

***Legal column April 2010***

***Can you explain to me what a fit note is? I run a small manufacturing business and am wondering how it might affect me?***

The new legislation came in on 1<sup>st</sup> April 2010 and involves a change from 'sick notes to 'fit notes' which spell out the work an ill person can do rather than can't do. The thinking behind the change is that under the current system either you are unfit for work or you are not as it makes sickness absence a black and white issue. The new fit note will require the GP to tick one of three boxes – fit, not fit or fit for some work. The new last option requires the doctor to comment on the condition and whether the employee could benefit from a phased return to work, altered hours or duty and workplace adaption.

There is concern amongst GPs that they are not occupational health specialists and that within a 10-minute appointment it is unrealistic to expect them to understand the nature of the patient's position at work and also make relevant suggestions for an alternative role within the company. Also how can a GP judge whether a patient who is employed for a physical role has the skills for a sedentary position – even if one exists? All of these questions cast doubt on the effectiveness of the new system particularly in the short term, when the temptation may well be for GPs to stick to what they know and merely certify patients as fit or not fit for work.



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That said this move is probably a good thing for businesses like yours and may help cut the number of non-genuine sick days that you suffer from. However, the fit note which states that an employee is fit for some work will ultimately shift more responsibility to employers to give genuine consideration to the measures identified by the GP. Although the majority of fit notes issued will be in respect of conditions which would not be considered to be a disability under the Disability Discrimination Act 1995, where such considerations do apply an employer would have to show why it was unreasonable to expect them to comply with any identified measures in order to avoid a finding of disability discrimination.

Employers should consider having a carefully documented return to work programme to deal with the new regime, in particular any recommendations made, in order to reduce the possibility of any claims arising.

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Please note that the answers provided are for general guidance only. If you have any legal problems you should always ensure that you obtain specific legal advice.