

**THE SOCIAL SECURITY (MEDICAL EVIDENCE) AND STATUTORY SICK PAY
(MEDICAL EVIDENCE) (AMENDMENT) REGULATIONS
(NORTHERN IRELAND) 2010**

REGULATORY IMPACT ASSESSMENT

The costs and savings outlined in this Regulatory Impact Assessment are calculated on a Northern Ireland basis unless otherwise stated.

Background

Medical statements or 'sick notes' are issued by doctors to their patients for Statutory Sick Pay and benefit purposes. The existing certificates ask a doctor to indicate whether an individual is or is not fit for work and how long they should remain away from the workplace.

Evidence shows that, in general, work has a positive effect on health while inactivity can worsen physical and mental well-being. With early healthcare and workplace management, people could be helped stay in work making themselves, their families and the communities in which they live better off.

Dame Carol Black's review of the health of the working age population *Working for a healthier tomorrow* recommends that action should be taken to facilitate a revision of the existing medical certificate process to create a 'fit note'. She envisaged that the revised certificate or 'fit note' would act as a vehicle for providing practical advice to both the patient and the employer about how a return to work can be achieved, rather than as a notification to refrain from work in all cases.

The medical statement is the normal method by which employees provide evidence of sickness to employers during absence. From day 8 of a period of incapacity for work an employer can request that an employee provides this evidence of their incapacity for work for Statutory Sick Pay purposes. A similar provision applies for claims to Employment and Support Allowance and Incapacity Benefit.

The medical statement used by GPs to document advice on fitness for work to patients with a health condition has remained largely unchanged since the foundation of the Health Service. This is despite the fact that in the intervening years the environment in which doctors give their advice has changed—

- In general, work has become safer and much less physically demanding, and less rigid, allowing more people with physical problems to work through their illness rather than take time off work.
- Employers are now more flexible and, given the right information about what an individual could be capable of, simple low-cost changes can be made to facilitate an individual's return to work. They are also now obliged to take

account of disability rights legislation to help disabled people back to work and to retain their jobs.

- Leaders of healthcare professions have recognised the positive health benefits of being in work, even for those who have to limit their activities, and their role in assisting patients to work.

Current regulations

Medical statements are prescribed in regulations. There are two sets of regulations: the Social Security (Medical Evidence) Regulations (Northern Ireland) 1976 which relate to state benefits and the Statutory Sick Pay (Medical Evidence) Regulations (Northern Ireland) 1985 which relate to Statutory Sick Pay.

Proposed changes

The proposed changes will amend the format of the medical statement to shift focus onto what individuals can do. This will allow a doctor to consider not only whether a patient is unfit for work but also whether their patient may be able to work with appropriate support if available. Where a doctor states that their patient may be able to work the doctor must provide general information to support this statement. This could include advice about changes that could be made by the employer in agreement with the employee that would assist a return to work.

Currently, there are a number of different medical statement forms and a doctor has to choose which is applicable to their patient's circumstances. These amending regulations incorporate the functionality of these different forms into one new statement. This reduces the number of forms, thus simplifying the process for doctors.

Reason for proposed changes

The objectives of the proposed change are to—

- improve communication between GPs, individuals and employers on what an individual can do, and how and whether an individual's condition can be facilitated in work;
- reduce sickness absence and support people with health conditions to stay in or return to work more quickly; and
- promote the health benefits of work and contribute to creating a new perspective on health and work.

The new medical statement is expected to result in an earlier return to work for some people with resulting improvement generally in health and well-being. This will reduce sickness absence and the numbers of people leaving work to claim health-related benefits such as Employment and Support Allowance.

Options

The following options have been considered—

- Do nothing – retain the current statement, form Med 3. The information provided by healthcare professionals to individuals or employers will remain imperfect, thereby potentially hindering an early return to work and risking longer-term absence or worklessness and reduced productivity.
- Legislative change – amend the current statement to shift focus onto what individuals can do rather than what they cannot do.

Financial Consequences

With the new medical statement it is expected that some individuals will return to work more quickly after a period of sickness absence, resulting in improvements in general health and well-being, with possibly the greatest benefit for individuals with numerous/repeat and/or long sickness absence episodes. United Kingdom-based analysis of medical statements found that 42.9% of medical statements were issued for a sickness period lasting longer than 4 weeks or to patients with 5 or more statements in the year (long duration and/or high frequency); and 37.8% of statements were issued to patients with 2-4 statements in the year and duration of 4 weeks or less (medium frequency and low/medium duration)¹. The medical statements most likely to be affected by the change are all those in the long duration and/or high frequency category and half of the medical statements in the medium frequency and low/medium duration category. This represents 62% of all medical statements in a given year that are most likely to be affected by the change.

For the purpose of estimating costs and benefits, 3 scenarios have been used that assume an additional 3%, 5%, and 10% of the likely affected cases return to work early for one extra week and that individuals produce just 50% of their normal output that week. Based on medical statements issued in Northern Ireland, this is equivalent to 11,700, 19,500 and 39,000 cases returning to work early out of a total of 630,000² cases.

Even with the conservative estimate of an additional 3% of affected cases returning to work, the increase in output to the economy is an estimated £1.2m per annum. This is calculated taking an average working week of 37 hours³ at the National Minimum Wage rate of £5.73 per hour. Output is valued at the National Minimum Wage rather than average earnings as survey data indicates that sickness absence is higher amongst the low skilled. This figure rises to £4.1m if 10% of affected cases return to work early.

¹ Patient factors associated with duration of certified sickness absence and transition to long-term incapacity; Shiels, C., Gabbay, M.B. and Ford, F.M. (2004); British Journal of General Practice, February 2004

² Total number of statements: analysis of statements issued by Health and Social Care; Business Services Organisation

³ Hours worked per week (median) ONS (2008) *Annual Survey of Hourly Earnings*

In addition to the increase in output, early return to work has a number of long-term benefits. Emerging evidence suggests that work is generally good for health and that for many people an early return to work helps to prevent short-term sickness absence from progressing to long-term sickness absence and ultimately worklessness. Worklessness is strongly associated with poor health, including higher mortality, poorer mental health and higher usage of medical services. So an early return to work as a result of the new medical statement can improve health and well-being for individuals, as well as generate further increases in output, fiscal benefits such as reduction in health-related benefit payments and increase in tax, and reduce usage of medical services.

Impact on individuals

Benefits

An early return to work for individuals can result in an increase in earnings (difference between earnings and Statutory Sick Pay/Occupational Sick Pay after tax). Based on the scenario that an additional 3% of affected cases return to work for an extra week and the assumed wage is at National Minimum Wage rate, the increase in earnings is estimated at £275,000 per year. This figure is calculated on the basis that 75% of employees receive Occupational Sick Pay and 25% receive Statutory Sick Pay⁴.

As well as the increase in earnings in the short-term, evidence suggests that work has a positive effect on health. So, on average, individuals can also benefit from improvements in health and well-being, gain additional years in the labour market and experience further improvements in income and socio-economic status.

Impact on employers

Benefits

For employers, an early return to work results in an increase in output. Based on the scenarios of 3%, 5% and 10% returning to work for an extra week with output valued at 50% of the assumed wage (National Minimum Wage) the increase in output is estimated at £1.2m - £4.1m per year.

A further benefit of the policy is savings from Statutory Sick Pay/Occupational Sick Pay not paid to employees previously off sick. Based on the scenarios of 3%, 5% and 10% returning to work for an extra week and on the basis that 75% of employees receive Occupational Sick Pay and 25% receive Statutory Sick Pay the saving is estimated at £2.35m -£7.8m per year.

An early return to work as a result of job/workplace modifications may bring a reduction in other costs of sickness absence such as turnover costs, loss of skills base, re-training costs and poor staff morale.

⁴ Calculations on figures from CIPD Annual Absence Management Survey Report

Costs

It should be noted that all costs to employers are voluntary. It is not mandatory for employers to take any action. It is expected that employers will take action where the benefits of doing so outweigh the costs.

Employers who choose to take action may incur some additional costs for job role/workplace modifications to facilitate an early return to work. It is expected in the majority of cases, these will have no or minimal costs, for example, changes in work patterns or flexible working. Data on the cost of job role/workplace modifications for employees with health conditions that may keep them out of work is unavailable. Research on reasonable adjustments made for disabled employees (a legal requirement under the Disability Discrimination Act), suggests that where adjustments were made, a substantial proportion had no costs (55%). A United Kingdom-based study found the average cost of reasonable adjustments for disabled employees to be £180⁵. This is high as it is likely to be distorted upwards by some costly adjustments such as workplace adaptations. The average costs of job role/workplace modifications for employees with a health condition are expected to be significantly lower due to the different nature/severity of health conditions and modifications required. For the purposes of the impact assessment, this is assumed to be simply a third of the cost of reasonable adjustments for disabled employees on average (i.e. £60). This equates to a cost of £0.7m-£2.3m per year (number of affected cases times the average cost of modification).

There will be an increase for employers in salary paid to employees who return to work early. Based on the scenarios of 3%, 5% and 10% returning to work for an extra week at the assumed wage (37 hours x National Minimum Wage x (1+National Insurance Contributions employer rate -12.8%)) the increase in labour costs is estimated at £2.8m - £9.3m per year.

Net Benefits

The estimated net benefit for the policy change for employers is £50,000-£300,000 per year.

Impact on GPs

Benefits

Early return to work is expected to result in improvements in general health and well-being so fewer GP consultations are expected. It is estimated that for each case of early return to work, one GP consultation is saved. This generates savings of £137,000-£456,000 per year.

⁵ Meager et al (2001) *Impact on small businesses of lowering the DDA Part II threshold*. Disability Rights Commission.

Abolishing form Med 4 and merging the functionality of form Med 5 into the new version of form Med 3 will make the medical certification process simpler for GPs and potentially increase their efficiency. This benefit is likely to be small and has not been monetised.

Costs

There is a one-off training cost for each GP to read the new guidance on the medical statement. It is estimated that on average each GP will spend one hour to train costing a total of £70,000.

Net Benefits

The estimated net benefit for the policy change for GPs is between £67,000 - £386,000 taking account of the one-off training costs.

Consultation

Public consultation on the draft regulations took place between May and September 2009. A total of 8 responses were received in Northern Ireland along with 140 in Britain from a wide range of stakeholders which included healthcare professionals, employers, employer representatives, unions and charity organisations, as well as some individuals.

Overall, respondents were supportive of the need to reform the medical statement. The main conclusions from the consultation were—

- There is agreement that the current medical statement is no longer fit for purpose as it does not capture the current needs of the individual or their employer.
- The proposed new statement should benefit both the individual and the employer by helping them to gain a better understanding of how their health condition might affect their function and as a result what basic adjustments to the workplace or job role could help facilitate a return to work.
- The important role of GPs in the successful implementation of the new medical statement.
- Awareness of the statement and its benefits will need to be raised amongst employers. Guidance to explain how to use the statement and how it impacts on their duties as employers should be provided.
- Access to occupational health would greatly support the advice given by GPs, especially for complex or work-related conditions. How small to medium-sized employers could access occupational health support was raised by a number of respondents.

Small Business Impact Test

All costs to employers are voluntary. It is not mandatory for employers to take any action; it is for each individual employer to consider whether such investments are worthwhile.

Sickness absence rates are generally lower in small businesses though each incident may be more costly. An absent employee in a small business could be more disruptive and cause greater productivity loss if there are fewer replacements available amongst existing staff due to lack of appropriate skills and/or time to take on additional work. Generally reasonable adjustments to help facilitate an earlier return to work are expected to have minimal or no additional costs to employers. Where there are significant extra costs to the employer, this could be a particular concern for small businesses that may be less able to afford the increase. However, as noted above, it is not mandatory for employers to take any action. It is for each individual employer to consider whether such investments are worthwhile.

The Federation of Small Businesses which represents small businesses has been involved in the development of the new medical statement. It has been supportive for a number of years on a new medical statement focusing on what a person can do.

Micro Business Impact Test

As with small businesses, reasonable adjustments to help facilitate an earlier return to work are expected to have minimal or no additional costs to employers. It is not mandatory for employers to take any action; it is for each individual employer to consider whether such investments are worthwhile.

Competition Assessment

The proposals do not affect competitiveness between companies.

Summary

The Social Security (Medical Evidence) and Statutory Sick Pay (Medical Evidence) (Amendment) Regulations (Northern Ireland) 2010 make provision to change the format of the medical statement and update the rules associated with its completion.

The introduction of the new medical statement will help reduce sickness absence and support people with health conditions to stay in or return to work more quickly. An early return to work can improve health and well-being for individuals, as well as generate further increases in productivity, fiscal benefits such as reduction in health-related benefit payments and increases in tax, and reduce usage of medical services.

Declaration

I have read the Regulatory Impact Assessment and I am satisfied that the benefits justify the costs.

Signed for the Department for Social Development



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