Making sickness absence policies work better for us

A guide for UNISON branches
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Working together to prevent sickness becoming job loss: practical advice for safety and other trade union representatives, HSE.

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Bradford score = (number of sickness episodes x number of sickness episodes) x (total number of days lost through sickness episodes)

The Sainsbury Centre for Mental Health: Mental Health at Work: Developing the business case, 2007. centreformentalhealth.org.uk/pdf/mental_health_at_work.pdf

nhshealthandwellbeing.org

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Contents

Purpose of guide ...................................................... 4
Role of safety reps .................................................. 4
Role of managers .................................................... 4
Statistical background: dispelling the myths ............. 4
Legal background .................................................... 5
— Duty to manage sickness absence .................... 5
— Duty to consult with safety reps and workers representatives 5
— Confidentiality and access to medical and occupational health records 5
— Duty to maintain accurate sickness absence records 6
— Employment rights ............................................. 6
— The Equality Act 2010 ......................................... 6
— Disability ........................................................... 6
— Disability leave ................................................. 7
— Disclosure of disability status ............................ 7
— The “Public Sector Equality Duty” ....................... 7
— Pregnant workers .............................................. 7
— Age ................................................................. 8
Sickness absence agreements and procedures ............. 8
— Recording sickness absence ............................. 8
— Reporting in when sick ..................................... 9
— Self certification ................................................ 9
— Fit-note .......................................................... 10
— Access to work ............................................... 10
— What to do when a worker becomes sick while on annual leave 10
— Unauthorised absence ..................................... 10
— Return to work ............................................... 11
— Trigger points .................................................. 11
— Exemptions ..................................................... 12
— Caring for sick family and relatives ................... 12
Creating healthy workplaces .................................... 12
— Presenteeism ................................................... 12
— Occupational health ....................................... 13
— Early diagnosis and interventions ..................... 13
Fit for work service Q&A ........................................ 13
Branch checklist .................................................... 16
Further reading ..................................................... 17
Purpose of this guide

Creating healthy workplaces is crucial to good health and safety. This guide will assist you in your role as a steward or safety rep by providing advice on the key issues in managing sickness, health and wellbeing. It is designed as a source of information and a general negotiating tool. It provides guidance on what you may want to see included in any sickness absence agreements with your employers, an insight into the aims of managers, and identifies what areas of conflict may arise and how these can be resolved. This guide also provides information on the government’s new fit for work service and what it may mean for both UNISON safety reps and members.

Role of managers

Employers are required to protect the health, safety and welfare of their employees. The HSE says this includes taking action to protect employees’ health and safety after they return to work after a period of absence, particularly if they have become more vulnerable to risk because of illness, injury or disability. In addition high levels of sickness absence may indicate underlying health and safety workplace issues.

Managers will say that they have a duty to ensure that absence levels do not undermine service levels. UNISON believes that service levels can be successfully maintained by a supportive approach that focuses on tackling the underlying causes of sickness and the rehabilitation of employees following a period of sick leave. In addition supportive policies and procedures often lead to improvements in productivity and services and can also assist employers in meeting their legal obligations - not only with regard to health and safety, but also equal opportunities legislation.

Role of safety reps

Sickness absence is a health and safety issue. Trade union safety reps have the legal right to be consulted on health and safety issues in the workplace, and this includes sickness absence. The Health and Safety Executive (HSE) suggests that union safety reps can work with the employer in respect of sickness absence by:

1. Helping to identify measures to improve worker health and prevent it being made worse by work.
2. Suggesting that your employer develops workplace plans and policies on sickness absence management.
3. Helping to keep workers who are on sick leave in touch with work.
4. Helping your employer to plan adjustments that will enable workers to return to work.
5. Supporting workers to help them to return to work.
6. Helping to promote understanding of impairments, health conditions and disability in the workplace.

This guide confirms the important role that safety reps can play in the process of sickness absence management by supporting individuals as well as improving and developing agreements that focus on employee rehabilitation and healthy workplaces.

Statistical background: dispelling the myths

Employers and governments have often tried to claim that there is a “sickie” culture prevalent among British workers and in particular public sector workers. Yet at the time of writing, according to the Office for National Statistics (ONS), days lost to sickness absence have declined over the last 10 years from 178 million in 1993 to 131 million in 2013. Although these figures indicate that sickness absence in the public sector is marginally higher than in the private sector, this is largely explained by the types of jobs public sector workers do. For example, absence rates are highest in the caring occupations (where many public sector workers are employed), and these workers are more likely to suffer from back and musculoskeletal injuries, which are among the most common causes of sickness absence.

The ONS statistics also show that public sector employers are more likely to be located in socially
deprived and poorer areas which have poorer health outcomes, and consequently higher levels of sickness absence.

Legal background

Duty to manage sickness absence

Managing sickness absence is a part of the employer’s general duty to secure the health, safety and welfare of their employees (Health and Safety at Work Act (1974)).

Duty to consult with safety reps and workers’ representatives

Safety reps of a recognised trade union have the right to be consulted in good time by their employer, and represent members on any matters that might substantially affect their health, safety or welfare (Safety Representatives and Safety Committee Regulations 1977). These regulations also give safety reps time off to fulfil these functions. Further details on the rights and functions of safety reps can be found in the UNISON guide “Health and safety – a guide for UNISON safety reps” (stock number 1684). If you have members working for an employer that does not recognise trade unions, employers still have to consult them on matters affecting their health and safety (Health and Safety (Consultation with Employees) Regulations 1996, see HSE website for further details).

Confidentiality and access to medical and occupational health records

The rules and obligations around patient confidentiality are complex and not always very clear. They are covered by a combination of:
1. The Common law.
4. Various professional codes of conduct which health care professionals will be expected to comply with (although none of these codes are legally mandatory, practitioners can be struck off and prevented from practising if they do not comply with them).

All medical, nursing and other health practitioners have a duty of confidentiality to their patients and under common law people have a right to expect that information given to these practitioners is only used for the purpose for which it was given and is not disclosed without their permission.

However the law governing your GP differs for example from an occupational health doctor or nurse. For example, although all doctors must ensure that a patient gives consent to a report being sent to the employer, the legal right for a worker to see a report in advance and then withdraw consent once they have seen it only applies to a doctor or consultant who is responsible for the patient’s treatment (eg GP). Therefore occupational health doctors are unlikely to be covered by this obligation.

In addition to their statutory obligations all doctors will need to comply with the requirements of their professional regulatory body, the General Medical Council, otherwise they risk being struck off and prevented from practising. This body requires all doctors, including occupational health doctors, to obtain the consent of the patient before they share such information.

Consent can be implied as well as explicit. If you were referred by your employer for a fitness to work assessment, the doctor or nurse who carries out this assessment can assume that they have your consent to share with your manager whether or not you are fit for work. However they would need your further consent if they wanted your manager to have more specific health information, such as whether you had a particular disease. For guidance on disclosure of a disability see the section below on the Equality Act and disclosure of disability status.

For more detailed information on patient confidentiality please read the TUC guidance, “Confidentiality and medical records” (see further reading).
Duty to maintain accurate sickness absence records

Currently employers have a duty (under the Social Security (Administration) Act 1992) to maintain records of sickness absence lasting four days or more, plus any details of Statutory Sick Pay (SSP) payments. The government recently announced its’ intention to abolish this requirement, although at the time of writing there are no details as to how and when it will do this. UNISON and other trade unions are opposed to this move as this requirement helps employers maintain accurate sickness records.

Maintaining accurate sickness absence records can help employers comply with their duty to risk assess any hazards in the workplace (Management of Health and Safety at Work Regulations (1999)). These records can provide information that identifies:

— who has been off sick
— why they have been off sick
— where the high levels of absence occur
— whether there are any underlying workplace related health issues.

Employment rights

The Employment Rights Act (1996) requires that terms and conditions such as sickness, notification of sick pay and rules relating to statutory sick pay must either be set out in a single document such as a “written contract of employment” or “statement of the main terms and conditions of employment” or in another readily accessible document (such as a sickness absence agreement) that is referred to in the above.

The Equality Act 2010

Sickness absence policies must be compliant with the Equality Act 2010, which covers discrimination around age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation. These categories are known as ‘protected characteristics’.

Disability

Employers must ensure that their sickness management procedures do not discriminate against any of the protected characteristics. The area that has caused most conflict between employers and trade unions has been when a sickness absence attendance policy is believed to be discriminating against a worker on the grounds of their disability. Disability discrimination is a complex area of law and the TUC advice is to use the requirements of the Equality Act and the Code of practice on employment produced by the Equality and Human Rights Commission (EHRC) (see “Further reading”) to resolve issues by persuading the employer to adopt progressive policies and procedures rather than going to an employment tribunal (ET). More information on disability discrimination can be found on the UNISON disability discrimination web pages, in the UNISON Guide, “Disability and health and safety” and on the TUC and the EHRC web sites.

When negotiating your sickness management policies and procedures you need to be aware of the protected characteristics within the Equality Act and consider if there is potential for discrimination. You also need to be aware of the employer’s duty to make reasonable adjustments which is a very specific legal responsibility under law. There is no defence at all should employers fail to meet this requirement. It is not possible, nor would it be advantageous for this guide to set out what constitutes a reasonable adjustment as each situation is unique. What is reasonable will depend on:

1. Whether the adjustment would work.
2. How much it would cost compared to the employer’s financial and other resources.
3. The disruption it may cause.
4. The availability to the employer of financial or other assistance to help make an adjustment happen (such as support through Access to Work) or expertise within the organisation including other disability related action it has already undertaken in order to meet its legal obligations (see below for more details on Access to Work).
5. The type and size of the employer.
Disability leave

When negotiating these adjustments it is important to persuade employers to separate absence for reasons related to disability from sickness absence. Instead they should adopt a disability leave policy, allowing workers time off work for disability related absence.

Branch negotiators should remind employers that the EHRC Code of Practice states that “although employers are not automatically obliged to disregard all disability-related sickness absences, they must disregard some or all of the absences by way of an adjustment if this is reasonable. If an employer takes action against a disabled worker for disability-related sickness absence, this may amount to discrimination arising from disability” (Para 17:20). This is a statutory guide for employers (and others) and is the authoritative, comprehensive and technical guide to the detail of law. Branch negotiators should remind employers that it has been produced for them to understand the law in depth and how to apply it in practice. Advice offered in the Code is widely used and is taken into account by courts and tribunals where it is relevant.

Other reasonable adjustments that may be relevant include:
- reduced or altered hours without financial detriment
- change of duties
- workplace adaptations
- working from home
- no financial detriment where bonus, attendance or performance incentives are made to staff.

For more details on negotiating reasonable adjustments read the UNISON Guide, Disability and Health and Safety (see further reading).

Disclosure of disability status

In order to prove a case of “discrimination arising from disability” it may be necessary to show that the employer knew that the worker had a disability as defined by the Equality Act. It therefore may assist negotiations if workers were to inform their employer that they had such a disability. Although it is not necessary for managers to know the details of that disability, the worker may be asked to undergo an assessment by the company doctor/nurse or some other health practitioner, which could then establish whether the member of staff is a disabled person as defined by the Equality Act, and whether reasonable adjustments are required. However, details of the person's condition or impairment are not usually provided. For information on “discrimination arising from disability” and how this differs from other forms of discrimination see chapter 5 of the Equality Act 2010 Code of Practice on Employment.

The “Public Sector Equality Duty”

This is part of the Equality Act and applies to all public sector bodies and those bodies that carry out what are known as “public functions”. This duty (which still applies when the functions have been contracted out and privatised) places an obligation on all such bodies to proactively eliminate discrimination and promote equality. So, for example, if you provide a service that was formerly provided by the NHS or local authority but has now been privatised, this duty would still apply.

Therefore under this duty it would be appropriate for a branch to request a review of all policies and procedures that impact on disabled workers, (eg attendance, sickness, capability and redundancy procedures) with a view to pressing for the employer to separate disability related from sickness related absences.

Pregnant workers

Rights regarding statutory maternity and paternity leave are covered by the Employment Rights Act 1996, Equality Act 2010 and Working Time Regulations 1998. In addition, under the Equality Act 2010, employers must not take into account a woman’s period of absence due to pregnancy-related illness when making a decision about her employment.
Age

Employers must ensure their sickness absence procedures do not discriminate against workers on account of their age. However it may be harder to prove discrimination on the grounds of age than with other forms of discrimination. This is because, unlike for example disability discrimination, an employer can claim “objective justification” even in cases of direct discrimination.

Employers should be reminded of the potential link between older age and impairment, and that they have the same responsibilities to older workers as with the rest of the workforce. For more information on the health and safety implications of the ageing workforce see the UNISON guide “The ageing workforce: health and safety implications” (see “Further reading”).

Sickness absence agreements and procedures

An absence agreement really is just as it sounds - an agreement between your union and your employer detailing how the absence of employees in your workplace is effectively managed. These agreements could be quite open and simple, or very rigid and complex, and what is considered a good agreement will very much depend on your local circumstances.

Absence agreements would normally cover the following:

- how employees report their absence
- sick pay levels
- employee legal rights
- procedures that managers should pursue when dealing with absence
- how to deal with unauthorised absence
- how records of absence should be kept and what they can and cannot be used for.

Absence agreements also cover trade union involvement and rights such as:

- the role of the health and safety committee (if one exists)
- the role of safety reps, and stewards in providing support and advice, including their right to accompany an individual to a meeting to discuss with their manager capability issues such as their levels of sickness absence, attendance and fitness for work.

Absence procedures should be part of a package of arrangements that aim to create healthy workplaces. They should include procedures to help rehabilitate workers as part of their return to work and methods to detect and tackle the underlying causes of work-related absence. Absence procedures should not be about penalising workers for being sick and forcing them back to work before they are sufficiently fit, or used as a weapon to discriminate against disabled people.

Recording sickness absence

Accurate sickness absence records are essential to the employer’s duty to manage the health and welfare of their workers. When analysing sickness absence figures employers should not only look at who took time off and for how long, but also what parts of the organisation had the highest levels of absence and why.

As a minimum employers will be expected to keep records of:

1. who has been absent
2. where they work
3. why they have been absent
4. patterns of absence
5. how long they have been off for.

It would also be useful if these figures could be broken down and correlated by other possible determinants such as age, disability, gender, ethnic group, pay and shift patterns worked. This could help, for example, in highlighting any underlying health and safety issues by prioritising workplace inspections, risk assessments and health and safety educational campaigns.
In the interests of transparency it is important that employers discuss and consult with trade unions about how and what information is recorded. Although employers would not, without the consent of the worker, be able to share any personal information, they should be able to share anonymised data that can help in identifying trends in sickness absence. Where possible employers should share these statistics with the Health and Safety Committee (where one exists) so that any patterns can be monitored, analysed and a union strategy developed to tackle bad practice. This would inform discussions on not only managing sickness absence but also health and safety generally. Remember safety reps have a legal right to be consulted by management under the Safety Representatives and Safety Committees Regulations 1977 on any matters that affect the health and safety of their members.

**Reporting in when sick**

There should be clear and transparent procedures telling staff what to do when they are not well enough to attend work. They should know who to contact, how contact should be expected and by what time in relation to their normal start time. The worker would normally be expected to explain briefly the reason for their absence and if possible approximately how long they will be off for.

However, a worker should not be intimidated by this process. A simple explanation for absence from work should not become an interrogation on the employee’s symptoms, nor should it result in a worker feeling pressured to return to work before they are fit to do so. Under no circumstances is it appropriate for managers to discuss with their staff the detail of a worker’s absence or any diagnosis or prognosis. Should assistance be required for managing absence additional appropriate advice should be sought from the employer’s human resource department.

In some organisations workers would not be expected to report their absence to their line manager, but instead contact some other third party. This may be somebody else within the organisation but could also be to an external organisation that specialises in recording sickness absence. Where an external organisation has been commissioned to provide initial sickness absence management, the procurement process should be checked to ensure it included a requirement to work with the employer to meet its health and safety and anti-discriminatory obligations.

Some workers may prefer to speak to a third party and find it less intimidating than reporting to their manager. However, it may also risk undermining the personal relationship between a manager and their staff, the employer’s duty to look after the health and welfare of their worker and the reliability of information. Regardless of who is the first point of contact the employer is still ultimately responsible for recording and managing sickness absence.

Employers should also have arrangements in place for keeping in touch with workers who are off sick for longer periods of time. This could vary depending upon the circumstances of the absence. Contact could be via their manager or whoever is responsible for recording sickness absence (see above). However the manager could also delegate this role to one of the worker’s workplace friends or colleagues or a member of human resources. Whoever this role is delegated to it is important that both they and their manager continue to respect the confidentiality of the employee and don’t divulge to their colleagues any personal information (including where applicable any information relating to the worker’s disability status) they may acquire while carrying out this role.

**Self-certification**

The Department of Work and Pensions (DWP) says that “self-certification” is required for between four and seven days absence. However where an employer pays sickness benefit from the first day of absence (statutory sick pay only applies after three days absence) it is reasonable for them to require self certification after one day’s absence.
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Fit-note

When a worker has been off for more than seven consecutive days (this includes non-working days) they must provide their employer with a doctor’s “fit note”. The GP will complete the “fit note” indicating via a system of tick boxes whether the worker:

1. is “not fit for work”
2. “may be fit for work taking account of the following advice”.

The doctor will then complete a comments box advising whether with the employer’s agreement the worker may benefit from:

- a phased return to work
- altered hours
- amended duties
- workplace adaptations.

The GP can then give additional comments on the effect the patient’s condition has on their ability to do their job. However the DWP says that if the employer can’t agree on any changes, they should treat the fit note as saying that the worker is not fit for work. The employee does not need a new fit note from their doctor to confirm this. However, they may want to consider returning to the GP to advise on the employer’s negative response and seek another fit note, preferably with other suggestions about return arrangements. The employee may in such circumstances consider inviting the support and advice of Access to Work (see below for more details), and also, in consultation with their rep, whether their absence is related to a disability. Reps should also ensure sick pay continues until the situation is resolved.

If a GP considers their patient fit for work as normal they would not issue a fit note.

It has been known for an employer to ask for medical evidence before the worker has been off eight days. However this is not normal practice and the GP is entitled to charge the patient for supplying it. When this happens the member should contact their safety rep or local UNISON steward and seek to ensure that the employer reimburses them in full for the cost of the fit note plus associated travel.

Access to Work

Access to work is a specialist disability service delivered by Jobcentre Plus that gives advice and support to disabled people whether they are working, self employed or looking for employment. This could, for example, include funds towards aids and adaptations to equipment that will provide support within the workplace. However, in order to access this support the employee (not the employer) must approach Access to Work although it is advisable (although not mandatory) to inform the employer of the approach, especially if any of the measures require the support of the employer.

The employer can ask the employee to initiate a request for support from Access to Work and the employer would be obliged, as a minimum requirement, to give the same level of consideration as they would with any other reasonable adjustment.

What to do when a worker becomes sick while on annual leave

If a worker becomes sick while on annual leave, as long as that annual leave was part of the four weeks they are entitled to under the Working Time Directive (WTD) the worker is entitled to claim back the annual leave for the period they were sick and have it recorded as sick leave.

The employer may require some form of evidence such as medical certification or doctor’s prescription. Similarly, a worker is legally entitled to carry over annual leave if a period of sickness prevents them from taking the 20 days annual leave they are entitled to under the WTD. Any leave in addition to the 20 days is subject to your locally negotiated terms and conditions of employment. However, UNISON would consider it good practice in such circumstances to allow workers to carry over any annual leave that is owed to them.

Unauthorised absence

Unauthorised absence can be seen as a breach of contract and therefore could result in disciplinary action and even dismissal. It is important when
negotiating sickness absence and attendance policies that branches urge employers to adopt a flexible approach to such occurrences. The Advisory, Conciliation and Arbitration Service (ACAS) guidance says, most sickness is genuine and unauthorised absence may be caused by family commitments or stress. In such circumstances, managers should establish the reasons for the absence and establish whether it is appropriate to apply other procedures for allowing time off, such as emergency or compassionate leave. Managers should be encouraged to use their discretion as invoking disciplinary procedures can be costly for the employer and demoralising for the worker and their colleagues.

Managers should focus on identifying ways of limiting such occurrences. For example in the case of a bereavement or serious illness of a loved one it should be acceptable for a friend or relative to inform the employer of the worker's absence. Employers should also give consideration to disability related unauthorised absences, such as those related to mental health issues and medication that can interfere with waking times.

**Return to work**

It has become increasingly common practice for employers and managers to interview their workers on their return to work after lengthy periods and in some cases after relatively short periods, of sickness absence. Branches should seek to ensure that these are used to:
1. welcome the employee back
2. check they are well enough to work
3. update employees on any news while they were off
4. identify the cause of absence - this would include finding out whether it was work related, or linked to a disability or any other underlying cause that is likely to result in a re-occurrence
5. check if there is anything the employer is required or can do to support the worker on their return to work including establishing whether any reasonable adjustments are required.

They should not be used to intimidate and bully workers. The meeting should be about rehabilitation and support, rather than punishing the worker. They should not be confused with formal capability or disciplinary meetings and hearings where different procedures should apply (see p.8 re rights to trade union representation on capability hearings). If a member has concerns about how these meetings are being conducted or used they should seek advice and representation from their safety rep or steward.

**Trigger points**

Managers do have a responsibility to manage sickness absence, and most branches are likely, at some point or another, to represent a member whose attendance is a cause of concern to their manager. Employers will therefore often want to set a level of absence which they consider to be of concern and therefore requiring further action. These indicators or “trigger points” may take into account different ways of measuring absence including:
1. cumulative number of days absent in a set period
2. number of episodes of absence in a set period
3. combination of days and episodes (eg Bradford Scale)
4. pattern-related absences.

It is understandable that managers want the “trigger point” to be transparent and equitable in its application. However, there are understandably some concerns that managers may abuse the triggers, especially if set and applied without any consultation with staff and their trade union representatives.

They may be used unfairly to:
1. discriminate against certain groups of staff
2. penalise workers who have particular health problems or those who are disabled
3. weed out staff, who are seen as either “troublemakers”, “surplus to requirements” or “unaffordable”.
Whatever measure is used, each has its potential shortcomings. For example one of most commonly used is the so called Bradford Scale. The formula used to calculate this scale means that workers with a higher number of sickness episodes are particularly likely to breach any set “trigger point”. This is because many managers believe a high number of short term sickness episodes are more disruptive than a low number of long term absences. However, if it is used in an arbitrary manner and without consideration of reasonable adjustments, it is also likely to illegally discriminate against disabled workers who require an above average number of short term absences.

In addition a rigid system that focuses on the number of sickness episodes may prove counter-productive as staff are encouraged to take more time off rather than risk an early return triggering another episode.

Any system used should be agreed in consultation with trade union representatives and applied with both flexibility and transparency. If a trigger point is used as an automatic pathway to formal capability or disciplinary proceedings, it is likely to cause conflict, which may involve legal challenges, that is detrimental to staff and employers. “Trigger points” should be as seen as an indicator that alerts managers that further action and a range of interventions, both formal and informal, may be required. These may include, for example, referral to occupational health, and workplace adjustments such as amended duties, altered hours or workplace adaptations.

Exemptions

As well as exemptions for absence related to any of the protected characteristics under the Equality Act (see above), branches should also seek to exclude any absence caused by work related injury or ill health from normal sickness absence procedures. In addition you may negotiate a period of rehabilitation and treatment outside normal procedures (eg trigger points) for any injury or illness on the basis that it will aid the recovery of the worker and allow the employer to retain a valued member of staff. Employers can avoid claims of favouritism by jointly negotiating and agreeing such arrangements with trade unions.

Caring for sick family and relatives

It is best practice for employers to allow time off (carers leave) to care for sick family members. However such arrangements are not mandatory. The Work and Families Act 2006, Employment Rights Act 1996 and Employment Rights (Northern Ireland) Order 1996 give carers the right to request flexible working, such as changing hours or working from home. To be eligible for flexible working, the person making the request must be caring for either:

- their husband, wife, partner or civil partner
- a child under 17, or a person under 18 who is in receipt of a personal independence payment (or in the past a recipient of disability living allowance)
- a near relative – this includes parents, parents-in-law, adult children, adopted adult children, siblings, brothers and sisters-in-law, uncles, aunts, grandparents, step-relatives or someone who lives at the same address as the carer (excluding tenants, lodgers and employees).

Creating healthy workplaces

UNISON believes it is in everyone’s interests to have as many workers as possible fit, healthy and in work. Rather than focussing just on sickness absence rates and procedures for punishing sick workers, we believe the best way to achieve this is to create healthy workplaces and, in particular, tackle the underlying causes of work related ill health and injury.

Presenteeism

Presenteeism is when staff attend work when they are not fit to do so. Research has shown that that presenteeism costs employers 1.5 times as much as sickness absence. It was for example recognised by the Boorman review of NHS Health & Wellbeing as a major cause of ill health. Presenteeism can lead to longer recovery periods from illness, damage staff morale and lead to decreased productivity.
If a manager believes a worker may be too ill or unfit to work, they should have a discussion with the employee and risk assess the situation. If the manager considers the worker too ill to be at work they should send them home. In reaching this decision they will have to take into account not only the health of the sick worker, but also that of their colleagues and service users (especially vulnerable service users in hospitals, care homes and schools) including the risk of cross-infection.

**Occupational health**

Very often workers who have been off sick view a referral to occupational health as some form of punishment. This is often because in many cases occupational health is underfunded and the only time a worker will have contact with them is when their employer is, or is considering, taking action against them on capability grounds.

The role of a good occupational health service should include:

- implementing occupational health and other employment policies
- ensuring compliance with health and safety, equality and other workplace legislation
- identifying, minimising and eliminating hazards
- identifying early health interventions to prevent long term injury or illness
- monitoring symptoms of work-related stress
- monitoring the health of workers after an accident, illness and during and after pregnancy including advising on possible workplace adjustments
- advising on ergonomic issues and workplace design
- promoting good health education programmes
- providing advice and counselling
- accommodating disabled staffs needs
- advising on ill-health retirement.

**Early diagnosis and interventions**

The key to tackling many underlying health issues is early diagnosis. This can facilitated by monitoring sickness absence records (see “Recording sickness absence” above) backed up by a comprehensive occupational health service. Once a diagnosis has been made it is in the interests of employers to ensure workers can access treatment at the earliest time possible. With all employers this means ensuring workers are given time off (exempt from any sickness absence triggers) to attend doctor, hospital and other health or disability related appointments and to recover/recuperate after operations or other treatments. With some employers it could mean making priority treatment referrals. For more advice and guidance on tackling the underlying causes of work related ill-health go to the UNISON website (see further reading below).

“Fit for work service” Q&A

In 2013 the UK government published details of its new policy entitled “Fit for work”, in which it announced a number of measures regarding the management of sickness absence. This included a new “fit for work service” which will consist of two elements:

1. A generic health and work advice primarily through a website and also a telephone line available to all employers, employees or GPs
2. An occupational health assessment for employees who have been, or are likely to be, on a period of sickness absence lasting four weeks or more.

The government has also announced it will introduce a tax exemption of up to £500 a year for each employee on medical treatments recommended by the Fit for work service or an employer-arranged occupational health service.

Below are answers to some frequently asked questions you may have about these services.

**Will the service apply to all four countries of the United Kingdom?**

This service will apply to England, Wales and Scotland. No announcements have made (at the time of writing) on whether Northern Ireland will provide a similar service.
Who will provide the Fit for work service?
In England and Wales the service has been contracted out to “Health Management Limited”, a subsidiary of “MAXIMUS”. In Scotland the service will be provided by NHS Scotland, under the label of Working Health Services Scotland (WHSS).

Who is the service aimed at?
It is primarily aimed at workers whose absence spell has already lasted four weeks, although GPs may be allowed to make a referral earlier if they anticipate that a patient will be off for that length of time. Also it is expected that GPs would not refer workers who have been off for four weeks but are expected to return to work imminently. Although this service would appear to be most relevant to employers that do not have an adequate occupational health service (particularly small and medium sized employers), all workers could potentially be referred to it.

Who will refer patients?
Referral will normally be through the GP. In Scotland however referral could also be made by:
1. The patient themselves (by calling 0800 019 2211)
2. Other health professionals
3. Partner organisations such Job Centre Plus, Remploy, housing and social services.

In England and Wales employers will be able to refer but only if the GP has not referred and the employee has been off for more than four consecutive weeks.

Fir for work (see DWP website “Further reading”)

Will referral to the service be compulsory?
The service will remain voluntary for employees to participate in. In England, Wales and Scotland it will ultimately be left to the GP’s judgement to determine whether it is appropriate to refer. However GPs in England and Wales have a guidance to inform their judgement.

What can the worker expect from the referral?
The Fit for work service will provide a “holistic” assessment that looks at non-health and non-work issues as well as those directly related to health at work, along with advice about how they could be supported to return to work. It would consist of an initial telephone based assessment, where a case manager will contact the worker enquiring about their health condition, absence and details about their work. The government envisages that this will be sufficient for 90-95% of cases. However, for the remaining 5-10% a more specialist advice service with an experienced occupational health professional or some other relevant expert will be available. Within two working days of the assessment the worker will receive a “Return to Work Plan” (RtWP) which will with the consent of the worker, be shared with their employer and GP.

Is the consent of the worker required?
Yes, consent of the worker must be obtained at the point of referral to the fit for work service. This service then must ensure that consent is obtained for each point of the process, ie before:
1. the initial assessment takes place
2. the RtWP is with the GP and employer
3. the employer or GP is contacted by the Fit for work service
4. any third party is contacted
5. follow up activity takes place.

Who will the worker be talking to during these assessments?
In Scotland these assessments will be carried out by professionals, employed by WHSS, and with occupational health skills. In England and Wales , although the exact skill mix will be left to the supplier, they will be expected to use appropriate health care professionals such as:
1. occupational physicians
2. occupational health nurses
3. nurses with occupational health experience
4. occupational therapists
5. physiotherapists
6. mental health specialists.
When will this all be rolled out?
The DWP has confirmed that it expects it to be phased in gradually across England and Wales from late 2014. In Scotland roll out of the service has already commenced, and details of it can be found on the WHSS website.

Does UNISON support this service?
UNISON is in favour of any moves that support workers rehabilitation into the workplace after lengthy periods of absence provided they offer genuine support for the worker and identify any workplace adjustments (especially reasonable adjustments required under the Equality Act) at the earliest possible stage.

Employees should not be pressured to return to work before they are fit to do so. The government has listened to some of UNISON’s concerns in particular that:
1. referral to the Fit for work service will not be compulsory
2. the consent of worker will be required at all stages of the process
3. the Fit for work service will be staffed by professionals with the appropriate skills
4. at least some provision has been made to ensure workers have access to the appropriate treatment following the assessment.

UNISON is opposed to the decision of the government to privatise the Fit for work service. We are also worried about whether the new service will get the resources it requires and about the repercussions for staff who exercise their right not to accept a referral to the service. We also have concerns that pressure may be put on GPs in England and Wales to make a referral.

UNISON will continue to scrutinise and monitor how the service is implemented in all three countries where it will apply; including ascertaining whether it is accessible to, and meets the needs of, all groups of workers including those with a disability.

Branches are encouraged to keep the UNISON Centre briefed on their experience of the new system and we will feed this information to the relevant government departments.

What should we advise members who are asked by their GPs if they want to be referred to the service?
If a member is likely to be off sick for four weeks or more and has not already agreed with their employer measures to facilitate their rehabilitation, it is important that they speak with their local safety rep or steward.

As previously stated it will not be compulsory for workers to participate in the service and neither will doctors be compelled to refer patients. When considering whether to agree to a referral to the assessment service a worker would need to consider, in consultation with their safety rep, the impact their decision will have on the support they would receive from both their GP and employer. For example they would need to consider:
1. Whether the GP will provide them with a fit note by way of an explanation for their ongoing work related absence
2. If the GP were to agree to the above, what would be the recommendations contained in the new fit note.

What advice should we give to members prior to their consultation with the Fit for work service?
It is important that members are both honest and constructive in their discussions with the Fit for work service. It is also important they don’t use ambiguous language and vague phrases (such as “I’m feeling fine” or “not too bad”) that could be misinterpreted. They should explain their condition and why it prevents them from working, but also be prepared to explore adjustments that could facilitate a return to work. However, they should not feel compelled to agree a return to work unless they are well enough to do so.
1. Make sure your branch is consulted over any sickness management policy or procedures.

2. Make sure any policy recognises that the key to managing absence is about creating healthy workplaces and supporting rather than punishing those with ill health.

3. Seek a commitment from the highest level of the organisation to ensure its absence procedures are compliant with its equality obligations under law and assist in creating an anti-discriminatory culture. This includes providing the appropriate training for managers.

4. Be proactive in negotiating reasonable adjustments alongside disabled members. These include:
   - policies that differentiate between sickness and disability related absence
   - reduced or altered hours without financial detriment
   - change of duties
   - workplace adaptations
   - working from home
   - no financial detriment where bonus, attendance or performance incentives are made to staff.

5. Ensure members understand how declaring their disability status may assist in negotiating reasonable adjustments.

6. Make sure your employer consults with your branch in deciding how and what information is required when collecting sickness absence records, and shares any data showing trends in sickness absence including accidents at work.

7. Remind your employer to ensure that any “trigger points” are agreed in consultation with trade unions, fair, equality proofed and do not discriminate against disabled workers or any other of the protected characteristics.

8. Seek to ensure that the following are excluded from normal sickness absence procedures (eg trigger points):
   - any disability related absence
   - work related injury or illness
   - pregnancy related absence.

9. Ensure your employer makes adequate provision for time off for:
   - caring for sick family and relatives
   - observance of religious holidays.

10. Make sure your members (especially those who are likely to be off sick for four weeks or more) understand how the government’s return to work service may impact on them and what will happen should they be referred to it.

11. Seek advice from members undergoing referral and after referral under the new return to work system as well as feedback on absence procedures generally.
Further reading

UNISON publications available from the UNISON online catalogue

- Risk Assessment – a guide for UNISON safety reps (stock number 1351)
- Health and safety – a guide for UNISON safety reps (stock number 1684)
- Disability and health and safety: a guide for UNISON safety reps (stock number 3068)
- The ageing workforce: health and safety implications (stock number 3240)
- Gender, safety and health: a guide for UNISON safety reps (stock number 1982)
- Stress at work: a guide for UNISON reps (stock number 1725)
- Bullying at work: UNISON guidelines (stock number 1281)

Other publications and websites

Equality and Human Rights Commission publications (equalityhumanrights.com)

- Religion or belief in the workplace: a guide for employers following recent European Court of Human Rights judgments, 2013 (updated 2014)

TUC publications (tuc.org.uk/)

- Sickness absence and disability discrimination: a trade union negotiator’s guide to the law and good practice, 2013
- Confidentiality and medical records, 2009.

Health and Safety Executive (HSE) (hse.gov.uk/)

- Managing sickness absence and return to work web pages (hse.gov.uk/sicknessabsence)
- Safety Representatives and Safety Committees Regulations 1977 (hse.gov.uk/involvement/1977.htm)

Information on the Fit for work service

- Working Health Service Scotland website healthyworkinglives.com/advice/Legislation-and-policy/work-related-illness-injury/vocational-rehabilitation/working-health-services-scotland
Making sickness absence policies work better for us
Working together to prevent sickness becoming job loss: practical advice for safety and other trade union representatives, HSE.

Ibid – The 2013 report showed that if musculoskeletal injuries and back pain figures were added together combined they would be the leading cause of both long and short term absence.

Common law is law developed by decisions of courts and other legal tribunals, as opposed to statutes developed through parliament.


Bradford score =\( \left( \frac{\text{number of sickness episodes} \times \text{number of sickness episodes}}{\text{total number of days lost through sickness episodes}} \right) \)

The Sainsbury Centre for Mental Health: Mental Health at Work: Developing the business case, 2007: centreformentalhealth.org.uk/pdfs/mental_health_at_work.pdf

nhshealthandwellbeing.org/