

How to use fit notes effectively

Introduction

The fit note, or 'Statement of fitness for work', is a statement provided by an employee's GP, hospital doctor or, from 1 July 2022, other healthcare professional. Prior to 1 July 2022, only doctors could issue a fit note. From this date, fit notes may also be issued by:

- nurses;
- occupational therapists;
- pharmacists; and
- physiotherapists.

An employee will be given a fit note only if the healthcare professional considers their fitness for work to be impaired. If someone is fit for work, they will not be given a fit note.

The fit note was introduced following research that showed that appropriate work is usually positive for people's physical and mental health, including those who have a health condition.

For many people, work is not just about financial reward; it also helps with confidence, friendships, personal contact and the building of skills and learning.

Suitable work during a period of sickness can support an employee's recovery and help maintain their mental and physical wellbeing.

In most cases, employees do not need to be back to full fitness to return to work. The employee may be able to conduct part of their role for a limited period of time or transfer to other suitable duties while they recover.

How fit notes work

Healthcare professionals can issue a fit note when the employee has been absent from work for more than seven calendar days. During periods of sickness absence of seven calendar days or less, the employer should accept the employee's self-certification.

Employers may, in some circumstances, ask employees for medical evidence from a healthcare professional during the first seven days of sickness absence but, in these circumstances, the healthcare professional can charge a fee for this.

The original fit note should be kept by the employee and a copy taken by the employer for its records. The fit note can state either that an individual 'may be fit for work' considering the healthcare professional's opinion and advice, or that the individual is 'not fit for work'.

When providing advice on the individual's fitness, the healthcare professional should do so on the basis of the individual's general ability to work rather than their ability to work in their actual role. This is because it may be possible for the employer to make some adjustments so that the employee covered by the fit note can carry out some work, either in their current role or in another role, during the recovery period.

On the fit note, to provide the employer with advice on getting the employee back to work, the healthcare professional may tick one or more boxes to indicate the employee may benefit from:

- a phased return to work;
- altered hours;
- amended duties; and/or
- workplace adaptations.

Employers need to be aware that they are responsible for ensuring that any adjustments suggested by the healthcare professional are suitable and do not pose a risk to the employee.

During the first six months of an employee's sickness, the healthcare professional can issue a fit note to cover a maximum of three months. Once the employee has been sick for more than six months with the same illness, the healthcare professional can issue a fit note for an unlimited period of time. The fit note also informs the employer when the healthcare professional's assessment ends and whether the employee needs to see them again on expiry of the fit note.

Long-term absence

In cases of long-term absence, where the fit note states that the employee is "not fit for work" for a period of several months or for an indefinite period, the employer may wish to consider gaining more specific advice via a medical report, which could be from the employee's own GP, another doctor, or an occupational health specialist.

This gives the employer the opportunity to ask specific questions, for example the likely date that the employee will be able to return to work; whether the condition is, in the doctor or specialist's opinion, a disability for the purposes of the Equality Act 2010; and whether there are any specific recommendations that would help the employee return to work.

The doctor or health specialist can then provide advice, taking into consideration the nature of the role in which the employee is working.

The employer needs to use the information provided on both the fit note and the medical report to look at any possible adjustments that can be made to help the employee return to work or to inform any decisions about their potential future capability to return to work.

Implementing a fit note that states an employee is 'not fit for work'

If the fit note states that the employee is 'not fit for work', the employer should make a note of when the fit note expires and whether the healthcare professional needs to see the employee again at this point.

The employer should be aware that the employee can come back to work before the fit note expires and does not need to visit their healthcare professional again to be able to do this.

This is the case even if the fit note states that the employee should revisit the healthcare professional on the expiry of the fit note.

However, the employer should take steps to ensure that the employee is not returning to work before they are ready.

If an employee wishes to return before the expiry of the fit note but the employer is unsure whether this would be appropriate, it could ask the employee to return to their healthcare professional for confirmation.

Implementing a fit note that states an employee 'may be fit to work'

If the fit note states that the employee 'may be fit for work', the employer should discuss the healthcare professional's recommendations with the employee to facilitate a return to work. The employer should ask the employee if there are any changes or adjustments that could be made to their role that would help them return to work.

The employer should decide whether to consult anyone else on potential adjustments, for example involving an occupational health specialist (as this may help the employer gather more detailed information on the effect of the individual's health issues) or the employee's line manager who will understand their role and any adjustments that could be made.

The discussion about making adjustments should be based on the information provided by the healthcare professional on the fit note including any comments made on adaptations that might help. The discussion should also consider the length of time that the employee's health issues are expected to last. Examples of possible adjustments for the employee include:

- a complete change of role or changes to part of the role;
- part-time working or perhaps adjusted hours to avoid rush-hour traffic;
- homeworking; provision of a new chair or desk (home or office);
- extra or increased breaks during the working day; and
- relocation to a ground-floor office or location to avoid stairs.

This list is not exhaustive. Discussions between the employer and the employee should help to identify a solution that is suitable for the specific situation, the workplace, and the employee.

Employees who are disabled within the meaning of the Equality Act 2010

The employer needs to be clear whether the employee's condition means that they may be considered disabled under the Equality Act 2010. If the employee is considered disabled, the employer will be under a legal duty to make reasonable adjustments to the working environment to support the employee's return to work.

The Access to Work scheme is accessible to employers that employ someone with a disability or health condition and can fund or contribute towards the equipment or support required for the employee to work.

The employer should make a record of any adjustments, including how long they are expected to remain in place and a copy should be given to the employee and another retained on the employee's file.

Failure to agree suitable adjustments

The advice from the healthcare professional on a fit note is not legally binding on the employer.

The purpose of the note is to provide the employer with greater flexibility by giving useful information about the employee's abilities. It is the employer's decision, after discussing the note with the employee, what action will be taken as a result of the healthcare professional's suggestions. When deciding what adjustments are suitable, the employer needs to look at all the information available. It should focus on what the employee is currently able to do and what they could potentially do if adjustments and support were made available.

In the event that the employer considers that there are adjustments that it could make to enable the employee to return to work, but the employee does not agree, the employer should first ensure that all relevant information has been disclosed by the employee and seek to understand their objection. Following a discussion with the employee, if it has not already done so, the employer may wish to gather further information by requesting a medical report from the employee's GP, or an occupational health specialist. The request from the employer to the doctor or health specialist should clearly state the suggested adjustments and the employee's concerns about them and ask for their opinion and advice.

If the medical evidence supports the employer's suggested adjustments, but the employee still does not agree, the employer has three options open to it.

1. The employer could decide the employee is 'not fit for work' until the expiry of the fit note or until a time when the employee feels that they are able to return, whichever is sooner.
2. The employer could consider the refusal to return to work with the adjustments in place as unauthorised absence and implement the disciplinary procedure.
3. The employer could look into whether the employee is capable of returning to work in the long term and instigate the capability procedure.

Work-related health issues

In the event that the fit note states that the employee's job may be affecting their health, the employer should consider this carefully. Having a discussion with the employee will allow the employer to gain further information on the aspects of the job that may be negatively impacting on the employee's health and wellbeing.

Data protection

The employer must ensure that it complies with its data protection responsibilities when dealing with information about employees' health. Access to fit notes must be strictly limited to staff for whom it is necessary, and the records must be kept secure.

Information about employees' health falls into the special categories of personal data under the UK General Data Protection Regulation (retained from EU Regulation 2016/679 EU) (UK GDPR). To be able to process this data, the employer must have in place a policy document that explains how it will comply with the principles of the UK GDPR in relation to the special category personal data and that sets out its policies on retention and erasure of the data.