

NEWS RELEASE

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Employers urged to gear up for fit notes

New Government regulations on sickness absence could benefit small and medium sized businesses who suffer when staff fall ill.

Sarah Pugh, a specialist in employment law, says the replacement of sick notes with fit notes should lead to more flexibility in the relationship between companies and ill or injured staff.

“The Government has now confirmed that from 6 April, 2010 the current system of ‘sick notes’ will be scrapped and replaced by ‘fit notes,’ said Sarah, a partner at Dudley based W.H. Law LLP.

“The new legislation will give more options to get people back into work, and employers’ need to be aware of the changes and consider how they will impact on their HR policies.”

The present format of a doctor's certificate merely obliges General Practitioners (GPs) to give a reason for an employee’s absence and an estimate of how long it is likely to last for. This can leave employers uncertain about whether an employee is fit to return to work.

The new fit note form will ask the doctor to indicate whether a patient is:

- a) unfit for work; or
- b) may be fit for work.

Where a GP decides that an employee may be fit for work, they will give advice on the effects of the patient’s health condition and, if appropriate, suggest appropriate adjustments or adaptations employers can make to help the

Changes may include a phased return to work, alternative hours, amended duties and workplace adaptation. For example, if the patient is suffering from back pain, a GP may propose that they should refrain from lifting heavy objects and that they should be given regular breaks.“

Sarah advised: "Fit notes may be a key development in the way companies manage absence, however, employers will not be obliged to implement the suggested changes – the change will be at the discretion of the employer with the agreement of the employee. The test will be how doctors approach their new responsibilities and whether employees are prepared to accept the employer's decision regarding their fitness to work.

"Where changes cannot be implemented, a revised note will not be necessary and the existing note will be evidence of the employee's inability to work.

"If adjustments cannot be made, you should, for sick pay purposes, consider the doctor's note as though the doctor had declared that the employee was 'not fit for work'. These new regulations do not alter an employer's obligations to pay statutory sick pay and to make reasonable adjustments under the Disability Discrimination Act 1995. Companies may wish to consult a solicitor for a legal opinion on what would be considered reasonable in law."

Employers should also be aware that the new form will not do away with the need to obtain specialist medical reports where it is suspected that an absent employee's condition may amount to a disability or where a conflict of advice arises between a company's doctor and a GP, particularly where an employee is disabled.

A GP may suggest that an employee seeks occupational health advice and you as an employer may yourself consider such advice to be necessary.

To help small businesses (companies with up to 249 employees) the Department of Work and Pensions has, from 1 April 2010, extended a new occupational health advice line to all small businesses in Great Britain, which has yet to be published.

For further advice on all aspects of employment law contact Sarah Pugh at W.H. Law on 01384 216920.

W.H. Law specialises in Workplace and Health and Safety law, providing a holistic service to businesses, focusing primarily on the assessment and management of the risks involved in employing people within a business and providing assistance with litigation where necessary.

A training service is available for managers and personnel officers.

Further information can be found on-line at: <http://www.whlawllp.co.uk/index.htm>