



## Guide seeks to reassure employers on new fit notes scheme

Fit notes are designed to encourage those off sick to return to work sooner, but several concerns still exist.

The Department for Work and Pensions recently published [guidance](#) for employers on the new “fit notes”. From 6 April, GPs will be able to certify that an employee “may be fit for work taking account of the following advice”, as an alternative to the usual statement that they are “not fit for work” (although this option continues to exist).

Sickness absence cost the UK economy £17.3 billion in 2008, according to recent CIPD figures. The new fit notes are designed to encourage those off sick to return to work sooner. However, some fear the reality may not match the intention. Although 75 per cent of HR professionals in a survey our firm conducted recently thought fit notes were a good idea, only 17 per cent believed they would actually reduce the duration of sickness absence.

Concerns exist around:

### GPs' limited knowledge

Doctors are generally perceived as patients' advocates and, since most are not trained in occupational health and will only hear their patient's version of events, they may have a limited understanding of whether a work adjustment is feasible.

### Potential for conflict

The form makes it clear that phased return-to-work options are subject to the employer's agreement. This may present difficulties where an employee mistakenly believes that the employer must follow the GP's advice. Previously if a GP said someone was unfit for work, employers would not generally contradict this medical opinion. So, explaining to patients that a “may be fit for some work now” assessment is subject to the employer's discretion will involve a change in culture and approach.

### Employer choice

The recently issued [guidance](#) will go some way towards helping employers implement the new system. It explains clearly that the “may be fit for work” option still requires the employer to make a decision (“It's your choice, after discussing the statement with your employee, how to act on the doctor's advice”). The question will often turn, for example, on whether the employer can make the adjustments.

The guide dispels the myth that employees need to be signed as fit to return to work by a doctor and confirms that partially fit employees returning to work will not invalidate an employer's liability insurance.

### Sick pay

The guidance could have been clearer on entitlement to sick pay, a potential problem area. What happens to sick pay, for example, if an employee returns to work on reduced hours, or refuses to agree to the adjustments recommended by both their GP and their employer?

The FAQ section suggests that employers who agree a reduced-hours return to work should consider whether it is cost effective to pay "sick pay for the hours not worked due to illness or injury, even where SSP does not apply". This seems unhelpful, especially when the government is trying to encourage employers to embrace the fit note scheme by reducing their absence costs. There is no legal requirement to pay sick pay as a "top up" measure where an employee returns to work on reduced hours.

Graham Paul, Partner in the Employment Team, London  
Valerie Dougan, Professional Support Lawyer in the Employment Team, Edinburgh

This article first appeared in People Management on 25 March 2010

---

If you would like any further information on this Article or any other Employment issues, please contact

Eilidh Wiseman	<a href="mailto:eilidh.wiseman@dundas-wilson.com">eilidh.wiseman@dundas-wilson.com</a>	+44 (0)131 200 7485
Mandy Laurie	<a href="mailto:mandy.laurie@dundas-wilson.com">mandy.laurie@dundas-wilson.com</a>	+44 (0)131 200 7496
David Walker	<a href="mailto:david.walker@dundas-wilson.com">david.walker@dundas-wilson.com</a>	+44 (0)141 304 6039
Graham Paul	<a href="mailto:graham.paul@dundas-wilson.com">graham.paul@dundas-wilson.com</a>	+44 (0)20 7759 9916
Robert Davies	<a href="mailto:robert.davies@dundas-wilson.com">robert.davies@dundas-wilson.com</a>	+44 (0)20 7759 5790

This Article is correct to the best of our knowledge and belief at the time of going to press. It is however written as a general guide, so it is recommended that specific professional advice is sought before any action is taken.  
We are required by law to protect personal data.

© June 2010, Dundas & Wilson CS LLP and Dundas & Wilson LLP. All rights reserved.

[www.dundas-wilson.com](http://www.dundas-wilson.com)