INTRODUCTION

In March 2008 Dame Carol Black published her report, “Working for a Healthier Tomorrow”. The report had been commissioned by the government to investigate the health of the working population in the UK, including the issue of sickness absence. The recommendations her report included a proposal for the introduction of “fit notes”, as an alternative to the current system of GP’s signing employees off sick for a certain period.

In November 2008 the Government published its response to the report, stating that they did intend to introduce the new fit note system as recommended in the report. The Department for Work and Pensions (DWP) completed a consultation on the proposed changes in August 2009 and amendments to the relevant regulations have now passed through Parliament. The fit note system is now due to come into force in April 2010.

Both during the consultation and Parliamentary stages, UNISON and the TUC have expressed concern about these changes. Though in agreement with the principle that workers should be given more support to return to work, UNISON has pointed out the dangers of forcing workers who are unwell to return to work when this would prolong or worsen their condition. This factsheet sets out the details of the changes, the concerns about its implementation and how UNISON branches can begin to organise around this issue.

WHAT WILL CHANGE?

As a result of these changes a new medical statement will be used by GPs which will assess a patient’s fitness to work and allow them to indicate if that a person is able to do certain work. The changes will apply in England, Wales and Scotland. The doctor will also be able to suggest changes in the workplace that would assist a return to work. The regulations state that the criteria for the assessment should be the medical outcome for the individual patient, not getting the person back to work.

The “fit note” gives doctors two options which allow them to confirm that their patient is:
- Not fit for work;
- May be fit for some work, taking account of the GP’s advice

This second option is new. Doctors can then elaborate on this option by indicating that employees may, with their employer’s agreement, benefit from:

- A phased return to work;
- Altered hours;
- Amended duties;
- Workplace adaptations.

The structure set out above may be subject to minor change as, at the time of writing, the Department for Work and Pensions is analysing responses to its consultation. The paper version of the note has been trialled with 500 GPs and an electronic version has been tested in Wales. Although the Government had hoped to introduce both versions simultaneously, it is now unlikely that the electronic format will be ready in time for spring 2010.
POTENTIAL PROBLEMS

UNISON believes there are a number of potential problems which may arise if it is not implemented properly. It’s worth outlining these issues here so that branches and individual UNISON members can guard against abuse of the new system by employers and look out for any unintended consequences. Potential problems with the fit note system are:-

1. Doctors will not always have the knowledge required to make an informed decision about how much work their patient is able to do. The physical and emotional demands of a job vary widely between different workplaces and different roles. Unless there is significant consultation between the GP, the patient and their employer there is a danger that patients will be forced to carry out work that inhibits their recovery. This is particularly true of cases where the work itself is the source of the illness, injury or physical strain.

2. Current proposals do not adequately clarify the relationship between the medical statement, Statutory Sick Pay and the employers sick pay scheme. Problems may arise if an employee returns to work on restricted duties but their employer does not pay their full rate of pay. It is not yet clear if they will remain eligible for some statutory sick pay (SSP) or payment from the employers sick pay scheme. It is also unclear if SSP will be payable when a GP states that a person is fit for work with adjustments but the employer refuses to make those adjustments.

3. UNISON is concerned that the new system may be abused by irresponsible employers to discriminate against disabled workers or those with long term health conditions. It is crucial that the new system does not lead to grievance and disciplinary procedures being used against workers who are disabled or have a long term health condition. To guard against this employers should have in place policies and procedures which promote access to work and explicitly prohibit discrimination. The requirements of the fit note system should also be used as a reminder to employers of their responsibilities under the Disability Discrimination Act to make reasonable adjustments which provide access to work for disabled people.

4. Feedback from UNISON members in recent years has revealed a trend among employers to treating medical certificates as only advisory. In some cases the Occupational Health practitioners are overriding the GP’s decision and telling managers that staff can return to work even when this contradicts the GP’s advice. It is important that the new fit note system does not encourage this trend, and that medical advice is taken seriously by employers.

An example (based on a real situation experienced by a UNISON member)

Take the example of a social worker who is suffering from stress due to the excessive caseload he is expected to deal with. The worker is signed off work following a breakdown and has a phased return to work some months later. The conditions of the return to work have been agreed with the employer in order to avoid additional stress being placed on the employee (just as they would be under a fit note system). However the employer fails to observe the agreement and the employee suffers another breakdown. The issue here is the implementation of agreed adjustments. Where they are put in place and enforced by the employer, this can aid recovery and support the member of staff in their return to work. Where they are not, the exposure to an unadjusted work environment can prolong or even worsen illness.
ORGANISING

All UNISON branches will deal with cases relating to sickness absence at one time or another. Often, the advice and support provided by branch officers can be crucial to the well-being of the member. Though many employers take an enlightened approach to sickness absence, emphasising support and good communications, there are others who continue to take a punitive approach to time off through illness.

How can UNISON branches organise around this issue:

1. **Let members know** this change is being introduced. Branches should put stories about this issue in their newsletters to make sure that members know the change is going to be introduced. Health and Safety reps might consider floor-walking sessions to go and speak face to face to members (and potential members) about the issues raised in this factsheet.

2. **Ensure sickness absence agreements are up to date.** Many branches have existing sickness absence agreements which will need updating. The new agreements should cover issues such as: communications with GPs, workplace modifications, the possibility of home or mobile working, systems of support for employees who are on long-term sick leave. Updated agreements should emphasise the general principle that a fit note is a means supporting the health and wellbeing of the individual, not a route to forcing employees back to work before they have recovered from illness.

3. **Ensure workers returning to work are supported** and that reasonable adjustments have been made where appropriate. Health and Safety Reps in particular may want to talk directly to members returning to work under the new fit note system. Ask them if reasonable adjustments to their role and working environment have been made. Do they require a phased return to work and has this been offered to them. Many workers returning to work after long-term illness can find the process of returning to work stressful. Knowing their union is there to help them can be crucially important.

UNISON Bargaining Support has produced a model fit note agreement. Can be found at: [http://www.unison.org.uk/file/Model%20Fit%20Note%20Agreement.doc](http://www.unison.org.uk/file/Model%20Fit%20Note%20Agreement.doc)

WORKING TOGETHER

If your branch does reach a new or updated sickness absence agreement as a result of these changes, it is important to let UNISON Bargaining Support know about it. By sharing information your branch can help the union to spread best practice, identify obstructive employers and monitor the implementation of employment rights. The way to do this is to forward a copy of the agreement to the Bargaining Support Group at bsg@unison.co.uk or UNISON Centre, 130 Euston Road, London NW1 2AY. This information will then be placed on the UNISON Agreements Library and for access please contact bsg@unison.co.uk
FURTHER INFORMATION

If you would like further information on any of the changes outlined in this document, please contact UNISON Bargaining Support on 0207 551 1402 or e-mail bsg@unison.co.uk.

Regular updates to factsheets and guidance can also be found on the Bargaining Support Website here: http://www.unison.org.uk/bargaining/

UNISON’s Sickness Absence guidance is here: http://www.unison.org.uk/safety/pages_view.asp?did=6078

The Government’s “Health, Work and Wellbeing” website can be found here: http://www.workingforhealth.gov.uk/

The TUC’s Sickness absence page is here: http://www.tuc.org.uk/h_and_s/index.cfm?mins=438