



Unite the Union response Consultation on Reforming the Medical Statement

Introduction

This response is submitted by Unite the Union. Unite is the UK's largest trade union with 2 million members working in the private and public sectors. The union's members work in a range of industries including manufacturing, food manufacture and distribution, agriculture, financial services, transport, print, media, construction, not for profit sectors, local government, education and the health service.

Summary

Unite agrees that the medical certification system needs to be reformed. We believe that many workers who are recovering from long-term illness or injury may welcome the opportunity for a phased return to work which is not really allowed for in the present system under which certificates are issued on the basis that someone is either too ill to return to work or is completely recovered.

We are pleased to note that the principles underpinning the concept of medical certification of sickness are being retained. Whilst GPs will not necessarily have occupational health training they are still in the best position

Unite wants to ensure that people who are on long-term sick leave or benefits are given support to return to work. Workers need supportive sickness absence policies drawn up in consultation with their trade union, safer workplaces with sufficient staffing to cover for sickness absence, and access to comprehensive occupational health services.

Unite therefore has concerns about proposed changes to the Medical Statement Regulations for these reasons:

- The employee is not central to the process
- GPs are unlikely to have sufficient knowledge of workplace and occupational health issues
- Employers do not have sufficient occupational health support to implement the

- changes
- The changes may achieve the opposite what is intended i.e. an employee's medical condition may re-occur
- The changes are not a substitute for good sickness absence policies

Discussion

1. Unite believes that the essential conditions to reduce sickness absence are:

Prevention of injury and illness, both in the workplace and elsewhere.

Access to treatment, and rehabilitation if appropriate.

Worker-centred return to work policies which support the worker in the transition back to work.

2. Unite believes that much more needs to be done to support those who are off sick to return to work, by employers and the medical authorities. Sickness absence, medical certificates and return to work issues are complex and delicate matters which are unique to each individual but which unfortunately can often be contentious, which is the last thing that should happen in this situation. These proposed reforms do nothing to address this.

3. In some cases Unite agrees that a phased or supported return to work may assist, but conversely in many situations an early return can prevent the worker making a full recovery, or lead to a relapse. Therefore the decision on how to support workers in returning to work should be made after discussion with the employee and an occupational health adviser. The employee must of course be central to the process, and relying on the sick note for this purpose may adversely affect employee's involvement in the process.

4. Workplaces are still unsafe. We note statements made under the heading **Policy Background** (Pages 8-9 of the Consultation Document) and we question the assumptions that are being made. Whilst we would agree that workplaces in Britain have changed significantly in the last few decades – for example many more people have more than one job, there are more agency workers and workplaces are more culturally diverse - we do not agree with the statement that “work has become safer and less physically demanding, and less rigid”. In fact in many cases the reverse is likely to be true. Neither the physical demands – nor the hazards - in the construction industry, for example, have reduced. At the same time, many more people are being asked to work around the clock which may have adverse effects on their health.

By way of illustration, the HSE's website provides these overall current statistics:

Ill health

- ***2.1 million*** people were suffering from an illness they believed was caused or made worse by their current or past work.
- ***1.3 million*** of these cases were suffered by people working during the year, of which 563 000 were new cases.

- *2056 people died of mesothelioma (2006), and thousands more from other occupational cancers and lung diseases.*

Injuries

- *229 workers were killed at work, a rate of 0.8 per 100 000 workers.*
- *136 771 other injuries to employees were reported under RIDDOR, a rate of 517.9 per 100 000 employees.*
- *299 000 reportable injuries occurred, according to the Labour Force Survey, a rate of 1000 per 100 000 workers.*

Working days lost

- *34 million days were lost overall (1.4 days per worker), 28 million due to work-related ill health and 6 million due to workplace injury.*¹

In addition, cutbacks and recession issues are likely to affect adversely workers' safety and health. Redundancies, job loss and plant closure are not just damaging for the workers who lose their jobs; they leave behind an insecure and unhappy group of workers who are more likely to go sick and more likely to develop health problems and this of course also has consequences for productivity.

6. Prevention of injury and ill-health is central, and this should be reflected in the medical certification process.

7. The consultation document makes other (incorrect) assumptions. It assumes that by simply by making changes to the regulations the certification the scheme will then start "working".

8. It will be necessary not only to ensure that GPs receive training in occupational health issues, but also that employers are willing to co-operate.

9. Unite welcomes proposals for occupational health advisors in GPs' surgeries, better training of all doctors, and the development of GPs with an interest in occupational medicine. But Unite believes that this should go further, and urges that a national occupational health service is established in accordance with the EU Framework Directive 89/391. At present it is estimated that less than 20% of workers are covered by any kind of basic occupational health support and only 3% of employers provide access to a comprehensive service.

10. In our experience, good employers see return to work as being more than a medical issue, but rather a joint approach taken by the GP, the HR department, the line manager, the worker and their representative.

11. It is crucial that any review of the medical statement recognises this and appropriate action is taken by Government.

¹ <http://www.hse.gov.uk/statistics/overpic.htm>, extracted 30 July 2009

The proposals

Computer generated medical statements

12. We have no particular objection to the introduction of an electronically generated medical certificate, but we want confirmation that GPs will continue to give paper copies to the patient, and will not send the certificate directly to the employer.

13. The regulations should also be amended to allow GPs to print out more than one copy if necessary to make it easier for employees who have more than one employer.

New Med 3 “May be fit for some work now/Suggesting changes to the workplace or role”

14. Unite is concerned that this may not work well in practice for a number of reasons. We are not convinced that the proposed Med3 form will assist workers who want to return to work early, and may make things worse in many cases.

15. It assumes that the GP is familiar with the patient’s workplace and their work tasks. Whilst GPs are in the unique position of being aware of their patient’s medical history, most GPs are unlikely to have the training, or knowledge of the workplace, to determine whether a person will be able to function at work using the adjustments checklist outlined in the draft form. Nor it is likely that most employers have access to the medical knowledge or advice to enable them to take appropriate action.

16. Unite believes that what is needed is greater access to occupational health services. If the “fitness to work” process involves occupational physicians, the patient and the employer’s occupational health department, the changes being proposed could be a positive development. Unfortunately at present there are only a few hundred occupational physicians and only 3% of employers have access to comprehensive occupational health advice.

17. Employer attitudes: even where an employer does wish to encourage an employee back to work on a supported basis many will have concerns that if the worker is made ill again they may be liable for damages. So it will also be necessary to overcome the perception of employers and insurers that an employee cannot be allowed back to work until they have been “signed back” by a GP.

18. Many employers also express the view that workers will stay off as long as possible. There is no evidence for this and surveys show that the vast majority of workers wish to return to work as soon as they feel able.

19. If the absence lasts for a long time, some workers may lose the confidence to return to work; or, though the physical illness may have receded, depression which often accompanies physical illness may remain. In such situations an employee will need support in returning to work. Often a person is able to work while “ill” and can be encouraged to do so if it is not going to harm their physical or mental health. In addition patients may get depressed or bored being at home and may welcome the opportunity to do light duties.

20. Such issues are delicate and complex and each case is unique. For example recovery periods for the same condition can vary significantly from person to person and in any event this not primarily a medical issue. Much will depend on the arrangements which can be made to support the person including taking into consideration such matters as health and safety arrangements and disability issues and also union support and input as appropriate. In the end the decision on whether the person feels able to return to work on restricted duties is one that only the patient can make after discussion with the employer.

21. State benefits and pay. If the person is receiving benefits and then returns to work on reduced hours, and reduced pay, this can have an effect on their earnings. This is another crucial reason for ensuring that the employee feels that they are in control of the process.

22. Unite is concerned that the proposals have not addressed the relationship between the medical statement and Statutory Sick Pay or employers' sick pay schemes. What are the consequences if someone comes back part time or on considerably reduced duties and reduced pay? Will SSP be payable if a GP says a person is fit for work with adjustments but the employer refuses to make adjustments? These matters need to be addressed before any changes are introduced.

23. Hourly-paid workers on low wages close to the minimum wage are the ones who may feel the greatest effect on earnings and the greatest financial pressure to return to full working hours as quickly as possible, even when this is not appropriate for their circumstances.

24. As we have suggested above, most employers, especially SMEs, will not have the knowledge or support to implement the system in a way which will be in the interests of the worker and in many cases will use the Med 3 to put pressure on the worker to go back before they are ready, stay a short time and then relapse. And promises of support are all too quickly broken.

24. Temporary employees will find it particularly difficult to get back to work if their GP indicates that they may be fit for some work now, but are not fully fit.

25. Unite is also concerned about medical confidentiality. A patient may wish to decline to disclose to their employer anything more than the diagnosis, and may feel anxious about additional information being included on the Med 3 in particular in the section for "comments".

26. The consultation document does not make it clear whether the Med3 is covered by the Access to Medical Reports Act. Even if it is covered then the only right the patient will have is to refuse to pass the form to their employer. But it is a requirement that the patient submit it to their employer if they are to claim SSP after one week's absence. The patient therefore has no control over whether to submit it to the employer or not, unlike other medical reports covered by the Act.

27. Where the person has work-related injury or illness, GP advice to employers

recorded on the Med3 would be helpful. Even though we have noted that many GPs have insufficient training in occupational medicine, it would be helpful if they were at least to indicate a condition may be caused or made worse through work and draw the employer's attention to the fact that they should look at preventive measures to ensure there is no reoccurrence in the patient, and that others in the workplace are not affected.

28. Unite urges that if the Government does review the Med 3 form and it is kept electronically, the form should also require the GP to record the person's job and the name and postcode of the employer. This will provide an invaluable source of statistical information which can be used to help inform prevention work, for example by identifying industry trends, as well as ensuring that the questions are asked.

Responses to consultation questions

Question 1

Do you have any further information, data or analysis which would be useful for improving the quality of the analysis in the attached impact Assessment?

No

Question 2

The Government welcomes views on whether listing common types of changes is helpful; whether those listed are sufficient; and on whether 'Occupational Health assessment' should be added to the revised statement.

Unite has no objection to these proposals but, as stated above, we do not believe that most employers will have access to occupational health provision.

Question 3

Will the changes described in paragraph 40 ensure that the current functions of the special statement - form Med 5 - are accurately incorporated in the revised form Med 3?

Unite has no objection to this proposal.

Question 4: The Government welcomes views on whether medical statements should only be issued when a patient is assessed as 'not fit for work' or 'may be fit for some work'.

There may be situations such a safety critical jobs where employers may be concerned that the worker will not pose a risk to themselves or others where this should remain an option.

Question 5: The Government welcomes views on whether the draft regulations, including the rules, achieve the intentions expressed in the commentary. In particular, bearing in mind the Government's aim of reducing sickness absence and supporting people with health conditions to return to work at the earliest opportunity,

should the maximum duration of a medical statement be less than 6 months? (See Rule 13.)

As indicated above, GP training in occupational health coupled with an availability of occupational advice are essential.

We do not think it is appropriate to specify a maximum duration for a medical statement as clearly individuals' situations will differ.