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fit notes

The Social Security (Medical Evidence) and the Statutory Sick Pay (Medical Evidence) (Amendment) Regulations 2010 bring into force a new Statement of Fitness for Work (the statement) – or so-called ‘fit note’ – which is due to replace the existing ‘sick note’ from 6 April 2010. This guide summarises the new statement and potential implications for employers.

background

The scheme was suggested by Dame Carol Black in her report ‘Working for a healthier tomorrow’ in 2008. After consultation on draft regulations in 2009, the Government’s response was published in January 2010. It confirmed implementation as 6 April despite concerns that this would not allow time for stakeholders to familiarise themselves with the new statement. It pledged that an evaluation of the new statement will be undertaken and published in 2012/13.

guidance

Guidance for individuals, employers and healthcare professionals is now available at www.dwp.gov.uk/fitnote/. The employer’s guide (the guidance), which has been made available through Business Link, is at www.dwp.gov.uk/docs/fitnote-employer-guide.pdf. This includes a sample copy of the statement. Employers may also be interested to see the guidance on fit notes issued by the TUC: <http://www.tuc.org.uk/extras/fitnote.pdf>

The Government has pledged that a new occupational health adviceline will be available for all employers with up to 249 employees from 1 April 2010.

form of the statement

The statement now only has two options for the doctor to tick:

- ‘You are not fit for work’
- ‘You may be fit for work taking account of the following advice’

There then follows a tick-box list of common changes which could be made to an employee’s work environment or job role to help facilitate a return to work: ‘If available, and with your employer’s agreement you may benefit from: a phased return to work/altered hours/amended duties/workplace adaptations’. There is then space for ‘comments, including functional effects of your condition(s)’. The doctor also has to specify whether and when he will need to see the employee again to reassess fitness for work. Doctors will be able to issue a statement as a result of a telephone consultation or a report by another healthcare professional.

‘not fit for work’ and ‘may be fit for work’ tick boxes

The ‘fit for work’ option was removed as doctors were felt not to have the appropriate knowledge about individuals’ roles and the risks involved to be able to assess this – the Government response to the consultation specifies ‘In all cases it is the employer’s responsibility to carry out a risk assessment when an employee returns to work to ensure there is minimal risk to the employee and others in the workplace’. A ‘fit for work’ statement is apparently not needed for Employer’s Liability Compulsory Insurance reasons – but each employer should check with their insurer.

The statement is not binding on the employer. It is designed to initiate discussion with the employee. The employer should consider the doctor's advice in the context of any industry or sector-specific safety guidelines or regulations that the doctor may not be aware of. If an employer cannot facilitate a change or adjustment, the statement is evidence that the employee cannot carry out their current role and there will be no need to revisit the GP for a revised statement. If the employer can offer changes to support the return to work and the employee refuses, the guidance suggests consulting an occupational health specialist.

common changes tick boxes and comments section

Controversially the doctor is under no obligation to go into any detail about what activities the employee can carry out at work. Guidance to GPs encourages them to give general advice which the employer should interpret into specifics.

The comments box would provide a place for recommending an occupational health assessment where appropriate – generally where it is felt that work itself is contributing to the condition or the issues are more complex.

The Government states that in most cases adaptations suggested will be temporary – with the doctor giving a length of time, or a date range, during which the changes would apply. After this it can be assumed that the employee can resume normal duties (although the employer would presumably still be responsible for assessing any risk), unless the doctor issues a further statement.

duration of statement

The maximum duration of the statement has been reduced from six months to three months during the first six months of a health condition.

issues raised by the new statement

Several issues are raised by the new statement, for example:

- GPs have to rely on the employee's version of the nature of their job and their employer
- there will be wide variation between GPs as to the amount of information and help they give and time available to discuss in more detail with the employer
- disputes with employees are likely to arise as to what changes may or ought to be made by the employer. For example, an employee may agree with a GP's suggestion to reduce high pressure work, but may disagree with the employer about how many or which duties are removed.
- if an employee unreasonably refuses changes suggested by the GP and offered by the employer, should the employer consider stopping the payment of SSP, or at the very least any company sick pay?

What are the key action points for employers?

- Manage the expectations of employees by changing sickness absence policies – for example, making clear that the contents of the statement are not binding on the employer.
- Be clear who should consider and implement any recommendations and how disagreements will be managed.
- Ensure that each statement is given proper consideration and the reasons for any decision are properly recorded.
- Amend company sick pay policies and employment contracts: how will a phased or part-time return to work be treated? What happens to company sick pay if an employee is not willing to accept changes made by the employer at the GP's suggestion?
- Remember that an employer's duty to make reasonable adjustments for disabled employees under the Disability Discrimination Act 1995 are not changed. Complying with a GP's suggestions on a statement does not mean that the duty has been fulfilled.

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