

are you ready for the new 'fit notes'?

Guidance note for employers

From 6 April 2010, GP sick notes are being replaced with a new Statement of Fitness for Work, known as 'fit notes'.

These are intended to allow employers to take a much more active role in helping their employees back to work by focusing more on what the individual can do rather than just their incapacity.

It is hoped that employers and employees will be able to have more informed discussions about how a return to work could be facilitated, based on the GPs advice on these new fit notes.

How is the fit note different?

Sick notes are used currently to indicate whether an individual is 'fit for work' or 'not fit for work', depending on the GP's advice. The new fit note will allow GPs to advise that an individual is:

- 'not fit for work' or
- 'may be fit for work'

If the doctor recommends 'may be fit for work' and it is not possible for an employer to facilitate a return to work, the statement will function as if it were a 'not fit for work' statement. An employee will not need to return to their doctor for a new medical statement.

A third option of 'fit for work' was rejected, as the Government acknowledged that it is the employer, in consultation with the employee, who has the knowledge about the employee's role and who is best placed to make the decision as to whether the employee is fit for work. The Government also wanted to reinforce the employer's responsibility to carry out a risk assessment when employees return to work, rather than simply relying on the word of the doctor.



What does 'may be fit for work' mean?

The GP will recommend this when they believe an individual may be able to return to work with some support from their employer.

GPs will be able to indicate on the statement whether the individual may benefit from the following common types of changes:

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

There will also be space on the statement to allow the GP to provide general advice about the impact of an individual's illness or injury and to detail any other options which may be appropriate.

Will the advice on the fit note be binding on employers?

No. The new statement will provide employees and employers with better information and greater flexibility to manage sickness absence by suggesting changes that will assist an earlier return to work. However, in some cases it may not be practical to make the changes necessary to support an individual in an earlier return to work.

Where an employee's condition is covered by the Disability Discrimination Act (DDA), an employer's obligations under this Act remain unchanged.

What happens if a GP's recommendations are not followed?

If it is not practical to follow a GP's recommendations, an employer will have to justify why the adjustments have not been made. A failure to seriously consider a GP's advice to make changes to an individual's duties or workplace may increase the risk of a disability discrimination claim where it is considered that an employer has failed in its duty to make reasonable adjustments under the DDA.

Are there any other changes being introduced?

An addition to the new fit notes, the maximum duration of the initial medical statement is to be reduced from six months to three months, allowing a GP and employer to assess the employee's medical condition at an earlier stage.

What are the implications of these changes?

These changes put far more responsibility on the employer to make the final decision on fitness and what changes can be made to facilitate the employee's return to work.

It continues to be essential for employers to have detailed sickness policies in place which clearly set out trigger dates for action, and for employers to follow those procedures rigorously. A policy which promotes dialogue between the employer and employee, and giving support including, where appropriate, adjustments such as a phased return, will all help the employee to get back to work. Return-to-work interviews have been shown to be one of the most effective interventions in managing sickness absence. Employers may also need to consider a referral to an occupational health specialist, depending on the individual's illness.

The new fit notes are likely to require a cultural shift within many organisations. However, a detailed sickness policy, including training for line managers in implementing that policy, continues to be the most important tool for employers in tackling sickness absence.

Where can I find out more information?

A 'Statement of Fitness for Work, a guide for employers' is available on the Department for Work & Pensions website: www.dwp.gov.uk.

Looking for support on HR and training issues?

Our People Management team can provide helpful practical advice on how to handle both short term and long term sickness absence issues effectively. We can also run in-house training courses for managers to increase their confidence in handling sickness absence issues as well as understand their legal obligations.

For more information on how our People Management team could support you and your business, please visit www.smith.williamson.co.uk/peoplemanagement. Alternatively, you can contact us directly on 0117 376 2076.

For further information:

Contact	Direct line	Office	Email address
Rachel Stone	0117 376 2066	Bristol	rachel.stone@smith.williamson.co.uk
Nicola Mayhew	0117 376 2079	Bristol	nicola.mayhew@smith.williamson.co.uk
Hugh Margesson	0117 376 2042	Bristol	hugh.margesson@smith.williamson.co.uk

Please visit our website for further information:
www.smith.williamson.co.uk

Offices: London, Belfast, Birmingham, Bristol, Dublin, Glasgow, Guildford, Salisbury, Southampton and Worcester.

Smith & Williamson Limited and Smith & Williamson (Bristol) LLP Both entities are regulated by the Institute of Chartered Accountants in England and Wales for a range of investment business activities. Members of Nexia International.