

Most members will experience sickness absence of some kind during their working life. Make sure you know about any procedures which your employer has for dealing with all aspects of sickness absence including the rules for letting them know that you are off sick, what your entitlement to pay is during sickness absence (contractual rights to sick pay will be set out in your contract of employment and will vary depending on your employer and on your length of service) and what procedures they will follow if unfortunately you are off sick frequently and/or for long periods of time.

Telling your employer you are sick

Your employer may ask you to follow certain rules which they must tell you about in advance, about telling them that you are off sick. You are not required to provide a sick certificate until your 8th day of illness to be eligible for Statutory Sick Pay (SSP) but the employer can ask you for confirmation that you are sick and you must provide it if they ask or you may not get any SSP (they could ask for a handwritten note saying what is wrong, a self certificate – which could be their own form or form SC2 provided by HMRC - there is more information about self certification at www.gov.uk).

There is no specific law which says what evidence your employer can ask you for to prove that you are sick but they may have rules which they require you to follow in order for you to be eligible to get contractual sick pay, for example, they may insist that you provide a self certificate as soon as you go off sick or after a certain number of days of sickness absence; phone in by a certain time of day to tell them you are sick; phone in more than once a week when you are off sick and phone in yourself (not ask someone else to do it on your behalf). If you don't follow the rules it may affect whether you are paid contractual sick pay and you will be breaking the terms of your contract so they may take disciplinary action against you which could lead eventually to you losing your job.



Medical certificates/fit notes

On a medical certificate, also known as a fit note, your doctor can say that you're not fit for work or may be fit for work.

The fit note can be handwritten or computer generated. Your GP can recommend that your employer makes some changes at your workplace. These changes might be things like a change to your working hours; a change to your duties; a phased return to work (coming back to work gradually possibly for fewer hours per day or for fewer days per week than usual or both) or adaptations to your working environment. It's up to you and your employer to agree between you what changes should be made. If your employer refuses to make the changes recommended by your doctor, you will still be considered unfit for work and can continue to get Statutory Sick Pay.

If you recover sooner than expected you can return to work before the end date on your medical certificate if your employer agrees to this. However, they may insist on you obtaining a new certificate from your GP to confirm that you are fit to return to work.

Occupational Health

You may be asked by your employer to have a medical examination with an occupational health adviser if you are off work for some time or the employer has a particular concern about your health.

The employer can only see information from Occupational Health with your written consent and you can see a copy of any report before it is sent to the employer and comment on its content. If you disagree with the medical evidence you can ask for your view to be added to the report, you can request an alternative view from your GP or from a specialist paid for by the employer or exceptionally paid for by the branch.

You should normally attend an appointment if requested to do so unless there is a particular reason why this would be a problem in which case you should raise this with

your employer rather than just not attend. The employer may argue that it is failure to follow a reasonable management instruction if you refuse to attend an appointment.

Length of sickness absence

If you are off sick for more than four short periods (four to seven days) in a year, your employer can contact Medical Services to look into the reasons you have given for missing work. Your employer contacts Medical Services through HM Revenue and Customs (HMRC).

Medical Services may want to contact your own GP to ask about your medical condition but they can only do so if you give them permission. If the Medical Services report says you have been off work without good reason, your employer may refuse to pay you sick pay. You can appeal against this decision if you think it is wrong.

If you have long periods of time off work, your employer can contact Medical Services to decide if you are fit enough to do your job.

Sickness absence/capability procedures

If your employer advises you that they are starting the sickness absence/capability procedures then you should think about the information which you might need to provide to support your position and contact your UNISON rep or branch to ask for advice and support. If you are called to a meeting in the procedure and want to have someone with you but are not able to arrange it in the timescale ask your employer if the meeting can be rearranged so that you can have representation (check your employer's procedure for any specific rules on this).

Dismissal due to long-term or frequent short-term sickness absence

This can be a fair reason for dismissal. Even if your absence is due to an accident, having been the victim of crime or even work-related injury it is not the case that you cannot be fairly dismissed due to sickness absence, however the employer should take into

account the cause of any injury or illness when deciding whether to dismiss. If the illness or injury is work-related the employer should not dismiss without first investigating all alternative ways of avoiding the dismissal.

The steps an employer must take before dismissal for long-term sickness absence depend on individual circumstances but normally include investigating the reasons for the absence. This will nearly always include seeking expert medical guidance with the employee's consent, looking at the employee's condition and prognosis, the likelihood of a successful return and any steps the employer could reasonably take to support that return; consulting the employee; looking at alternative work; and warning the employee clearly that continued or further absence may result in dismissal.

Disabled under the Equality Act 2010

You will be considered to have a disability under the Equality Act 2010 if you have a physical or mental impairment that has a substantial (more than minor or trivial) and long term (has lasted or is expected to last for 12 months or more) adverse effect on your ability to carry out normal daily activities.

There are special rules about fluctuating conditions such as arthritis and people diagnosed with HIV infection, cancer or multiple sclerosis automatically meet the definition from the day they are diagnosed.

There is a range of support to assist disabled workers to continue working through the Government's Access to Work Scheme, including assistance with transport costs, installation of a ramp, funding for training to learn to use software that makes information accessible or sign language interpretation services. Employers may be expected to contribute to the costs of this support. You can find out more about Access to Work at <https://www.gov.uk/access-to-work/overview>.

If your employer fails or refuses to make reasonable adjustments you may be entitled to make a claim of disability discrimination to an employment tribunal. Any such claim should be lodged within three months of the failure and you should seek advice as quickly as possible from your UNISON branch. If it is not possible to make reasonable adjustments or otherwise facilitate your return to work in the same job other possibilities should be investigated including the possibility of redeployment.

An employer may decide that it is not possible to redeploy (this decision will be influenced by the size of the organisation and the availability of other jobs) and they are not obliged to create another job. If you are not expected to be able to return to your job then the employer should be encouraged to consider, if you are eligible, taking ill health retirement.

If the employer does dismiss you then you have a right to appeal and you may have a claim for unfair dismissal. Such claims have to be lodged within three months of the date of dismissal. You should seek advice from UNISON promptly if you believe that you have been unfairly dismissed.

Sickness absence and holidays

Workers build up statutory annual leave while off sick - this only applies to the 4 weeks' holiday under the Working Time Directive, not the extra 1.6 weeks under UK law. A worker cannot be forced to take annual leave while off sick and can choose between taking paid holiday when off sick or saving it up to take when they return to work.

If you haven't been able to take statutory holiday during the holiday year because of sickness you must be allowed to carry it forward to the next year even if the employment contract expressly forbids this.

Sickness absence and holidays

If you are off sick during your notice period you are entitled to normal full pay during that period even if you have used up all your sick pay, unless your contractual notice is at least one week more than the statutory minimum notice entitlement.

Finally, if you believe you may have a legal claim against your employer you should contact your branch without delay to request they assist you to complete and submit a UNISON Caseform for Assistance to Regional Office. As there are strict legal deadlines (usually three months minus one day) to challenge disciplinary dismissals at the Employment Tribunal it is most important that you don't delay.

UNISON Caseforms can be downloaded from the UNISON South East website at:

www.unionsoutheast.org.uk/how_to_get_help

