



Managing Short Term *Absence*



Staff members will inevitably be off sick from time to time. Most employees feel bad about letting down their colleagues and most employers are reasonably sympathetic about their staff's welfare.

However, some employees will take advantage of any uncertainty about the rules and how they should be applied. In all cases it is important that employers are aware of the key rules provided for in the relevant legislation and principles that the law has developed through the courts and tribunals.

Issues concerning absence can be complex. Whilst this information contains general guidance it is not a substitute for legal advice. Please call the helpline for further information.

Employee sickness and injury raises several issues for employers and employees, including the right to sick pay and other benefits, the need for investigations and medical reports, and the impact of issues of unfair dismissal and/or disability discrimination.

The main issues an employer will need to consider when dealing with sick employees include:

- **Entitlement to Statutory Sick Pay (SSP) and/or contractual sick pay, including deciding whether qualifying conditions have been met.**
- **The reason for absence, how long it is going to last and when they will be able to return.**
- **Whether the sickness has been caused by workplace factors**

such as an accident at work or stress.

- **Whether the employee is frequently absent and/ or has an underlying health condition.**
- **Whether any reasonable adjustments may need to be made in the workplace.**
- **Whether any dismissal is appropriate and, if so, ensuring a fair process is followed.**

Pay whilst off sick

An employee when off sick may be entitled to contractual sick pay as detailed in their employment contract. If the contract is silent about this, the employee will be entitled to SSP only, provided they have been absent for more than three days, they have a fit note to confirm their absence and they earn above the relevant threshold. They will not be entitled to any pay during the first three days. A fit note is required for any absence of 7 days or more, including non-working days.

The current rate payable can be found [here](#).

Certifying Absence

Where an employee is absent for longer than seven days they will need to produce a fit note. A fit note can be issued to your employee by a registered nurse, occupational therapist, pharmacist, physiotherapist, or doctor. Employees may now receive their fit note

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digitally via SMS, e-mail, an App or other digital channels and so they may not have a paper copy. A digital fit note will be authorised digitally and so will include the name of the healthcare professional who has issued it.

A fit note will certify the period of time the employee will be absent and may also indicate that they can work with 'amended duties'. Where the "may be fit for work" option is selected, there are tick boxes for the GP to suggest common ways to facilitate a return to work: a phased return, altered hours, amended duties and/or workplace adaptations. This is intended to help discussions between employer and employee about ways of getting the employee back to work. There is also space for further advice or information, including how the employee's condition will affect what they do.

If the employer does not have any such work available, the employee will have to remain absent on sick leave.

Please note this suggestion from a doctor is not to be confused with the issue of 'reasonable adjustments' where an employee may have a long-term disabling condition.

Monitoring Absence

Return to work interviews

Investigations into the reasons for an employee's absence should always be handled sensitively and are best initiated by way of holding a return to work interview. It is up to the employer whether it decides to hold a return to work interview for every absence, no matter how short, or only hold them in cases of longer absence, for example, a week or more.

The purpose of the interview is to be able to keep a record of the reason for absence and to ensure an employee can account for the absence and is aware that the absence is not unnoticed. It is also an opportunity for an employer to identify any patterns for short term illnesses.

An employer's approach to return to work interviews should be applied consistently to ensure that individual members of staff do not feel "singled out" or make allegations that they have been treated in a discriminatory fashion. However, there should be sufficient flexibility so that where a manager wishes to dispense with the requirement for an interview because

the reason for an employee's absence is obvious, was anticipated or unavoidable, is unlikely to recur or lead to any problems at work, they should be able to record this decision.

Absence Management

Some employers use formal absence management systems which calculate levels of absence and send reminders to employees when they reach critical stages. Such systems are usually detailed in a staff handbook and supported/enforced by disciplinary action. Typically, such systems allocate points for periods of absence and when certain prescribed thresholds are reached the scheme will recommend a course of action



Short term absences

What is a short term absence?

A short term absence from work is generally anything up to a week or can last as long as four weeks. Very often it is a few days. Recent reports show the main reason for such absence are minor illnesses such as colds, flu and headaches. Stress and mental health issues also accounted for some absences.

When absence becomes a problem

Most absence issues can be managed without the need for escalating matters so that formal meetings

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and formal warnings become necessary. However, an employer should deal with matters formally when the absence levels present an unacceptable level of disruption to the business. Some employers have sickness absence policies which provide for a trigger point, after which the absence, or series of absences, will be dealt with formally in accordance with the procedure set out in the policy. Even when an employer does not have such a policy in place, it should still hold formal meetings with the employee to establish the reasons for the absence(s) and when the employee is likely to show improved attendance patterns.

Investigating the reason for the absence may involve obtaining medical evidence and consulting with the employee. The steps connected with a first (or further) meeting connected to the formal process are considered below.

Investigate the cause and frequency of the absence

Employers should establish the reason for absence to rule out or deal with any work-related cause or trigger.

Employers should be alert for signs of workplace stress.

Employers may also take time to see if there is an established pattern of short term absence. Examples may include immediately before or after a holiday or weekend, when a colleague is also absent or to coincide with school holidays.



Short-term absence meeting

Where an employee has a series of short-term absences, it can be easy for the employer to overlook the fact that there may be a pattern emerging, so the employer may be slow to realise that the matter needs to be dealt with formally. It is important for the employer to address whether there is an underlying health condition giving rise to the absences and to satisfy itself that the absences are genuine. The employee's absence may not even be health-related: it may relate to a problem with a colleague, a manager or workload. Return to work interviews may help to reveal the problem.

In a first meeting to discuss short-term absence, the employer is likely to want to explore the following issues:

- **The effect of the pattern of absences on the employee's colleagues, department and the employer's business.**
- **The likelihood of continuing absences and the impact they may have.**
- **Whether there are changes to the employee's job or redeployment opportunities that would assist in attendance or reduce the effect on colleagues or on the employer's business.**
- **Whether the employee has a disability and, if so, whether there are any reasonable adjustments that could be made.**

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- **This type of meeting may be formal or informal. The employees does not have the right to be accompanied by a trade union representative or work colleague. Employers should check any staff handbook or documented policy to make sure they are following the correct procedure.**
- **It may be the outcome of such a meeting is a direction that absence levels have to be improved and that failure by the employee to do so may result in more formal meetings and/or disciplinary action. Usually a timescale is provided for any improvement to be achieved and some suggestions for improvement. The Acas Code emphasises, that procedures should be used to encourage employees to improve rather than just as a way of imposing punishment.**

What action is appropriate, will always be a matter of degree, depending on the specific circumstances. For example, employers should examine the reason for any absence during the period given for improvement,

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the likelihood of further absence and the impact of the absence on the employee's department and colleagues.

Employers' actions should also be consistent with their treatment of other staff in similar positions.

Obtaining a medical report from a GP

When a report may be needed

The purpose of obtaining a medical report from an employee's GP is to find out more about the medical condition with which the employee is suffering and which may be responsible for short term absences. For example, an employee may suffer intermittently with back pain resulting in absence and an employer may wish to understand more about the condition to assist with management of the absence. It is not intended to allow full access to the employee's complete medical records.

To obtain the necessary consent the employee needs to sign a form of consent. If the employee does not sign this the doctor will not provide the report.

When the consent has been signed it should be sent with an accompanying letter to the GP. A fee for the report will need to be paid and it may be advisable to enquire about this before making the request, so payment does not cause undue delay.

Once the medical report is prepared by the GP a copy will be sent to the employee and they may even have the right to prevent you from seeing a copy if they choose. The report may form part of further discussions if the employee remains absent or if the doctor cannot provide any certainty as to when they will be able to return to work.

Confidentiality of medical information

Information about a person's health is particularly sensitive and constitutes "special category data" under

data protection legislation. Special category data should be handled fairly and transparently.

The employer should ensure that the employee is clear about the purposes for which the information will be used and to whom it will be disclosed. As a separate but related point, the employer should treat information received about a person's health with sensitivity and should not use it in a way which would breach trust and confidence.

Is the employee suffering with a disability?

It is important for an employer to know if an employee is suffering with a condition which could be classed as a disability under the Equality Act 2010. This is defined as an illness or condition which:

- **is long term – capable of lasting 12 months or more; and**
- **has a significant and negative impact on the employees day to day life.**

This could affect a number of conditions, mental or physical. Cancer, multiple sclerosis and HIV infections are all classed as disabilities from the day they are diagnosed.

Failure to improve short term absences

It may be that an employee persists with frequent short term absences to such an extent that an employer finds the employee increasingly unreliable.

If that is the case the employees attendance should be monitored carefully with return to work interviews being held regularly and for guidance being given on the need to improve attendance levels.

Where an employee fails to improve, without good reason, it can be treated as a matter of misconduct and potentially be subject to disciplinary proceedings. Employers should check the staff handbook to check if this is listed as an example of misconduct.

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