



A FOIL consultation

August 2009

Changes to the current medical statement: the introduction of the 'fit note'

Every year 350,000 people leave work to claim health-related benefits and around 172 million working days are lost in Britain due to sickness absence. The Government believes that more, early work-focussed healthcare and workplace management would enable more people to stay in work, benefitting themselves and society.

The process used by GPs to document their advice on fitness for work, and the forms used, have changed very little since the formation of the NHS. This is despite major changes in the environment in which the advice is given:

- Work is now safer and less physically demanding and more people can work through an illness
- Employers are more flexible and able to make low-cost changes facilitating a return to work. They are also required under legislation to help disabled people back into work.
- Healthcare professionals have recognised the benefits of work even for those who have to limit their activities
- Patients have a right to be consulted on all decisions about their healthcare, including making informed decisions about refraining from work
- The stigma which still attaches to those with mental health problems can be overcome by appropriate advice to employers on working capacity.

All of these factors, together with the need to provide better support to GPs in giving back to work advice to their patients, led to Dame Carol Black, the National Director for Health and Work, recommending to the Government in 2008 that the current 'sick note' medical statement be replaced with a 'fit note' (together with other measures). The aim is to introduce the 'fit note' from April 2010.

Medical statements are prescribed in regulations, both those relating to Statutory Sick Pay paid by an employer and those relating to state benefits paid by Jobcentre Plus. The Government is now consulting on those regulations to obtain feedback on the proposed changes to both as follows:

- Introducing a change in the format of the medical statement to allow doctors to record whether a person is fit or not fit for work, and also allowing the option of "may be fit for some work". Information would be recorded to provide details of the general functional effect of the employee's condition to inform discussions between employer and employee on any changes to the work environment or role which could facilitate an earlier return. Possible changes could include a phased return to work, altered hours, amended duties or workplace adaptations.

The Government asks:

Is it helpful to list on the medical statement common types of changes the employer could make? Are the possible changes listed above sufficient? Should 'the obtaining of an Occupational Health assessment' be added as another possible change an employer could make?

- An employer will not be obliged to make changes to facilitate a return to work. If the employer and the employee cannot reach agreement on changes the employee will be entitled to refrain from work.
- As in many cases a doctor will be able to judge quite accurately when an individual will be fit to return to work there is generally no need for an individual or employer to seek confirmation from a doctor that they are now fit. The Government intends to change the statement to expressly state whether the doctor needs to see the individual again when their current statement expires, which should allow employees to make their own informed decisions about when to return to work without placing needless burdens on doctors. To reinforce this approach the Government is considering removing the option of a medical statement that the individual is fit to return to work. This would remove the practice of employers requiring employees to obtain such a certificate before they return.

The Government asks:

Should medical statements only be issued when the patient is 'not fit for work' or 'may be fit for some work' as outlined above?

Other proposed changes would:

- enable a doctor to use a computer-generated format for medical statements rather than requiring a paper format as at present
- Remove the rule which allows a doctor to record an "unspecified" diagnosis when he cannot find any clinical signs of a condition which prevents the patient from working
- Rationalise the specific forms used at present to make the system more streamlined. (Forms med 4 and 5 would be removed)

The Government asks:

Overall, do you believe that the new rules will achieve the objectives set out by the Government, of reducing sickness absence and supporting people with health conditions to return to work at the earliest opportunity? To that end, should the maximum duration of a medical statement be reduced from six months as at present, to a shorter duration?

FOIL's conclusion

In principle this move should assist defendants by encouraging more thought to be given to a return to work and by providing more information on the medical statement, which should assist in developing rehab and return to work strategies. It remains to be seen how it will work in practice as GPs get to grips with the new system.

Please forward your views on the Government's proposals to Shirley Denyer shirley.denyer@foil.org.uk, by **Friday 14 August 2009**.

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