

## Stress and Recession

---

### Article

Author: Helen Brooks, Partner

Date: 2 July 2009

---

Over 13 million working days were lost in Britain alone last year due to stress related absence and this figure is expected to rise as the economy declines. A survey of absence management conducted by the Chartered Institute of Personnel and Development (“CIPD”) in 2008 found stress to be the leading cause of long-term absence in non-manual workers. Nearly a third of organisations responding to that survey reported an increase in stress related absence during 2007. The cost to British business of sickness absence is felt in both financial and human terms; reduced productivity, low morale and poor health. At a time when cost cutting initiatives are high on the agenda, health management strategy is key to the success of any business intent on riding out the recession.

---

### Contents

- Stress at Work – New Guidance
  - “Fit Notes”
- 

### Stress at Work – New Guidance

Recognition of the potential cost savings to be made in this area comes in the form of new guidance for HR teams and line managers. The CIPD, Health and Safety Executive (HSE) and Investors in People have joined forces to launch this new guidance on the management of workplace stress. This follows a research programme (sponsored by these organisations) which set out to identify and develop the management behaviours necessary to manage stress in others. The Guidance (Line Management Behaviour and Stress at Work) highlights four main management competencies which aim to help employers save on both human and business costs. In essence, the guidance encourages Line Managers to be more “stress aware” and to take responsibility for managing stress issues in the workplace.

The HSE has also launched a new website aimed at helping businesses prevent work related stress. The site can be found at [www.hse.gov.uk/stress/index.htm](http://www.hse.gov.uk/stress/index.htm) and offers advice for employers, including guidance and case studies.

### “Fit Notes”

The initiatives outlined above will help to pave the way for the urgent and comprehensive reform of the approach taken to health at work advocated by Dame Carol Black in her report “Working for a healthier tomorrow” published on 17 March 2008. Amongst other things, this report called for a radical new approach to sickness certification. The report recommended that the current paper sick note should be replaced with an electronic certificate system, linked to GP’s computing system. Known as a “fit note”, this would switch the current emphasis from what people cannot do to what they can do. Consultation on “fit notes” was launched by the Government on 28 May this year with a view to implementing the new system in spring 2010. The consultation closes on 19 August.

It is generally acknowledged that the longer an employee is absent from work, the harder it is for them to return, and there is evidence to show that being out of work leads to a decline in physical and mental health. The proposed change in the system of sickness certification is designed to facilitate an earlier, possibly phased, return to work. Currently, a GP must certify either that an employee need not refrain from work or that the employee need refrain from work for a specified period. In contrast, the new “fit notes”

will have three categories of ability to work; “fit for work”, “not fit for work”, and “may be fit for some work now”. When a doctor selects the final category, he or she is asked to describe the functional effects of the employee’s condition and has the option of indicating appropriate arrangements to help the employee back into work, for example, a phased return, altered hours, amended duties, and/or workplace adaptations.

---

**Published**

---

This article was published in the Solicitors Journal on 2 July 2009.

---

The changes have been welcomed by employers and trade unions alike and are seen as representing real progress in tackling long-term sickness absence. However, potential difficulties with the proposals have been identified as follows:

- There is concern that the process may become a dialogue between the GP and the employer, to the exclusion of the employee, thus leading to a deterioration in the situation. This aspect will need to be managed carefully in practice.
- Another concern is that GPs are not (usually) occupational health professionals and so may not have the expertise to make an informed assessment of the employee’s work-related capabilities. In practice, this is likely to lead to an expanded role for occupational health which, in itself, was one of the recommendations made by Dame Carol Black in her report.
- There is a potential for conflict if the doctor and employee disagree about what the employee can do. If the GP assesses the individual as capable of carrying out light duties and the employee refuses, query whether the employer can insist on the modified return to work and take disciplinary action in the face of continued resistance from the employee. This point has not been addressed in the consultation.
- Finally, the new system of electronic “fit notes” will not release the employer from obligations under the Disability Discrimination Act 1995 (“DDA”) because a doctors’ recommendations in a “fit note” will not be binding. However, suggestions made in a “fit note” may amount to reasonable adjustments for the purposes of the DDA.

Whilst clearly a positive step forward, it remains to be seen how successful the “fit note” will be in practice. What is certain, however, is that health issues will continue to present a particular challenge for employers (and hence employment lawyers) while the economy remains in freefall.

---

**More information**

---

Helen Brooks

---

+44 (0)20 7203 5357

---

[helen.brooks@charlesrussell.co.uk](mailto:helen.brooks@charlesrussell.co.uk)

---

This information has been prepared by Charles Russell LLP as a general guide only and does not constitute advice on any specific matter. We recommend that you seek professional advice before taking action. No liability can be accepted by us for any action taken or not taken as a result of this information. Charles Russell LLP is not authorised under the Financial Services and Markets Act 2000 but we are able in certain circumstances to offer a limited range of investment services to clients because we are members of the Law Society. We can provide these investment services if they are an incidental part of the professional services we have been engaged to provide.