



What are fit notes?

From 6 April 2010 fit notes replace sick notes. To see a sample fit note follow this link http://www.direct.gov.uk/en/NI1/Newsroom/DG_184645 and scroll down the page.

With the previous medical statement, doctors described an individual's condition and indicated whether or not they were fit for work. The Statement of Fitness for Work ('Fit Note') is relevant to all employees in England, Northern Ireland, Scotland and Wales. It aims to provide more useful information on how your employee's condition affects what they do and how they might be able to return to work. A doctor may give a 'may be fit for work' statement if they think that your employee's health condition may allow them to work - as long as you give the appropriate support. A doctor may be able to suggest ways of helping an employee get back to work which might mean discussing: a phased return to work; altered hours; amended duties; and/or, workplace adaptations. The doctor will also provide general details of the functional effect of the individual's condition.

What is staying the same?

- **the form can still be used as evidence for why an employee cannot work due to an illness or injury;**
- **the Fit Note is still not required until after the 7th calendar day of sickness;**
- **the information on the form is still advice to your employee. It is not binding on you;**
- **the requirements for the payment of Statutory Sick Pay have not changed; and**
- **employer's obligations under the Disability Discrimination Act 1995 have not changed.**

The guidance from the Department for Work and Pensions states that, where a doctor has stated that an employee 'may be fit for work taking account of the following advice', if it is not possible for the employer to provide the support for the employee to return to work, the employer and employee should use the Fit Note as if the doctor had advised 'not fit for work'.

The guidance also suggests that when an employer receives a 'may be fit for work' statement they should do the following:

1. **Discuss the advice on the statement with the employee.**
2. **Consider the advice on the statement and how it affects the job and the workplace.**
3. **Consider the functional comment, any of the return to work tick boxes, and any other action that could help a return to work.**
4. **Discuss the options with the employee.**
5. **If a return to work is possible: agree a return to work date; agree any workplace amendments; agree a date to review; and monitor and review as agreed.**
6. **If a return to work is not possible then agree the next review date or return to work date and pay sick pay as contractual terms and/or Statutory Sick Pay rules.**

It may be that employers will want to consider amending their policies on sickness absence in light of this.

Fit Notes could potentially increase conflict between employers and employees over the workplace changes that may need to be made for partially fit employees returning to work. GPs will need to make decisions about partial fitness to return to work without proper knowledge of what an employee's job entails. It seems inherently unreasonable for an employer to be expected to incur the expense of workplace adaptations for someone with a short-term acute illness.

Another concern is the potential for disputes to arise from the difference between employer's responses to fit note requirements and their obligations to make workplace adjustments under current disability discrimination laws. It is important that employer's remain aware that, irrespective of what is stated on the Fit Note, if an employee has a disability under the Disability Discrimination Act 1995, the employer has a duty to make reasonable adjustments for the employee's benefit. In such cases, a doctor's recommendation on a Fit Note may amount to a reasonable adjustment that the employer is under a duty to make under disability discrimination law.

The scheme will be reviewed in 2012/2013 to see if it is working.

For further information regarding Fit Notes or for a review of your contracts of employment and policies and procedures relating to sickness absence, please contact **Elizabeth Judson** on **0115 9 100 200** or e-mail enquiries@actons.co.uk.