

THE FIT NOTE

Under a new system from 6th April 2010 a doctor can advise an employee that they are:

- unfit for work or
- may be fit for work.

“May be fit for work” will mean that the doctor thinks that the patient’s health condition may allow them to work if they get suitable support from their employer.

The Government’s advice on this can be accessed at www.dwp.gov.uk/fitnote.

It should be noted that the employee can still self-certify for the first 7 days of any absence.

The new doctor’s note – the Statement of Fitness for work

Not fit for work

This means that the doctor has assessed that the employee is not fit to work – this is the same as the old sick note.

May be fit for working taking account of the following advice

The doctor has assessed that the employee’s condition does not necessarily stop them from returning to work – for instance that they can return to work but may not be able to complete all their normal duties or may need an adjustment such as amended working hours.

Suggested ways for a return to work

The doctor may be able to suggest ways of helping an employee get back to work:

- a phased return to work, being a gradual increase in the intensity of work or their working hours
 - altered hours, perhaps being reduced hours or a changed start time
 - amended duties, for example, removing heavy lifting for someone with a back problem
- and/or
- workplace adaptations, for example moving someone to work on the ground floor when they normally have to go up steps

The doctor can also provide written comments on the form offering a more detailed view of the kind of things that may help.

Where an employer does not understand or is unsure as to how to act upon recommendations from a doctor on the Statement then the employer should discuss it with the employee as the employee may have more information. An employer could seek advice from the GP or the employer could decide to seek advice from an occupational health professional. Contact the NTF for details of occupational health advice.

Period of “may be fit for work”

The doctor can state on the form the period that the advice covers – which during the first 6 months of sickness can be up to a maximum of 3 months. If the advice is that it covers a number of days – say 28 days – this will be the calendar period and not 28 working days.

If the employee is able to return to their normal duties either during this period or at the end of the period they do not need to obtain another Statement from their doctor.

Precise dates for the period

- The doctor may do this where the Statement covers a period based on a previous assessment during which a Statement was not issued (for example because the doctor did not have the forms available)
- the statement is for less than 14 days and the doctor does not need to see the employee again or
- the doctor believes it will be helpful to state a specific date for the employee to return to work as part of their recovery

Whether employee needs to see the doctor again

The statement contains provision for the doctor to state whether or not they need to see the employee again.

If the doctor does not need to see the employee again then it would normally be the case that the employee will return to work or their usual duties at the end of the Statement period.

Things to do now

Trainers should review their procedures to decide the “journey of the fit note”, i.e. who needs to see it first, who discusses it with the employee, who will consider and decide upon any adjustments and who else in the business needs to see it, for example, pay roll.

Trainers may wish to amend any sickness absence procedures which they have to ensure that employees know who to give the note to and that it should be handed in as soon as possible.

Employees need to know that they should give their “fit note” to their employer or manager as soon as possible – employee confidentiality should be borne in mind and an employer may decide it is appropriate to cross out details of the medical condition on the fit note before it is given to any managers or pay roll so that the manager only sees the adjustments or restrictions that affect work rather than details of the medical condition.

Employer’s actions on receiving a “may be fit for work” statement

The employer should meet and consult with the employee and see if the changes suggested by the doctor can be made. If the changes can be made then the employer should

- Discuss with the employee and agree what changes are being made
- Agree a return to work date
- Make a note of when the employee should be able to return to normal duties (i.e. at the end of the period on the “fit note”) and agree a date to review this
- It may be appropriate to agree additional review dates
- Discuss effect on pay if applicable
- Discuss effect on RIABS if applicable and employer contact RIABS if appropriate
- Carry out risk assessment if appropriate
- It may be sensible to record any amendments in writing

If the employer cannot provide the support for the employee to return to work, say for example, the employer cannot make the adaptations or adjustments to help a return to work or because there are industry or sector guidelines or regulations that the doctor may not be aware of, then the employer should use the Statement as if the doctor has advised “not fit for work”. The employee does not need to return to the doctor for a new statement to confirm this. It may be appropriate to agree a date to review the situation depending on why the employer cannot make the adaptations or adjustments.

Trainers will need to be aware that ignoring a GP’s recommendations or failing to properly consider them could lead to a claim for constructive and/or unfair dismissal, personal injury and disability discrimination.

Returning to normal duties

The employee should be able to return to normal duties at the end of the period of adjustments referred to on the “fit note” unless the doctor has stated that he wishes to see the employee again.

If at the end of the “fit note” period the employee does not feel able to return to their normal duties, the employee should go back to the doctor for further advice.

Risk assessment

The employer will need to consider whether a revised workplace risk assessment based on the evidence from the doctor is required and to keep it under review. See www.hse.gov.uk/risk/fivesteps.htm. It should usually be fairly obvious what an employee can or cannot do but where there is uncertainty the employer may wish to discuss this with an occupational health specialist.

The employer should also consult with the employee – for example if an employee has had stress or anxiety the doctor may advise that the employee can return to work but should avoid stressful situations. In this case, it would be appropriate for the employer to ask the employee what it is about the job that the employee finds stressful rather than relying on the employer’s or manager’s own assessment of what is stressful.

Insurance

An employer’s liability insurance should not prevent employees who may be fit for work from returning – if an individual trainer has any concern on this, then they should contact their insurer. It is though important that a risk assessment is carried out, see above.

Disability Discrimination Act

Under the Disability Discrimination Act, it is unlawful not to make any reasonable adjustment that may enable a disabled person to return to work or to continue working. This must be borne in mind where a doctor has made recommendations and where the employer considers himself unable to make workplace adjustments and the person may be protected under the DDA. Employers in this situation should contact the NTF or other adviser for advice. .

Information on the DDA on the NTF employment guide and also from www.dwp.gov.uk/employer/disability-discrimination-act

Employers must not rely on the contents of the fit note for deciding whether a person should be dismissed as incapable of work where there is a disability discrimination issue. Employers considering such action need to make more enquiries and obtain a detailed medical report and follow the correct procedures as set out in the NTF employment manual. Refer to the NTF manual and contact the NTF office for advice.

Employee wishing to return to work before the end of a “not fit for work statement”.

Where an employee has decided that they are able to return before the end of a Statement period where a doctor has advised that they are not fit for work, then it is up to the employer to agree with the employee that it is appropriate for them to return to work. The employer does not need to wait until the end of the Statement period for them to do so. The employer must do a risk assessment and should record that in writing.

It should be noted that the new form does not include an option for doctors to advise someone that they are fully fit for work. If any employer feels that they need a medical opinion stating that an employee is fit to carry out their role safely, then the employer will need to arrange that privately on a paid basis with a GP or with an occupational health specialist.

Occupational health specialist

A doctor may recommend or the employer may decide that it is appropriate for the employee to see an occupational health specialist.

Contact the NTF for assistance.

Pay and SSP

Phased return from sickness or adjusted duties

Where SSP only payable –

This will be when an employee has less than 6 months service or after a qualifying employee has used up their entitlement to normal wages whilst off sick. It is for the employer and employee to agree how the employee will be paid – whether it will be normal pay or whether the employee will just be paid for the hours worked. This should be agreed and recorded in writing.

Where employee is entitled to normal wages when off ill –

Logically the employee should be paid their normal wages for the reduced hours or reduced period as otherwise there is little incentive for the employee to return to work. It is important that employers manage this appropriately.

Where there is an entitlement to RIABS -

In the event of an employee being issued with a "May be fit for work" note by their GP, RIABS will respond in one of two ways:

1) If the employer is unable to adapt work duties and hours, then RIABS will accept the claim for weekly benefits as being for Temporary Total Disablement, and payment will be made in full subject to all other qualifying criteria .

2) If the employer is able to adapt work duties and hours, but this results in a reduction of the employee's net weekly wage, RIABS will pay the difference between pre accident and post accident net wage. Again, this is subject to qualifying criteria.

This applies both to new claims, and ongoing claims where the employee is recovering and the doctor has changed the type of note issued.

It is essential that the claims managers, SLS Crawford, are kept fully advised on claims where persons are working but at reduced capacity to ensure that benefit payments are adjusted accordingly

March 2010

Flow chart explaining process to follow when receiving a
“May be Fit For Work Statement”



Discuss the advice on the statement with the employee



The employer and employee should consider the advice on the statement and how it the
job and the workplace



The employer should consider the comments from the doctor and any other action that
could help a return to work



Discuss the options with the employee



Where a return to work is possible



- Agree a return to work date
- Agree any workplace amendments
- Agree a date to review
- Make a note of when employee should be able to revert to normal duties
- It may be sensible to record any amendments in writing
- Discuss effect on pay
- Discuss effect on RIABS
- Carry out risk assessment if appropriate



Where a return to work is not possible



- Monitor and review as agreed
- The employer and the employee should agree a review date or a return to work date.
- The employer should pay sick pay as
per the contractual terms and/or
SSP rules
- Ensure RIABS claim submitted where appropriate

