

MANAGING ABSENCE

Introduction

Absence causes difficulties both for the person who is absent and for the organisation. For small organisations in particular, where there are limited resources to cover and cope with the direct and indirect costs of an absence, it can be very disruptive. Absence places extra strain on the people who are present and can lead to mistakes and delays, lower productivity, increased costs and impact on service. It can cause stress for the manager and for other members of the team. If the absence is seen as being unjustified it can cause resentment amongst other staff and a loss of respect for a manager who is seen to be tolerating it.

For the person who is absent it can lead to a sense of isolation, contributing to depression and lack of self-esteem. In some cases, it can cause loss of income.

Key points

- Tackle absence problems before they get out of hand.
- Record and monitor absence rates – identify patterns of absence and gather information on common causes.
- Address causes where possible.
- Have an absence management policy and ensure that it is widely understood and applied.
- Set and communicate trigger mechanisms for review of attendance.
- Establish reporting procedures and ensure these are adhered to.
- Always hold return-to-work interviews and discuss reasons for absence.
- Treat absence relating to an underlying medical condition differently from absence not related to an underlying medical condition.
- Keep in touch with employees who are off work for any length of time.
- Manage non-genuine absence through the disciplinary procedure.
- Remember that it is possible to dismiss for genuine absence, provided all relevant factors are taken into account and appropriate procedures are followed.
- Be aware of specific legal requirements in relation to pregnant employees and those with disabilities.
- Ensure that managers are aware of their responsibilities in relation to managing absence and that they have the necessary support and training to manage absence effectively.
- While policies and procedures are important, a positive and supportive work environment with effective health and safety management is also an important factor in preventing excessive absence.

Recording and monitoring absence rates

Monitoring and measuring absence is a key part of managing it. This allows the company to identify any trends, such as a higher than average number of sick days, or particular causes for absences and to target any actions appropriately.

Ensure that:

- absence is being fully and accurately captured and recorded;
- absence is categorised appropriately so that information is available on different types of absence, such as agreed absence, short-term and long-term;
- absence can be analysed according to cause e.g. stress, cold and flu, bad back; and
- absence is managed consistently and there are consistent triggers in place which prompt action.

Patterns of absence

Effective measuring and monitoring of absence rates should highlight any particular patterns both across the organisation and in relation to specific individuals.

The type(s) of illness that someone complains of and the **reasons provided for absence** should be monitored in order to uncover whether there is a link between the absences. Bear in mind that a number of absences due to an underlying illness may be due to a disability which would legally require reasonable adjustments (see the later paragraphs on disability).

Employers should also monitor **when employees are absent**, particularly if there is a **recurring absence issue**. Those who take off Fridays may be starting the weekend early while those who take off on a Monday may be recovering after the weekend. If the behaviour is persistent it should be investigated via the Company's disciplinary policy and addressed accordingly (see the later paragraph on non-genuine absence).

Causes of absence

Employees may be absent from work for a variety of reasons, including genuine health problems, caring responsibilities or personal problems and lack of motivation.

Health problems can be physical or mental and can result in both short and long-term absence.

Minor illnesses (such as colds, flu, stomach upsets, headaches and migraines) are by far the most common cause of **short-term absence**. Musculoskeletal injuries, back pain and stress are the next most common causes of short-term absence. The most common causes of **long-term absence** are stress, acute medical conditions (for example stroke, heart attack and cancer), mental ill-health, musculoskeletal injuries and back pain.

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Musculoskeletal injuries and back pain are particularly common for manual workers while stress is more common for non-manual workers.

Stress-related illness is certainly rising in the UK with a large number of organisations reporting a rise in mental health problems such as anxiety and depression among employees. Job related factors such as rising workloads, organisational changes and job insecurity all contribute to increased levels of stress. Non-work factors such as family and relationship problems, and financial issues also have an impact on stress levels.

With excessive stress linked to the development of mental health issues, it is important to recognise when mild stress, which can have a positive effect on performance, becomes a problem which may lead to time off work.

Recurring medical conditions such as asthma, angina and allergies are one of the top causes of short-term absence, but can also lead to longer periods off.

Home and family responsibilities remain among the top causes of short-term absence for many employers. With demographic changes leading to an older workforce that also includes more women, there is an increasing proportion of employees with caring responsibilities for both children and older relatives. Often this absence is masked as sick leave since many employees see it as more acceptable to take time off 'sick' than request time off for family reasons. For the employer, this simply means that it is more difficult to plan for people's absences effectively.

Lack of motivation to come to work is usually characterised by an above average number of short-term absences with a range of temporary causes.

Where common causes are identified, take action to address them. For example, appropriate and flexible working arrangements can help to reduce stress and also 'illegitimate absence'.

Access to counselling services and employee assistance programmes can also help reduce stress.

Health screening, promoting and encouraging healthy eating and exercise can be cost effective measures to improve employee health, wellbeing and morale.

Dealing with absence

All employers should have an up to date **Absence Management Policy**, which should provide for:

- confirmation in respect of contact on the first day of sickness;
- the procedure for self-certification;
- the requirement for Fit Notes and what is expected of employees in this regard;
- procedures for keeping in touch with employees who are absent;
- any entitlement to enhanced sickness pay which is over and above current statutory provisions;
- how the organisation may assist in co-ordinating and facilitating an employee's return to work following periods of longer absence;
- managing absence as a capability issue (i.e. for dealing with absences caused by an underlying medical condition);
- managing absence as a conduct issue (i.e. for dealing with absences not related to an underlying medical condition); and
- a reference to the disciplinary procedure, should it need to be invoked.

The policy may also outline trigger points when attendance will be reviewed. In any case it is considered good practice to make employees aware of the level of absence which will require further investigation.

Trigger mechanisms to review attendance

In order to control absence it is important to set a standard in relation to the level of absence regarded as acceptable. This might be the average number of days lost per employee per year or it might be a measure such as the Bradford Factor.

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The Lost Time Rate is the percentage of total work time available which has been lost to absence.

Calculated as;

Total absence (hours or days) in the period measured.

Possible total hours or days that could be worked in the period.

Examples: 12 days' absence in a possible
260 work day period X 100 = 4.61%

or

75 days' absence in a possible
260 work day period X 100 = 28.85%

The Bradford Factor is based on the following formula:

$BF = S * S * D$ (S = number of instances of absence;
D = number of days absent)

The scores are generally calculated over a 52 week period. Higher scores can be a reason for concern and further investigation. Higher scores are generally representative of a number of short-term absences.

Example: An employee who was absent 12 times for a total of 13 days would be calculated as: $12 * 12 * 13 = 1872$;
Two absences of 5 days and 6 days would look like:
 $2 * 2 * 11 = 44$

It is important to communicate to people that action will be taken once absence reaches a certain level.

However, it is also important to be sensitive to individual circumstances. The trigger should be used as a prompt to discuss the issue with the employee and to investigate the reasons for a particular pattern of absence rather than automatically leading into a disciplinary process. This is particularly important where the employee may have an underlying medical condition. If the employee has an underlying medical condition, which has caused the absences, the employer must carefully consider whether or not the employee may be 'disabled' for the purposes of the Disability Discrimination Act 1995. Unless disability is very obvious, medical evidence will often be required. If the employee is disabled, the employer will need to tread carefully. Just because a non-disabled employee would be dismissed for the same level of sick leave, does not mean that the disabled employee can also be dismissed. The employer must show that the dismissal is justified for a material and substantial reason.

Justifying such a dismissal will involve taking medical advice as to whether the absences are likely to continue or improve, and considering what reasonable adjustments could be made to the job or the working environment to enable the employee to continue working.

Reporting procedures

It is important that people adhere to the organisation's absence reporting procedures. This means that the employee needs to call personally and speak directly to their manager. The manager needs to know why the person is absent and how they should deal with absence. If the employee does not call themselves, the manager should call them at the first opportunity to find out why they are absent. This applies even if something serious such as a bereavement has occurred. It is appropriate in this case for the manager to call to offer support and to tell the employee not to be concerned about work.

If the absence is not genuine, communicating with the employee while they are absent helps to reinforce the fact that the absence has been noticed and that the employer is monitoring the situation. The same approach should be adopted regardless of whether the employer thinks the absence is genuine or not. The manager should simply ask about the reason for the absence and the likely date of return, taking care not to accuse the employee of anything or give the impression that they suspect the absence is not genuine.

Employers should ensure they hold records for sickness absence separate from those relating to non sickness absence i.e. dependant's leave, maternity leave, etc.

See a sample Sickness Absence Notification and Sick Pay Procedure in Annex A of the sample contract in Section 3 (Appendix 3A).

Statement of Fitness for Work – 'Fit Notes'

Employees absent for more than 7 days should provide their employer with a Statement of Fitness for Work certificate, often referred to as a Fit Note. The Fit Note will state whether someone is **unfit for work** or whether they **may be fit for work**.

Fit Notes can be handwritten or printed, but must always be signed by a registered; medical practitioner; nurse; occupational therapist; pharmacist or physiotherapist. If they are printed, the bar-code can be scanned, using a 2D matrix scanner so that it can be added to your sickness records. This also confirms that the Fit Note is genuine.

The employee's Fit Note will say how long they will not be fit for work, and whether the signee needs to assess fitness again at the end of the specified period.

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Fit Notes cannot be issued during the first 7 calendar days of sickness absence. Employees can self-certify for this time. There is a template self-certification form available on the forms section of the HMRC website.

If the person is **unfit for work**, the Fit Note will state this and will also state whether the employee is expected to be fit for work at the end of their Fit Note or whether he or she is likely to need a new Fit Note when their current one expires i.e. whether they will require assessment again at the end of the specified period.

The employee can come back to work at any time, even if this is before their Fit Note expires. They do not need to go back to the registered professional first. The Fit Note should be used as evidence for Sick Pay Procedures.

The advice in the Fit Note is about the employee's fitness for work in general, and not specifically about their current job. If a Fit Note states that an employee **may be fit for work**, this means that they may be fit for some work but not necessarily their current job. This is because, while the employee may not be 100% fit for the full range of duties, they may be able to undertake some work, perhaps with some adjustments to help their return. The Fit Note will not tell the employer what changes to make, but will provide advice about how the employee's health affects what they can do at work and may also provide suggestions about how they may benefit, for example by agreeing a phased return to work, or amended duties etc. The benefit to the employee is that appropriate work can support their recovery and help them maintain their wellbeing. For the employer, supporting someone with a health condition to come back to work can save money and minimise disruption. Often, a few simple and / or low-cost changes are all that are required to help someone with a health condition come back to work earlier. Bear in mind that Access to Work (NI) can help employees with a disability or health condition. This includes paying towards equipment or support. Possible changes or adjustments include:

- A phased return to work: a gradual increase in work duties or hours;
- Altered hours: changing their work times or total hours;
- Amended duties: changing their work duties;
- Workplace adaptations: changing aspects of the work;
- Changing to a different job or location;
- Changes to work equipment;
- Reduced or flexible hours;
- Adjustments to work premises;
- Giving some of their tasks to somebody else;
- Providing training or additional supervision;
- Providing a reader or interpreter;
- Working from home;

- Voice-activated software;
- Arranging a mentor or work buddy;
- Working in a team instead of by themselves (or vice versa).

The employer should discuss the Fit Note with the employee to see if it is possible to agree any changes to help them come back to work. The employer is not obliged to make any changes.

It may be helpful to put any changes you agree down in writing, so that everyone is clear on what has been agreed. In general, any changes should last at least until the Fit Note expires although this will depend on the advice in the Fit Note and discussions with the employee.

If the Fit Note states that the employee may be fit for work but changes/adjustments can't be agreed, the Fit Note should be used as evidence for sick pay procedures.

The Fit Note belongs to the employee and they should keep the original. The employer should take a copy for their records.

If the employee's medical professional thinks they are fit for work, they will not be issued with a Fit Note i.e. a signing off line is not required.

Sick pay

All employees are eligible for Statutory Sick Pay (SSP) if they have been ill for at least 4 days in a row, including non-working days, and earn above the specified weekly threshold.

Many employers provide occupational sick pay in addition to SSP. Some provide this benefit to all employees, others to some employees depending on their level in the organisation or the nature of their role.

There is considerable variation in how long organisations provide occupational sick pay to an employee who is on long-term sick leave.

This ranges from paying the full rate for 1 to 3 weeks to paying full pay to employees on long-term sick leave up to 30 weeks. Some then continue to pay a reduced rate for a further number of weeks. Further information on Sick Pay is available on the www.nibusinessinfo.co.uk/content/understanding-statutory-sick-pay and www.gov.uk/employers-sick-pay.

Short-term absence

Short-term absence is generally categorised as up to four weeks. This kind of absence can be particularly disruptive for business since it is usually unplanned and it can be difficult to arrange cover at short notice.

Many employees will have an occasional day off when they are ill but when an employee is off frequently the reasons for the absence need to be investigated.

In order to deal with short-term absence:

1. Hold a return-to-work interview to reassess/discuss each specific absence (see later information on return-to-work interviews).
2. Hold an absence review meeting to discuss the overall pattern of attendance, establish the cause and agree action (see later information on absence review meetings).
3. Seek a medical opinion if there is an underlying medical problem. The employee will need to give their consent to this (see later information on medical reports).
4. Absence in relation to disability will be carefully considered and if required, a reasonable adjustment may be made. This may mean providing special equipment or changes to hours or job content. Where reasonable adjustments can be made, or should have been made previously, they should be made before taking disciplinary action against a disabled employee. Employers should seek further advice on their legal obligations in relation to disabled employees.
5. Determine appropriate action, based on all information available. This may mean implementing procedures to dismiss an employee on the grounds of capability (health) if the information suggests that the employee is unlikely to be able to meet the requirements of the business to attend regularly. It may also mean a dismissal on the grounds of misconduct, if there is no underlying health issue. In this case, the process should include warnings, the opportunity to improve attendance, written notification of meetings in advance and the right to be accompanied at meetings. The employee should also be notified of their right of appeal.

Long-term absence

Any absence which exceeds 28 days or 4 weeks is generally considered long-term.

For small businesses an absence of even a couple of weeks can have a major impact, particularly if the individual is in a key role. It is important to balance the needs of the business with support for the individual, to plan for cover during the absence and to consider the options if the employee is unable to return.

In the first instance, employers should work with employees to help them return to work. By doing so you will:

- Retain valued staff and avoid unnecessary recruitment and training costs;
- Reduce unnecessary overheads (ie. sick pay costs);
- Avoid discriminating against disabled employees;
- Improve and maintain good employee relations.

In order to manage long-term absence an employer should take the steps outlined below.

1. Regularly communicate and consult with the employee

Regular communication with the person who is absent is critical. This should continue for the duration of the absence. This lets the person know that their contribution at work is important and that they are missed and this can help to avoid feelings of isolation and depression which can cause the absence to last longer than it otherwise would.

The employer and employee should agree how and when to communicate during the course of the absence. The employee should keep the employer informed during these discussions as to their current prognosis and when they may be able to return to work. With this information, the employer will best be able to decide on a return-to-work plan and on whether they need additional medical information to proceed. The employer should assess the situation regularly throughout the course of the absence, by getting all the facts and keeping the person informed of his or her position. However, employers should avoid overbearing or intrusive contact, or any other conduct that could cause distress such as to amount to harassment. It can be helpful to agree the nature and frequency of contact with the employee.

2. Seek a detailed medical opinion

To get a true and full picture of the employee's state of health and possible return dates, the employer should get a detailed medical opinion as to whether the employee is able to carry out the duties of the contract of employment. This should be from the employee's own doctor first, and then if necessary (e.g. if the original report is vague or unhelpful) from a company doctor or an independent occupational health specialist.

Where reports conflict and an employer relies on one, there should be good reasons for doing so. If the employee is seeing a specialist consultant, the opinion may be extremely important. There may be times when it would be advisable for the employee to see a specialist, for example, where a doctor's report suggests this course of action.

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Before contacting a medical practitioner for an opinion, employers should carefully consider the type of relevant information they are likely to need and what the practitioner needs to know to be able to provide a meaningful response. See the section below on medical assessment and consent and Appendices 19B, C and D.

3. Consider how to help the employee return to work

The ultimate goal of long-term absence intervention is to help the employee return to the workplace. The optimum timescale for encouraging an employee back to work (and avoiding many compounding health problems) is 4 to 6 weeks.

For employees a return to work can be very beneficial since it can increase self-respect, self-esteem, mental wellbeing and social inclusion as well as financial stability and independence, provided it is timely and well planned. Line managers play a crucial part in the return-to-work process and in the health and wellbeing of their employees, so it is vitally important that they be helped to manage the return-to-work process effectively.

The return-to-work plan may involve moving the employee to another (less strenuous) job where possible or making reasonable adjustments to the employee's workplace or work day. The medical practitioner may suggest some of these adjustments, including a phased return to work. Employers need to be aware of any obligations under the Disability Discrimination Act when deciding on return-to-work strategies.

Some examples of reasonable adjustments might be:

- a phased return to work starting with part-time working and building up;
- changing the individual's working hours;
- assistance with transport to and from work;
- looking at aspects of the job that the person finds particularly stressful and rearranging responsibilities;
- allocating some of an employee's duties to another colleague and adjusting the content of the job;
- allowing the employee greater control over how they plan and manage their time and workload;
- offering the option of working at home for some of the time;
- allowing time off for attending therapeutic sessions, treatment, assessment and/or rehabilitation;
- changing shift patterns or exploring different work options such as part-time, job-share, flexible working;

- review and implementation of adjustments to the physical work environment e.g. moving away from a busy corridor, allowing a person to use headphones to block out distracting noises; and
- identifying training needs and providing support to develop required skills.

Most adjustments are simple, inexpensive and need only be temporary. Some mental health conditions can be episodic and so it may be better to agree adjustments when they are needed rather than agreeing one or more specific adjustments that will apply all the time. Remember:

- do not make promises that cannot be kept. Be realistic;
- if you not sure what will help someone, ask them; and
- review the adjustments regularly.

Employers who are considering making changes to an employee's work may seek advice from Access to Work, a government scheme that works with disabled people and employers to work out what changes are needed so the disabled person can do their job. They may also be able to provide some money to pay for the changes. Access to Work (www.gov.uk/access-to-work) may be able to provide an assessment of the employee's needs at work, and help with things like equipment, adapting premises or a support worker. Access to Work may be accessed through your local Job Centre.

In any case, it is important to plan the return to work to ensure that the employee has as much support as possible to enable a smooth transition.

4. Redeployment/Dismissal

There may be cases when a doctor is unable to state when an employee might be able to return to work or when there is little possibility of a return in the short-term. An employer is not required to keep an employee's position open indefinitely if he or she is no longer fully capable, competent or available to undertake the duties attached to the role.

Once the employer knows an employee's medical position, the employer must decide how long it is possible to wait for the person to return to work and to assess options as to how he or she can meet the needs of the business.

The employer is not expected to approach the problem as a medical one. The decision as to what to do is based on the organisation's needs. However, any decision must always be reasonable and the employer should treat the ill employee sensitively at all times.

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The employee should be given fair notice that his or her dismissal for capability is being considered and the employer should engage/consult with the employee to consider what reasonable adjustments could be taken and what alternative roles could be offered to facilitate the employee's return prior to any decision being made. Even if the employee is not suffering from a disability it is best practice to consider this to help avoid an unfair dismissal claim.

The decision to dismiss should be a last resort once all other options have been considered. Before reaching this decision the employer should consider:

- The medical opinion of the employee's own GP, or a GP appointed by the employer or of an occupational health specialist;
- The real effects of the absence on the business, for example, the difficulty in completing work or the amount of disruption caused by the absence;
- The length of time the company can wait for the employee to return without the absence having a major effect on the business;
- The nature of the illness;
- Alternatives to dismissal and any 'reasonable adjustments' which could be expected under the Disability Discrimination Act 1995, if relevant and appropriate;
- Any measures which could help the person return to work;
- How long the employee has worked for the organisation; and
- The availability of a replacement worker.

If it is not possible to make reasonable adjustments in the individual case, and the business cannot sustain the absence the employer should proceed to implement procedures to dismiss the employee on grounds of capability, adhering to the statutory dismissal procedures. Failing to follow a fair procedure before dismissing the employee could lead to an **unfair dismissal** claim.

The employer should arrange an initial formal meeting either at home or at a mutually agreeable location with the employee, by writing to them in advance and informing the employee of their right to be accompanied. Any relevant documents such as absence summary information, any medical reports already received should be supplied to the employee in advance. This meeting should focus on the employee's current state of health, the likely date of return and any possible reasonable adjustments. If appropriate, the employee should be made aware at this stage of the possible consequence of continued absence. Notes should be kept of the meeting and a letter should be sent confirming the issues discussed and any agreed actions.

If absence continues and the decision to dismiss is confirmed, the employer needs to ensure that the statutory 3 step procedure is followed:

1. The employer must write to the employee to inform them that dismissal is being considered, and to arrange a meeting to discuss the issue.
2. At this meeting, the employee should be given the opportunity to present his or her case. This could include the following:
 - The employee's current state of health (and, in particular, whether the employee has a 'disability' as defined by the Disability Discrimination Act);
 - The chances of recovery in the short, medium and long-term;
 - Possible return dates and any help or adjustment the employer could provide.

The employee has the right to be accompanied at this meeting.

After the meeting, the employer must inform the employee of their decision and notify the employee of the right to appeal against the decision if they are not satisfied with it.

3. The employee should be informed of their right of appeal. If the employee informs the employer of their wish to appeal, the employer must invite the employee to attend a further meeting. After the appeal meeting, the employer must inform the employee of their final decision.

Any dismissal should also be with the relevant notice. (See Section 18 for further details on dismissal.)

When following any procedure in relation to employee incapacity, it is essential to ensure that accurate and legible records are kept of all meetings and correspondence.

Alternatives to Dismissal

In certain circumstances, an employee may be entitled to early retirement on grounds of ill health. This will depend on the terms of any company occupational pension scheme. They may also be entitled to state benefits.

Use of the Disciplinary Procedure to deal with absence as a conduct issue

Where there is no underlying medical condition causing the absence due to illness the employer will use the disciplinary procedure to deal with the matter as a conduct issue.

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Likewise, if there is evidence that the employee has reported sick when they were not actually sick, this evidence may be used as part of an investigation into alleged misconduct. However, the employer should be careful to ensure that any response is appropriate to the evidence provided and that the approach is consistent with other similar incidents within the company.

It can often be difficult to prove that an employee was not genuinely ill and therefore it is important for employers to carry out a thorough investigation to ascertain the facts and gather as much evidence as possible. For example, employers should obtain statements from other employees, or copies of any incriminating posts recording on social networking sites. If there is a pattern of suspicious absences, the employer could ask the employee to see an Occupational Health Professional or request consent for their GP to provide a medical report.

Upon their return to work, an investigation meeting between the employer and employee should be held in order to discuss the reason for their absence and also to give them the opportunity to explain their actions. Employers need to be aware of any long-term conditions that an employee may suffer from and give consideration to the possibility that the employee was genuinely unable to attend work but was not prevented from carrying out other activities.

For example if an employee suffers from depression and was seen out shopping as she felt this helped her to deal with her illness, but genuinely felt unable to attend work, it may not be appropriate to take any formal action. To discipline in these circumstances, could expose the employer to a claim of disability discrimination.

Following a full and thorough investigation, should the employer feel that there is a case to answer, consideration needs to be given as to how best to deal with the situation. This will often depend on the individual circumstances and the employee response to the situation.

Where an employee has self-certificated and has taken sufficient time off work to qualify for sick pay, and the employer has proof that they were not genuinely sick and entitled to it, this may amount to an act of gross misconduct for fraudulently claiming sick pay. In this case, the disciplinary procedure should be followed. This will include carrying out a full and thorough investigation, giving the employee the opportunity to respond to any allegations and to be accompanied at any disciplinary meetings. It is also preferable that the person who carried out the investigation does not chair the disciplinary hearing, if this is possible. (See Section 18 for further information.)

Pregnancy Related Illness

Employment legislation makes it automatically unfair to dismiss or discriminate against an employee if the reason for the dismissal/discrimination is related to pregnancy. This can include pregnancy related illnesses such as morning sickness, backache, miscarriage and post-natal illnesses. Pregnancy related illnesses should be held as a separate record and should never, for example, be included in the count for the purpose of meeting trigger points etc. Employers must be aware that dismissal or detrimental treatment are illegal during the period from conception to the end of statutory maternity leave - otherwise known as the 'protected period'. Employers who are considering dismissing a pregnant employee may wish to take legal advice or consult the Labour Relations Agency (www.lra.org.uk)

Disability Discrimination Legislation

The Disability Discrimination Act 1995 bans disability discrimination against disabled job seekers and employees. It is crucial to keep it in mind when managing disability-related absences.

A person is disabled if they have:

- cancer, multiple sclerosis or HIV infection; or
- any other physical or mental impairment that has a substantial and long-term adverse effect on their ability to carry out normal day-to-day activities.

Disability discrimination can arise in a number of ways but the ones that are most likely to occur when managing an employee's disability-related absences are:

- failing to comply with the reasonable adjustment duty (see previous guidance in this section); and
- handling the procedure without enough sensitivity so that it might give rise to disability-related harassment e.g. making insensitive comments like 'pull yourself together' to an employee with a mental health illness.

The most important consideration will always be the reasonable adjustment duty. For further guidance on this, contact the Equality Commission who produce a 'Disability Code of Practice for Employers'. (www.equalityni.org)

When employers are deciding whether an adjustment is reasonable they can take into account several things, including the cost of making an adjustment and the size of their business. If an employer is considering adjustments for someone who is already in the job, they can also take into account the employee's skills and experience and the length of time they have worked there.

Stress/mental health

Stress and mental health problems are common causes of sickness absence particularly long-term sickness. Mental ill-health can range from feeling 'a bit down' to common disorders such as anxiety and depression and, in limited cases, to severe mental illnesses such as bipolar disorder or schizophrenia.

Research shows an increase in mental health issues in recent years and in fact suggests that it is likely that one in four of us will suffer mental health problems during our lives. However, despite this fact, very few employers have preventative measures in place and many do not know how to deal with mental health issues effectively. Due to the perceived stigma around mental illness many employees are also reluctant to admit to mental health problems.

For these and other reasons mental health problems can be very difficult to diagnose. They may be caused by stress, by bullying or by depression brought on by a combination of factors affecting an employee at work and at home. Employers should ensure that steps have been taken to assess and act upon any stress related risks to employee's health. Managers should be alert to any possible signs of mental ill-health such as:

- an increase in unexplained absences or sick leave;
- an uncharacteristic drop in the quality of someone's work;
- starting to turn up to work late;
- failing to cope with the volume of work;
- stopping taking part in work social occasions;
- claiming lack of energy and tiredness;
- poor performance or timekeeping;
- poor decision-making; or
- losing their temper easily when asked to do something, uncommunicative or moody behaviour.

The best initial approach is to have a quiet word with the employee. It may be that something at home is troubling them and some understanding and patience are all that is required.

Some other practical measures will include monitoring workloads, making changes to the physical environment and helping the employee to access a suitable counselling service.

Ensuring an open, supportive culture where employees can talk about issues freely can help prevent problems and also help with early identification of any issues which do arise.

If the employee is absent or returning from sickness absence, follow the same procedures as with any absence:

- keep in touch while they are away;
- hold a return-to-work interview on their first day back; and
- check on how they are coping and monitor their behaviour and performance, offering support when necessary.

Mental ill-health, if an employee experiences it, or is likely to experience it, for sufficiently long enough (i.e. at least 12 months) and if it is sufficiently severe, can be deemed to be a disability for the purposes of the Disability Discrimination Act. Many conditions are likely to satisfy this test, including depression, anxiety, schizophrenia and bipolar disorder.

As such, any employee who is disabled as a result of mental illness will have rights under the act, including the right to have reasonable adjustment made for them. (See previous guidance.)

Recent case law also makes it clear that employers are expected to take a proactive role in dealing with **work-related stress** and must consider the appropriate response in relation to the individual employee. Giving the employee paid leave and seeking a medical report is recommended as a minimum. Employers should act upon the recommendation of any report even if it means reducing hours, providing flexible working, providing counselling or authorising extended leave. It is important that employees' personnel records are accurate and up to date otherwise the employer may not appreciate the severity or multitude of an employee's complaints of work related stress.

Sources of support

The HSENI (www.hseni.gov.uk) and charities such as Action Mental Health, Inspire and Mindwise can provide advice and support to help local employers manage mental health at work and raise awareness of mental illnesses. The ACAS Advisory booklet 'Promoting Positive Mental Health at Work' also provides very useful advice (www.acas.org.uk). Signing up to the Equality Commission's Mental Health Charter will provide a framework and guidance to help you promote good mental health in your workplace (www.equalityni.org/mentalhealthcharter).

The Public Health Agency provides employers with hands-on support and guidance in managing health and wellbeing at work. See their guide for further information (www.publichealth.hscni.net/publications/health-and-wellbeing-work-resource-guide) More information on funded workplace health and wellbeing support for employers is available at www.nibusinessinfo.co.uk/content/support-if-you-employ-someone-disability

Procedures to assist in the management of absence

The Return-to-Work Interview

Return-to-Work interviews are generally acknowledged to be one of the most effective means of managing absence. They provide a mechanism to show support for people who have been ill and plan for a smooth return to work and also help to deter non-genuine absences. They also help to identify any underlying health issues which are causing absences and enable managers to put measures in place to help workers avoid taking time off in the future.

A Return-to-Work Interview should take place for every person after every absence, regardless of the length of the absence. Consistent adherence to the procedures will help to avoid any claim of discrimination or unfairness.

The Return-to-Work Interview should take place in private within an hour or so of the return to work.

The interview should take the following format:

1. Welcome the employee back

Welcome them back, tell them they were missed and check that they are well enough to be at work, update them on any news or events which occurred while they were absent.

2. Discuss the absence

Ask about the reasons for the absence and listen to what the person has to say, asking questions, if necessary, to clarify understanding.

Avoid challenging the reasons for the absence but ensure that the reason for the absence is clear and that all relevant information has been provided.

If the employee has been absent for less than seven days, you could also give the employee an 'Employee's statement of sickness' form to complete at this stage.

Let the person know how their work has been handled in their absence and that they were missed, without trying to make them feel guilty.

3. Discuss the attendance record

Inform the employee of the number of days and number of occasions they have been absent and how this compares to the company target or benchmark. The purpose of this discussion is not to make the employee feel bad but rather to discuss objective information about their attendance.

Again, individual circumstances should be taken into account in order to avoid causing undue stress to an employee who may have had one instance of illness or bad luck.

However, if absence levels are above the target and this is a cause for concern then it may be appropriate to have a separate Absence Review Meeting. See below.

The rest of the Return-to-Work Interview should focus on what is required for a smooth return to work.

Notes should be kept of the Return-to-Work Interview meeting.

A format for recording the Return-to-Work Interview is attached at Appendix 19A.

The Absence Review Meeting

This is a separate informal meeting to review the individual's **overall attendance record** when the overall level of absence is giving cause for concern.

This meeting should be held a day or so after the last Return-to-Work Interview to ensure that it is clear that this is not about one particular absence but about the overall level of attendance. This should be stated at the beginning of the meeting.

In the case of genuine reasons for absence the causes will be clear and the meeting can focus on discussing ways in which they can be overcome or accommodated. If the cause is not genuine illness, the interest taken by the manager in the absences will cause the individual concerned to think carefully before taking more time off.

The aim of the meeting is to discuss the fact that this individual has a higher level of absence than other people and to explore the possible reasons for this and take action to address these.

It is useful to ask the individual for their thoughts on why their absence level is higher than that of others and to ask any follow up questions to ensure a clear understanding of the reasons for the absence.

Once the reason is clear, then it may be possible to take action to address this. There may be factors at work which are contributing to illness and it may be possible to make changes to address these. For example, if a manager's behaviour is causing stress to the employee, training could be provided for the manager. The employee may have caring responsibilities which require staying at home to look after a child or an elderly relative and it may be possible to agree a flexible working arrangement to facilitate this.

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On the other hand, the needs of the business may mean that this is not possible on a permanent basis but could be considered on a temporary basis. However if this also is not possible then the employee will need to take responsibility for resolving the issue.

If there is no clear reason for the absence it may be worth informing the person that you will need to seek further medical information to determine whether there is an underlying cause. See further information below.

Depending on the level of absence, the reason and whether there has been a previous absence review meeting, it may be appropriate at this stage to make the person aware that if attendance does not improve, it may be necessary to move to more formal handling, which could include action under the disciplinary procedure i.e. where absence has been identified as a conduct issue which could ultimately lead to dismissal. See Section 18 for further information on dismissal.

Medical assessment and consent

When deciding what action to take when absence levels are causing concern, it is useful to obtain a professional medical opinion. This can be achieved by seeking a report from the individual's GP or by referring the person to a company nominated doctor. In difficult or sensitive cases (e.g. where an employee is suffering from work related stress or during a grievance / disciplinary process) an Occupational Health Professional may be well placed to provide an objective view of the situation and recommend an effective solution which is satisfactory for both the employee and the employer.

When seeking consent from the employee the employer should ensure that it explains the nature, purpose and extent of the medical examination required. A sample letter to an employee seeking consent and a consent form and summary of the employee's rights to send with the letter are attached at Appendices 19B, C and D respectively.

If the company contract of employment contains a clause stating that the company reserves the right to refer the individual to a company nominated doctor or Occupational Health Specialist, the company can proceed to arrange this. If the individual refuses to comply in this case they would be in breach of contract. This would be grounds for disciplinary action.

If the contract does not contain such a clause, the company will need to obtain the permission of the individual and he or she does not have to give this.

Similarly, the employer must obtain the permission of the individual in writing in order to see a report from the individual's GP and he or she does not have to give this. If permission is refused the employer should ensure that the individual is made aware of the possible consequences of refusal. This may include disciplinary proceedings if there is evidence that the absence is not genuine, or proceedings to dismiss the employee on grounds of capability. If an employer has done all it reasonably can to obtain available medical information and if the individual continues to withhold consent for either an examination or information to be provided the employer may make a decision on the best way to proceed based on the information available.

An employee can provide limited consent if they are concerned that a report might reveal information about past illnesses which are not relevant to their current condition. However, even limited information may still help the employer to make a decision on the likelihood of the employee achieving satisfactory attendance in the future.

If provided, the written permission must then be passed to the relevant doctor. Legislation specifies that the individual has up to 21 days to see any report from the GP and to make representations to the doctor about any aspect of it with which the individual disagrees. This can mean a delay in the process.

When requesting a medical opinion, it is vital that all relevant information is provided and that the reason for the request is clear. The information should contain any **factual** information about the employee's absence to date, the Company process to date, minutes from meetings or impressions from individuals within the Company. A full and accurate job description is also important. This is particularly relevant if the employee has to lift weights, (it is important to know the amount of weights lifted, frequency), whether they have to climb, drive a forklift truck, etc. Describe the job and what is involved, rather than just stating the job title. Ask the medical practitioner to recommend any adjustments which might help the individual return to work. Include the original Access to Medical Reports consent form with the employee's signature. Ask specific questions and give full information. Also remember that letters to occupational health consultants are discloseable in any proceedings.

A sample letter to a GP is provided at Appendix 19E and a letter to an Occupational Health Specialist is provided at Appendix 19F.

SECTION 19

The GP, or Occupational Health Specialist will be able to independently review the condition, treatment, the likely duration of absence and the long-term effect on capability in relation to job performance and attendance at work.

The medical practitioner may recommend one of the following:

- The individual is, in their opinion, fit to return to work.
- There is the potential to offer alternative employment or reduced hours if this would enable the employee to return to work and meets the operational needs of the business.
- The employee is not fit to return to work.

If the GP's report is vague or unsatisfactory, it is quite acceptable to contact the GP to ask for further clarification.

Accrual of annual leave during sickness absence and carry over to the next holiday year

The current legal position in relation to accrual of annual leave during sickness absence is as follows:

- Employees can request holiday whilst on sick leave;
- The entitlement to statutory holiday leave accrues during all periods of sickness absence, even where the employee has been absent for the whole holiday year;
- Employees who had been absent for the entirety of that holiday year can carry forward holiday entitlement into the next year;
- The statutory right for employees who have been unable to take annual leave as a result of sickness to carry forward the unused holiday to the next holiday year is restricted to the 4 weeks of annual leave prescribed by the EU Working Time Directive and under current EU case law this must be used within 18 months of the leave year in which it accrued. This means that employers are free to specify their own contractual rules governing employees' holiday entitlements beyond the first 4 weeks as regards how these interact with periods of sickness absence;
- Employees whose employment is terminated must be paid for untaken leave even if they have been on sick leave for the entire year.

Sickness that prevents an employee from taking holiday

Where an employee falls sick (or is injured) shortly before a period of planned holiday, the employer must permit the employee, on request, to reschedule the holiday to another time once he or she has recovered.

Sickness during annual leave

Where a worker becomes incapacitated during a period of paid annual leave, he or she will be entitled subsequently to take paid annual leave equivalent to the period of sickness.

Further information on managing absence may also be found on the websites of the following organisations:

The Labour Relations Agency: www.lra.org.uk

The Health and Safety Executive for Northern Ireland: www.hseni.gov.uk

The Equality Commission for Northern Ireland: www.equalityni.org

NI Business Info: www.nibusinessinfo.co.uk

The CIPD: www.cipd.co.uk

RETURN-TO-WORK INTERVIEW FORMAT

Interview to be conducted in private, on the day of return to work

1. In advance of the interview, check the following information:

- Length of employee's absence;
- First date of employee's absence;
- Date of employee's return to work;
- Reason employee gave for absence;
- Notification procedures followed?;
- GP consulted?;
- Any recommendations on a "Fit Note" as to a phased return to work or potential changes to the employee's hours, duties or to the working environment?;
- Any indication that factors at work may have caused or contributed to the absence?

2. Welcome the employee back.

3. Ask how they are and let them know their contribution was missed.

4. Ask about the cause of the absence and ensure any relevant documentation is provided by the employee, e.g. a self-certified form or a Fit Note. Do not question the validity of the absence unless there is clear evidence that the individual was not sick.

5. Listen to the responses. Ask for more detail if necessary.

6. Discuss how the work was handled in the employee's absence.

7. Inform the employee if there is an **issue with their general attendance record** and schedule an Absence Review Meeting if necessary.

8. Give the employee the opportunity to raise any issues which may be causing him/her concern.

9. Check whether the employee has any disability which may require particular consideration under the Disability Discrimination Act.

10. Offer help and support if necessary.

11. Take a note of any agreed actions and follow up on these after the meeting.

APPENDIX 19B

EXAMPLE LETTER TO EMPLOYEE SEEKING CONSENT FOR A MEDICAL REPORT FROM EMPLOYEE'S GP

Employer name

Address

Employee name

Address

Medical practitioner address

Date

Dear _____

*(a) Thank you for replying to my letter dated _____.

*(b) I was disappointed that you did not reply to my letter dated _____.

*(c) As agreed at our meeting on _____ I need to obtain certain information regarding your current medical condition.

In order to assess your current medical condition I need to seek information from your own Doctor.

In accordance with Part III of the Access to Personal Files and Medical Reports (NI) Order 1991 I cannot ask your Doctor to supply a report on your state of health without your written consent.

I am also required to inform you of your rights under the Order before you give your consent. A statement of your rights under the Order is attached.

I would be grateful if you would give consent to me to approach your Doctor for a medical report by completing the consent form attached.

Yours sincerely

(Employer/Manager name)

*Delete as appropriate

Employers Guidance - Enclose the consent form (appendix 19C) and the 'Statement of Rights' (appendix 19D).

APPENDIX 19C

CONSENT FORM FOR ACCESS TO MEDICAL REPORTS

Name in full _____ Date of Birth _____

Address

Name and Address of GP

I have received a statement of my rights under Part III of the Access to Personal Files and Medical Reports (NI) Order 1991 and I hereby consent to _____ (Employer/Manager) obtaining a report on my state of health and fitness for employment from the medical practitioner named above.

I *do/*do not require access to the report before it is sent to _____
(Employer/Manager)

*(delete as necessary)

Signed _____ (Employee) _____ Date

SUMMARY OF YOUR RIGHTS UNDER THE ORDER

1. A report cannot be obtained from your GP unless you consent in writing.
2. You may when giving your consent in writing ask to have access to the report before it is sent to your employer by your GP.
3. If you elect to have access to the report you must contact the GP with 21 days of the report being requested, to make arrangements for access. If you fail to do this you will not have a right to see the report before it is sent to the employer. However you will still have the right to see the report on written request to your GP within 6 months after it is sent.
4. You should make contact with the GP in writing. You can either ask to see the report at the GP's surgery or ask to be sent a copy of it. If you ask for a copy the GP may charge a reasonable fee.
5. Even if you do not ask for access to the report at the time you give your consent to the report being obtained, you can request access (in writing at any time within 21 days after the report is requested by the employer). You must address your request to your GP.
6. If you exercise your right to access to the report before it is sent your employer, you have the following additional rights:
 - a) You can request that the report be amended (but the GP is not obliged to agree to this request).
 - b) You can require a statement of your views to be attached to the report (if your amendments are not agreed).
 - c) You can withdraw consent to the report being sent. In the latter case the GP will simply inform the employer that your consent has been withdrawn.

You must exercise your rights under paragraph 6 in writing within 21 days of seeing the report. If you fail to do so, the GP will assume you do not object to the report being sent to the employer.

NOTE: The GP is not obliged to show you any parts of the report which he/she considers might cause serious harm to your physical or mental health or that of others, or which would reveal information about a third party, or the identity of a third party who has supplied information to your GP about your health, unless the third party agrees. The GP will inform you if any of these restrictions applies.

APPENDIX 19E

REQUEST TO EMPLOYEE'S GP FOR MEDICAL ASSESSMENT

Doctor's Name _____

Address _____

Date _____

PLEASE ACKNOWLEDGE RECEIPT OF THIS LETTER IF THERE IS LIKELY TO BE ANY DELAY IN REPLYING

Dear _____

Re:

Name in full _____ Date of birth _____

Address _____

To administer Statutory Sick Pay, and the Company's Sick Pay Scheme, and plan the work in the department, it would be helpful to have a report on your patient, who is our employee.

His/her work as a _____ has the following major features:

*Management responsibility for _____

*Seated/standing/mobile _____

*Light/medium/heavy effort required _____

*Day/shift/night work _____

*Clerical/secretarial duties _____

*HGV/medium/private driver _____

*Other _____

* Delete as appropriate

The attendance record for the past year is summarised as:

Total days _____

This month _____

Previous months _____

I have your patient's permission to enquire:

What is the likely date of return to work?

Will there be any disability at that time?

How long is it likely to last?

Is there any underlying medical reason for this attendance record?

Is he/she likely to be able to render regular and efficient service in the future?

In accordance with Part III of the Access to Personal Files and Medical Reports (NI) Order 1991 your patient has been advised of his/her rights under the Order and has consented in writing to you supplying a report. A copy of the consent supplied by him/her is enclosed and this indicates that he/she does*/does not* require access to your report before it is submitted to us.

Is there any specific recommendation you wish to make about him/her which would help in finding him/her an alternative job, if that is necessary, and if there is an opportunity for redeployment or any reasonable adjustment that we could make to enable him/her to do his/her job?

Thank you for your assistance in this matter.

Yours sincerely

APPENDIX 19F

SAMPLE LETTER TO AN OCCUPATIONAL HEALTH DOCTOR REQUESTING OPINION ON FITNESS FOR WORK

Name

Address

Date

Dear _____

Thank you for agreeing to meet with our employee _____ on _____ at _____.

Mr/Mrs/Miss/ Ms _____ is employed as (include details of employee's position, and employment/attendance history, medical history and present health).

As an employer, our employee's health is our priority and we would wish to receive your views on the following:

For clarity the position of _____ entails _____

For clarity the position of _____ entails _____ (if an alternative exists)

1. Do you consider that _____ is fit to return to work?
2. If so, in the capacity of _____ or _____ or neither?
3. If not, do you consider that _____ has a disability under the Disability Discrimination Act 1995?
4. Are reasonable adjustments necessary for any return to work?
5. How long do you envisage _____ will be off work?

If you require anything further, please do not hesitate to contact me.

Please find attached the employee's medical records/GP report.

Yours sincerely
