be payable if a GP says a person is fit for some work but the worker disagrees? More needs to be done to address these issues before the proposed changes are introduced.

Low paid workers are the ones most likely to feel the greatest effect on earnings and the greatest financial pressure to return to full working hours as quickly as possible, even when this is not appropriate for their medical condition or circumstances.

It is not clear if changes to the Med 3 form in itself will assist workers who want to return to work early, and could in fact make things worse.

Most GPs don't have the training or knowledge of the workplace to determine whether a person will be able to function at work; even with the recommended adjustments as outlined in the draft form. And the same can be said of employers as they will not have the medical knowledge or advice to be able to act on those recommendations.

## **The consultation questions.**

**Question 1:** *Do you have any further information, data or analysis which would be useful for improving the quality of the analysis in the attached impact Assessment?*

The Impact Assessment is optimistic and does not assess the cost on the health of the worker as a result of returning to work too early or into a job which makes their condition worse.

**Question 2:** *The Government welcomes views on whether listing common types of changes is helpful; whether those listed are sufficient; and on whether 'Occupational Health assessment' should be added to the revised statement.*

UNISON agrees that it would be appropriate to add Occupational Health assessments. However, we question how most employers would access such an assessment.

**Question 3:** *Will the changes described in paragraph 40 ensure that the current functions of the special statement - form Med 5 - are accurately incorporated in the revised form Med 3?*

UNISON is happy with the suggested changes and therefore has no problems with the proposal.

**Question 4:** *The Government welcomes views on whether medical statements should only be issued when a patient is assessed as 'not fit for work' or 'may be fit for some work'.*

In general UNISON would not encourage the use of medical statements confirming that a person is fit for work but would like to see the option remain. This would enable some employers such as those working in food hygiene or a safety critical environment to ensure that the worker is fully recovered and does not pose a risk to themselves or other workers.

**Question 5:** *The Government welcomes views on whether the draft regulations, including the rules, achieve the intentions expressed in the commentary. In particular, bearing in mind the Government's aim of reducing sickness absence and supporting people with health conditions to return to work at the earliest opportunity, should the maximum duration of a medical statement be less than 6 months? (See Rule 13.)*

UNISON agrees with the principle of supporting sick workers back to work when they feel ready. However, it is difficult to see how the proposed changes will help to do this without considerable training of GPs, the provision of occupational health advice to employers and without creating detrimental effects to those workers who remain unfit to work despite efforts to provide rehabilitation.

## **Conclusion**

UNISON welcomes the commitment to ensure that those who are on long-term sick leave or benefits are given support to return to work. However, we believe this is best done through good sickness absence procedures, better training of GPs and greater access to occupational health advice for employers. For these reasons we have a number of concerns about the proposals outlined in the Medical Statements Regulations. These include the fact that GPs have insufficient knowledge of the workplace; existing occupational health support is woefully inadequate to implement the new arrangements; there is no link with sickness absence policies; the worker sits outside of the process and it may result in employees having a reoccurrence of their condition or encourage sickness presence – where workers return to work when they are still unwell.