

# Managing Sickness Absence

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DANIEL BARNETT

# Managing Sickness Absence

By Daniel Barnett

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Daniel Barnett  
March 2023

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Daniel Barnett is a leading employment law barrister practising from Outer Temple Chambers. With 25 years' experience defending public and private sector employers against employment claims, he has represented a Royal Family, several international airlines, FTSE-100 companies and various NHS Trusts and local authorities. Employee clients include David & Victoria Beckham's nanny and Paul Mason (subject of the ITV documentary 'Britain's Fattest Man').

Daniel is a past chair of the Employment Lawyers' Association's publishing committee and electronic services working party. He is the author or co-author of eight books, including the Law Society Handbook on Employment Law (currently in its 8th edition). He is the creator of the Employment Law (UK) mailing list, an email alerter bulletin service sending details of breaking news in employment law three times a week to 33,000 recipients.

Legal directories describe him as 'extremely knowledgeable and [he] can absorb pages of instructions

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Daniel is widely sought after as a commentator in both broadcast and print media on all legal issues. Since 2010 he has presented the Legal Hour on LBC Radio. In 2019, he launched Employment Law Matters, a weekly podcast with short explanations of employment law topics. Subscribe at [www.danielbarnett.co.uk/podcast](http://www.danielbarnett.co.uk/podcast)

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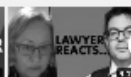
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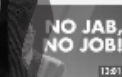


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# Introduction

Everyone gets ill - even those with the strongest constitutions need to take sick leave from time to time. However, there is no denying that sickness absence is expensive for employers and that this cost has grown further over the past couple of years thanks to the Covid-19 pandemic.

The pandemic has helped put a spotlight on the importance of a well-structured framework for managing sickness absence: one that supports the health needs of employees and enables firm action if staff try to take advantage. Taking the time to monitor and measure sickness absence should help identify not only those few employees who are prone to 'pulling a sickie' but also bigger patterns or problems within the workforce.

Central to the sickness absence framework are some basic tools and principles which - although maybe a little dry and boring - are fundamental to getting it right.

This book examines the mechanics of sickness absence management and how basic principles can help form the building blocks of a solid foundation from which to deal with trickier issues. But mainly, this book is an in-depth look at managing the problems of short-

term, intermittent and long-term absence and the tools available to help with this. It examines some knotty issues, including dealing with stress or pregnancy-related illness.

# CHAPTER 1

## The Mechanics of Sick Leave

### **Right to sick leave**

Perhaps unusually, a quirk in the law means there is no statutory right to take time off work due to ill health. However, section 1 of the *Employment Rights Act 1996* (ERA) does require employers to provide particulars of ‘any terms and conditions relating to . . . incapacity for work due to sickness or injury, including any provision for sick pay’. This means that the majority of employers do provide such terms in their employment contracts, their staff handbook or both. Even if employers do not include terms in their contracts, it is likely that in most cases a term would be implied into the contract stating that an employee is not required to work if they are not fit to do so.

### **Right to sick pay**

Although most of the employment contract continues as normal during sick leave, this does not apply to pay. Employees who are not able to work due to ill health are not entitled to continue to receive their usual salary. The majority of employees do have a right to receive statutory sick pay (SSP) (under the *Statutory Sick*

*Pay (General) Regulations 1982*). Of course, it is also open to employers to provide more than this and give employees 'occupational' or company sick pay, but this is not compulsory.

## **Statutory Sick Pay (SSP)**

Most employees are eligible for SSP. The definition of 'employee' for SSP purposes is wide and includes not only those who work under a contract of employment but also anyone whose earnings are liable for Class 1 National Insurance contributions. This includes, for example, casual, zero-hours and agency workers. However, it does not include the self-employed or contractors.

Employees do not need a minimum period of service to be eligible, nor are there any age limits. However, an employee's average weekly earnings must be more than the lower weekly earnings limit for National Insurance liability. At the time of writing (March 2023), this is £123 a week, and it increases every April. So, unfortunately, this does mean the lowest earners miss out.

To qualify for SSP, employees (in theory at least) should be too ill to perform any work. The SSP Regulations support this obligation by requiring employees to comply with their employer's process for giving notice of sickness absence and to provide evidence of their ill health.

However, for the purposes of SSP, employers are only entitled to ask for medical evidence after seven days

of absence. In the meantime, employers are left to rely on the employee's own word for the reasons for their absence. Inevitably, it is difficult for an employer to challenge how ill an employee feels, but it remains important to ask them to complete a self-certification form or to provide a written account explaining the details of their absence. Employees could also complete the official form SC2 statement of sickness. After seven days, employers can ask employees to provide medical evidence from their doctor, which is usually provided in a 'Statement of Fitness for Work' (known as a 'fit note').

## **Calculating SSP**

Anyone who has worked in payroll will know that SSP can be pretty tricky to calculate. A summary is set out in this book, but the government and HMRC provide more detailed guidance at [gov.uk](http://gov.uk), including an SSP calculator and a helpline.

The rate of SSP is set by the government but paid by the employer. The rate is expressed as a weekly amount, which increases every April. From 6 April 2022, the rate is £99.35 per week and can be paid for up to 28 weeks.

However, SSP only starts when an employee has been on sick leave for four calendar days in a row (including Sundays, bank holidays and days not normally worked). So, the first three days of sick leave are not paid under the SSP scheme (known as 'waiting days'). Also, a day only counts as sick leave if the employee is

off for the full day. If an employee comes in and works for 30 minutes before going off sick, that day cannot be counted towards their SSP.

SSP is only due for payment for the days on which an employee is contracted to work ('qualifying days'). However, it is important to note that SSP is the minimum amount employers must pay to any employee who qualifies. Part-time staff are entitled to the whole weekly rate and there is no pro-rata sick pay. If an employee works part-time, it means they will have fewer qualifying days but will be owed more SSP in respect of each of those days.

To calculate how much SSP is owed, the employer should take the weekly rate and divide it by the number of qualifying days an employee works in a week. Then multiply this by the number of qualifying days the employee was off sick (but remember that the employee is not paid for the first three waiting days).

**Example:** Employee A and Employee B were sick from Friday 1 April 2022 until their return to work on Monday 11 April 2022. Employee A works full-time (Monday to Friday) and Employee B works part-time three days per week (Mondays, Wednesdays and Fridays).

To calculate their SSP, the employer will need to divide the current SSP weekly rate by the number of

qualifying days they work in a week. Then multiply this by the number of days the employee is entitled to SSP (but remember that the employee is not paid for the first three waiting days).

**Employee A (full-time):** Their qualifying days are Monday to Friday. They have a total of five qualifying days in a week so  $£99.35 \div 5 = £19.87$  SSP per day. The number of days they are entitled to SSP is five (for 4 to 8 April). They are not eligible for the first three waiting days from 1 to 3 April.

The total SSP is  $£19.87 \times 5 \text{ days} = £99.35$ .

**Employee B (part-time):** Their qualifying days are Monday, Wednesday and Friday. They have a total of three qualifying days in a week so  $£99.35 \div 3 = £33.12$  SSP per day. The number of days they are entitled to SSP is three (Monday 4, Wednesday 6 and Friday 8 April). They are not eligible for the first three waiting days from 1 to 3 April or their non-working days on Tuesday 5 and Thursday 7 April.

The total SSP is  $£33.12 \times 3 \text{ days} = £99.35$ .

## Contractual sick pay

Many employers go further than providing SSP to employees (particularly given the headaches in administering these payments). If so, in accordance with section 1 of the ERA, the amount of any

contractual payments and how and when they will be paid should be set out in the contract of employment or sickness absence policy.

Employers do not need to provide sick pay at the full rate of salary, but this is often the case. It is common for employers to pay at full rate for a certain period (perhaps the first three or six months of sick leave), then at half rate for a further period and at nil rate after that.

Employers should also set out in the contract or policy whether entitlement to benefits continues during sick leave. Keep in mind that:

- permanent health insurance and private medical insurance should continue.
- if the employee is absent due to disability, the removal of the benefit could amount to disability discrimination.
- any use of discretion not to continue benefits should be used carefully and applied 'even-handedly'. In other words, if benefits routinely continue for most employees when they are off sick, there will need to be a pretty good reason not to do so for another employee.

If an employee is eligible for contractual sick pay and the employer does not pay it, the employee may be able to bring a claim for breach of contract and/or claim for unlawful deduction from wages.

## **Policies and procedures**

Although section 1 of the ERA requires employers to provide terms and conditions on sick leave and pay, it does not tell employers how much detail they need to provide. Nevertheless, it is in the employer's interest to go beyond the basics. An informed and effective sickness absence policy with fair, clear processes is the best medicine for curing problem absence. It sets standards, lets everyone know their responsibilities and reduces legal risk. Such a policy will usually include:

- a process for reporting sickness absence, including who to contact, by when, and by what method
- details of any contractual sick pay terms and their relationship with SSP and how and when the employee will be paid while off sick
- information on when and what evidence of ill health is required
- a process for keeping in touch while on sick leave and discussing any workplace adjustments to assist a return to work
- information on how any review or trigger-point system for dealing with potential problem absence will be used
- arrangements for return to work meetings to discuss the reasons for and impact of the absence

- the right to require employees to attend an examination by a company doctor or occupational health professional and (with the employee's consent) to request a report from them
- the formal dismissal process that will apply if the absence does not improve to acceptable standards
- a process for monitoring absence to help identify any patterns so that the business can address them

## **Reporting sickness absence**

Most employers and HR professionals will have experienced the disruption (and complaints from annoyed managers) caused when an employee fails to turn up and offers no notice or reason. Plans cannot be made, and work does not get done. For this reason, it is important to establish a clear, consistent process for reporting sickness absence and to record it in writing. This ensures employees know their responsibilities and can be held to account.

Although there is no legally mandated process for reporting absence, it will often be the employee's line manager who is the first point of contact. It is common to require employees to notify their manager that they are unwell at least 30 minutes before they are due to start work. However, this can be longer if, for example, cover needs to be arranged. Unless there are exceptional circumstances (for example, the employee is too ill to communicate), it will be appropriate for the

manager to ask the employee for the reason for their absence and the likely date of return. This information will help the employer work out the likely impact and length of the employee's absence and manage the employee's workload. If the reason for the absence is more serious, then early knowledge of this will enable a manager to think about more long-term or supportive measures, such as workplace adjustments or regular meetings to keep in touch with the employee. Equally, it is important to establish the cause of the absence if it may have been triggered by an incident or ongoing situation at work. If this is the case, the safest course of action is to investigate the cause, even if the employee is reluctant to do so.

## **Keeping in touch**

It is important that the person responsible for managing the employee's absence stays in touch. How much contact is required will often depend on the nature of the employee's role and the need or capacity to do so. For example, there is likely to be more need for a senior manager who is off sick to stay in touch and help manage their team, than for an employee in a standalone role.

However, regardless of the employee's role, some regular contact should be maintained to make sure an employee does not feel forgotten. This also helps them reintegrate back into the workplace when the time comes. That said, a balance does need to be struck

between the need for connection and maintaining sufficient distance to ensure the employee has space to recuperate. Employers should be particularly careful of this if the employee alleges that their illness is work-related and that such contact is increasing their stress.

Given that handling sickness absence communications can be tricky, it makes sense to provide managers with appropriate training. A well-handled conversation by a manager who has the knowledge and skills to support an employee's ill health concerns with sympathy can make all the difference to how relationships develop during the absence and beyond. If resources allow, it could also be helpful to go beyond the basics and provide managers with training to help them spot when an employee might be disabled and requires specific support such as workplace adjustments.

## **Evidence of ill health**

Evidence of ill health is not just required for the purposes of sick pay. It is fundamental to the ongoing success of managing sickness absence that employees provide evidence during the whole period of their absence. This not only helps keep employers updated on the employee's health and likely length of the absence but also means employees have to actively manage their absence and keep the employer informed.

An employer can request several types of evidence.

### **Self-certification**

The initial form of evidence the employer usually requires from the employee is a self-certification form - or SC2 - statement of sickness. However, as this does not require any input from a medical professional, it is usually only suitable for short-term, non-problematic absence.

### **Fit note**

If an employee is off work due to ill health for more than seven days, their employer can ask them to provide a 'Statement of Fitness for Work' (known as a 'fit note') from their doctor (usually their GP).

The fit note will set out when the employee was medically assessed, the nature of the employee's condition that affects their fitness for work and the period the advice in the fit note covers. As doctors can only sign employees off work for a maximum of three months at a time (at least during the first six months of the employee's absence), this means that for long-term absence, an employee will need repeat visits to their doctor to obtain further 'fit notes'.

Fit notes also set out an option of 'may be fit for work'. This enables doctors to suggest ways of helping an employee get back to work, such as a phased return

or amended duties. There is a comments box for the doctor to provide more detailed guidance as to the functional effects of the employee's condition, including what the employee can or cannot do at work. This goes beyond assessing the employee's fitness to do their particular job and looks at an individual's fitness for work in general.

This all sounds great. However, as many HR professionals will have experienced, the reality is sometimes far from the promise of the theory. Fit notes are not always completed as fully as they could be by doctors and sometimes opportunities to encourage a return to work are missed. Equally, when the doctor does suggest ways to facilitate a return to work, the guidance on fit notes issued by the Department of Work and Pensions (DWP) says that unless these can be agreed with an employee, the fit note should be treated as if it says that the employee is not fit for work.

It may go beyond this, and in some cases, an employer may be left with the strong feeling that an employee has improperly influenced the doctor's advice. In this context, it is frustrating that the legal position is that fit notes normally need to be taken at face value. According to the Employment Appeal Tribunal in *MerseyRail Electrics 2002 v Taylor*, where a doctor recorded a medical condition in a sick certificate as the cause of a worker's absence, the employer must accept that as the true reason for absence, unless there is other contradictory medical evidence. Therefore, as a general

rule, an employer that disbelieves what is stated in a medical certificate must obtain reliable further medical evidence to back up any doubts before any action is taken based on this disbelief.

The good news is that the effectiveness of fit notes may improve in the future as the government has proposed reforms in response to its 'Health is everyone's business' consultation. This could include providing training to support healthcare professionals who sign them.

### **Other medical evidence**

Given the current issues with fit notes and their restriction to absence over seven days, employers often want to get their own medical advice. This is particularly so when an employee's sickness absence becomes a problem and/or the employee may be disabled. In these circumstances, employers may request that the employee is examined by an independent specialist doctor or occupational health expert. The employer will usually pay for this, but it is well worth the money if it results in a detailed and reliable report (if you are a member of [www.hrinnerscircle.co.uk](http://www.hrinnerscircle.co.uk), you can find a list of recommended occupational health practitioners available in the members' area). How to obtain these independent reports is examined in Chapter 3.

## Record-keeping and data protection

It is important to keep evidence of ill health and any other information obtained during the management of sickness absence. This includes notes of keeping in touch meetings and more formal meetings and any correspondence between employer and employee. These records are not only useful for administering sick pay and monitoring and measuring sickness absence but also for defending any legal claims by an employee connected to their absence.

Unfortunately, reliance on this type of data brings with it the compliance regime for data protection legislation, such as the *General Data Protection Regulation* (GDPR) and the *Data Protection Act 2018* (DPA). Data concerning an employee's absence record is personal data, and information on an employee's health is considered 'special category data' (previously known as 'sensitive personal data'), which must be treated with extra caution. The information must only be used for the purposes for which it was collected, must be kept up to date and must only be shared where necessary. All records, correspondence and medical evidence must be stored confidentially, securely and in accordance with the employer's record-keeping policy. Specific information on health must be kept separately from simple absence records.

There is detailed information about this in the *Employment Practices Data Protection Code, Part*

*4: Information about workers' health* (and the supplementary guidance) on the Information Commissioner's Office website ([www.ico.gov.uk](http://www.ico.gov.uk)). Although it is still being updated to reflect the introduction of the GDPR in 2018, it remains a helpful guide.

## **Monitoring and measuring**

Keeping records of ill health helps employers to monitor the reasons for, length and frequency of sickness absence. This is important at an individual level to identify any high levels or unusual patterns of absence and allow the employer to take steps to address any issues. However, it is also important to monitor sickness absence at a company-wide level. For example, information on the timing and levels of sickness absence across teams and departments can highlight more widespread issues, such as bullying or changes in working practices that do not have staff support. It also helps to ensure that sickness absence procedures are effectively and consistently applied so all employees receive fair treatment.

There are different methods employers can use to monitor and measure absence at a workplace level, and measuring an individual's pattern of absence is explored in Chapter 2.

## The 'Lost time' rate

The most common measure of absence is the 'lost time' rate. This shows the percentage of the total time available that has been lost due to absence. It can be calculated either across the business or by department or group of workers to show up particular problem areas.

Total absence (hours or days) in the period	x 100	= Lost time rate (%)
Possible total (hours or days) available in the period		

For example, if the total absence in the period is 150 hours, and the possible total is 1,500 hours, the lost time rate is:

150	x 100	= 10%
1,500		

However, the use of the 'lost time' rate is limited in that the total time lost may comprise a small number of people who are absent for long periods, or a large number absent for short spells. A measure of 'frequency' is needed to show how widespread the problem is so that employers can reduce it.

## The 'frequency' rate

This measure shows the average number of absences per employee (as a percentage) irrespective of the length of each spell. This allows employers to understand how often employees are absent.

Number of spells of absence in the period	x 100	= Frequency rate (%)
Number of workers in the period		

For example, an employer has 100 employees. During one month, 20 workers had periods of absence. One was away four times, three were away twice and 10 were away once. This was 20 spells of absence in total. The frequency rate was therefore:

20	x 100	= 20%
100		

Whichever way an employer chooses to track absence, knowing the rates offers a much better chance of spotting and correcting problems before they cost too much.

# Chapter 2:

## Handling Persistent Short-Term Absence

Most organisations aim to have healthy employees who turn up each day ready to work and support their team. But people get sick - we're only human, after all. This means employers need to build a certain amount of flexibility into their plans, such as a go-to solution for finding cover staff or a way to cover the absence within the team.

There is, though, a limit to how far a team (or budget) can be stretched before employers need to act. This is particularly important with frequent and persistent short-term absence where the lack of notice and unpredictability of episodes can be very disruptive.

### **Acas guidance**

Appendix 4 of the non-statutory Acas 'Discipline and Grievances at work' gives guidance on handling frequent and persistent short-term sickness absence. In particular, it recommends that employers deal with

such absence promptly, firmly and consistently and that:

- unexpected absences should be investigated promptly and the employee asked for an explanation at a return-to-work interview.
- where there is no medical certificate, employers should get their own medical evidence to investigate the cause of the absence. If there is no good medical cause, the employer should consider taking action under the disciplinary procedure.
- if the absence could be disability-related, the employer should consider reasonable adjustments.
- employees should be told what improvement in attendance is expected and warned of the likely consequences if this does not happen.
- appropriate action will take into account factors such as the employee's length of service, performance to date, the likelihood of a change in performance, the availability of suitable alternative work, and the effect of past and future absences on the organisation.

These factors should be reflected in an employer's sickness absence policy as they are central to handling short-term sickness absence in a fair and consistent manner.

## **Return to work interviews**

Return to work interviews are important for managing short-term absence as they send a clear message that absence is actively managed and require employees to explain their absence face to face. Such interviews are attended by the employee and their line manager (or a member of the HR team) and should take place as soon as possible after the employee's return from absence.

The term 'interview' is perhaps misleading as this suggests a rather pressured environment where the employee is questioned on the reasons for their absence. Although this may (very occasionally) be appropriate if the employer is confident that the employee is just 'pulling sickies', on most occasions a sympathetic approach is needed. It is better to frame it as an informal meeting for a two-way, constructive discussion about the reasons for the absence and an update on any workplace news. A more informal environment could also encourage the employee to open up about any job-related or personal problems that might be a cause of or contribute to their illness (such as stress). In this way, the manager can get a bigger-picture perspective on the reasons for the absence.

Although the manager is unlikely to be medically qualified, they are entitled to discuss the employee's medical history and explore issues such as whether there is an underlying health condition or disability.

This allows them to offer appropriate support or make reasonable adjustments. It also allows them to keep an eye on any trends. For example, absences for headaches may indicate that the employee's computer workstation requires assessment and/or that the employee should have a sight test.

It is important to keep notes of the meeting to help track the reason for the absence and the employee's explanation. (Defending an unfair dismissal claim will be a lot more challenging if the employee's explanations for their absence are not sought or recorded at all.)

In an ideal world, there would be a return to work meeting after each absence. However, the modern workplace is undeniably busy and holding such meetings this frequently is often not feasible. In this case, it is important there is a way of deciding at which point this, and other action, is taken. This means monitoring and measuring each employee's absence.

### **Monitoring absence**

Monitoring of absence at an organisational level was covered in Chapter 1. Of equal importance is how to monitor an individual employee's absence. There are a few ways to do this and, whichever the chosen method, it is important to make sure the rules are set out in the sickness absence policy.

## The 'lost time' rate

To measure an individual employee's 'lost time' rate, it is necessary to divide their total absence in hours or days within a chosen period by the possible total in hours or days the employee was due to work and then multiply by 100. The absence measured can include all absence, or just focus on sickness absence.

Total absence (hours or days) in the period	x 100	= Lost time rate (%)
Possible total (hours or days) available in the period		

For example, if an employee was supposed to work 130 hours during February but missed 13 hours, their 'lost time' rate for that month would be:

13	x 100	= 10%
130		

The employee's rate of 10% can then be compared with other members of their team or the average across the company to understand the rate in context. A particularly high 'lost time' rate could be the trigger for action.

However, although helpful, these rates are limited as they do not give any insight into whether the absence consists of one continuous period of absence or frequent short-term absence.

To specifically spot short-term absence problems, there are a couple of options.

### **Identifying patterns**

This involves monitoring employees' absence records over a period of time to identify problems with frequent or disruptive absence. Different thresholds can be set for triggering action. For example, three (or more) episodes of one (or more) days' absence in any 12-week period, or problem patterns such as frequent sickness absence on Mondays (the top sickie day).

### **The Bradford Factor**

This is probably the most (in)famous method of monitoring short-term absence. (If you are a member of [www.hrinnercircle.co.uk](http://www.hrinnercircle.co.uk), look in our online Inner Circular magazine archive at 'The Bradford Factor: Useful tool or blunt instrument?' in the HR Inner Circular February 2021 issue.)

In summary, a simple equation, combined with a system of trigger points and scores, helps signal who is away from work too often:

**Bradford Factor score = S x S x D**

**S** = the number of spells of absence over a particular time period

**D** = the total number of days' absence over that same time period

**Example:** Employee A and Employee B work for an employer who uses the Bradford Score to measure absence over a 52-week period. During this period:

Employee A gets the flu and is off sick for two days. A couple of months later, Employee A gets food poisoning and takes a further three days off work. Towards the end of the year, Employee A gets a cold and is off for one day. Employee A's Bradford Factor score is: **3 x 3 x 6 = 54**

Employee B hurts their back and is off work for 6 days. Employee B's Bradford Factor score is: **1 x 1 x 6 = 6**

Employee A's score is higher than Employee B's. This is because Employee A has had more periods of absence than Employee B and the principles underpinning the Bradford Factor mean that this is more concerning.

A perk of the Bradford Factor is that it is easy to set up thresholds to trigger action. Typically, absence is

measured over a rolling year and action is taken as follows:

- 0-49: No action required
- 50-214: Consider issuing a verbal warning
- 25-399: Consider issuing a first written warning
- 400-649: Consider issuing a final written warning
- 650+: Consider dismissal

However, there are no hard-and-fast rules regarding which thresholds trigger what action (if any) or the period of time absence should be monitored. How the Bradford Factor is used will vary between employers depending on the sector and individual company needs. For example, a threshold of 10+ could trigger a return to work meeting. Alternatively, if an employer already carries out return to work interviews after each absence, the triggers can be helpful to indicate when formal meetings are appropriate.

That said, the triggers should not dictate the action. It is important to take a flexible approach because an employee's Bradford Factor score often does not tell the whole story. Rigidly responding to triggers without understanding the background to the absence could lead to treating an employee with a high score due to a serious health condition, disability or pregnancy-related illness in the same way as a fully paid-up 'time-waster'. Failing to understand the history of the

employee's absence is likely to end in tears for the ill-treated employee - and for the employer when it faces an expensive tribunal claim.

To help avoid this, it is advisable not to include any pregnancy or disability-related absence when calculating the score for the Bradford Factor (or any other absence measure), or otherwise make adjustments to the thresholds and triggers to take proper account of the reasons.

## **Formal sickness absence procedure**

Once problem absence has been spotted and investigated (and assuming it has not been resolved), it is likely time for action under the formal sickness absence procedure. This generally involves a series of formal meetings, warnings and time scales for improvement that should be set out in the sickness absence policy.

### **Meetings**

The employee should be invited to attend a formal meeting with their manager and offered the right to be accompanied (as usual, by a work colleague or trade union representative). The meeting is the opportunity to take an in-depth look at the reasons, impact and possible solutions in respect of the employee's absences, including the following:

- review of the reasons for the employee's absence and any self-certification forms, fit notes or other medical evidence
- the effect of the absences on the employee's colleagues, team and department, and on the employer in general
- the likelihood of continuing absences and the impact they are likely to have
- whether there are changes to the employee's job or redeployment opportunities that would support improved attendance and reduce the effect on colleagues or the employer's business
- whether (further) medical evidence should be obtained
- whether the employee has a disability and, if so, whether there are any reasonable adjustments that could be made
- whether it is appropriate to give the employee a formal warning that their attendance levels need to improve

These can be tricky meetings where emotions can run high, particularly if the employee feels that they are being unfairly blamed for absences beyond their control due to genuine illness. It is therefore only fair to give managers who carry out these meetings some training first. In particular, it is important managers

know that the idea of the formal procedure is to encourage employees to improve rather than to punish them (as set out in Appendix 4 of the Acas guidance), and managers should be given the knowledge and skills to encourage this. Managers also need to be able to spot and support employees with a disability.

Following the meeting, managers need to make a decision regarding what action, if any, is to be taken. Managers will very likely need some HR support with this, as the choice of outcome must be balanced between the employee's and employer's needs and take into account how employees in similar circumstances have previously been treated. A decision borne out of a manager's frustration with the disruption caused by the absence, rather than flowing from a calm and clear assessment of the evidence, is likely to cause more problems than it solves.

It may be that no further action is required. For example, an open and amiable meeting could reveal that the employee's illness is on the mend or that further absence can be avoided or accommodated by changes to the employee's role (such as flexible working or working from home).

However, if it seems clear that future disruptive absence is imminent, a formal warning is likely to be appropriate.

## **Warnings**

It is important that employers take care when communicating a formal warning to an employee. There is a difference between disciplinary warnings in misconduct cases and when dealing with genuine short-term sickness absence. According to the Employment Appeal Tribunal in *Lynock v Cereal Packaging*, genuine illness requires employers to act with sympathy, understanding and compassion when giving warnings and to ensure underlying problems have been investigated and properly addressed.

That said, it is important that the warning letter makes clear that the level of absence is unacceptable and what will happen if it does not improve. It should also include a time scale for the level of improvement expected. If dismissal is a potential outcome (whether at that stage of the process or later), the letter should also make clear that this is the case.

## **Tricky issues**

Following a formal meeting and/or warnings, attendance often improves. However, it's wise to keep the celebrations low-key because this may not be the end of the story. As many frustrated managers (and HR professionals) know, relapses are common. A pattern of improvement and relapse (often just after the warning expires) can be discouraging and makes it very difficult to know how or when to continue with the formal sickness absence procedure and system of warnings.

To help manage this situation, employers should make sure their sickness absence policy allows:

- extending the life of an existing warning (which would normally otherwise expire) when improvement is not sufficiently consistent
- re-entering the same warning stage in the event of a relapse and renewed poor attendance

Ultimately, the only certainty when dealing with short-term absence is that it is an uncertain process that may need (several) changes of tack. For example, what starts as intermittent, short absences may extend to weeks or months and need to be treated as a long-term absence problem. Alternatively, what initially looked like genuine absence may turn out to be faked, in which case a rapid segue to the disciplinary procedure is called for.

However, there is one step that usually helps with a lack of clarity, and that is to obtain medical evidence.

## **Medical evidence**

Although medical evidence will not be required to manage every problem short-term sickness absence, it is sometimes key to unlocking trickier cases. Even if medical evidence seems irrelevant (as the employee's minor medical problems appear unrelated), it is often worth obtaining an expert's view. Missing an underlying medical condition could prove a costly mistake if an employee is dismissed without taking this into account.

Even if the medical evidence confirms that the absences are not related, simply making the request for medical evidence will alert the employee to the fact they are being monitored and could improve their attendance.

In the case of problem short-term sickness absence, it would be preferable to obtain the evidence in a report from an independent medical expert rather than the employee's own doctor. This avoids any issues with loyalty or partiality that may arise in respect of the latter. This is particularly the case if there is any suspicion that the employee's absence may not be as genuine or debilitating as they suggest.

How to go about obtaining (and getting the most out of) a medical report is explored in Chapter 3, which focuses on long-term absence.

Whatever the source of the medical evidence, it is well worth a careful review with particular attention paid to anything that suggests the employee is likely to have a disability. If there is any evidence, this requires careful handling and a more flexible approach.

## **Disability**

A person is disabled under section 6 of the *Equality Act 2010* if they have 'a physical or mental impairment that has a substantial and long-term adverse effect on their ability to carry out normal day-to-day activities'.

In most cases of short-term absence, the employee is unlikely to be disabled. This is because they will not have a sufficiently serious, long-term and ongoing health condition. However, sometimes, frequent or intermittent short-term absences will be connected by an underlying medical cause that makes them 'long-term'. If this is (or may be) the case, it is important to avoid disability discrimination. In other words, the employer should make sure it does not treat the employee less favourably because of, or for reasons arising from, the employee's disability.

Disability discrimination is covered in more detail in Chapter 3. However, for short-term absence, the most important consideration is whether reasonable adjustments can be made. In Appendix 4 of its 'Discipline and Grievances at work' guidance, Acas suggests that this might be something as simple as an adequate ergonomic chair or a power-assisted piece of equipment. Or it could also mean redeployment to a different type of work or working pattern if that would help. In fact, even if the employee is not disabled, this type of adjustment could well help to sort out the problem absence.

It is also important to treat employees with short-term absence consistently. For example, if an employer always picks up on employees with absences for stomach upsets but never those with absences for colds or flu, this could lead inadvertently to less favourably treating a disabled employee with a long-term condition relating to their stomach.

## Dismissal

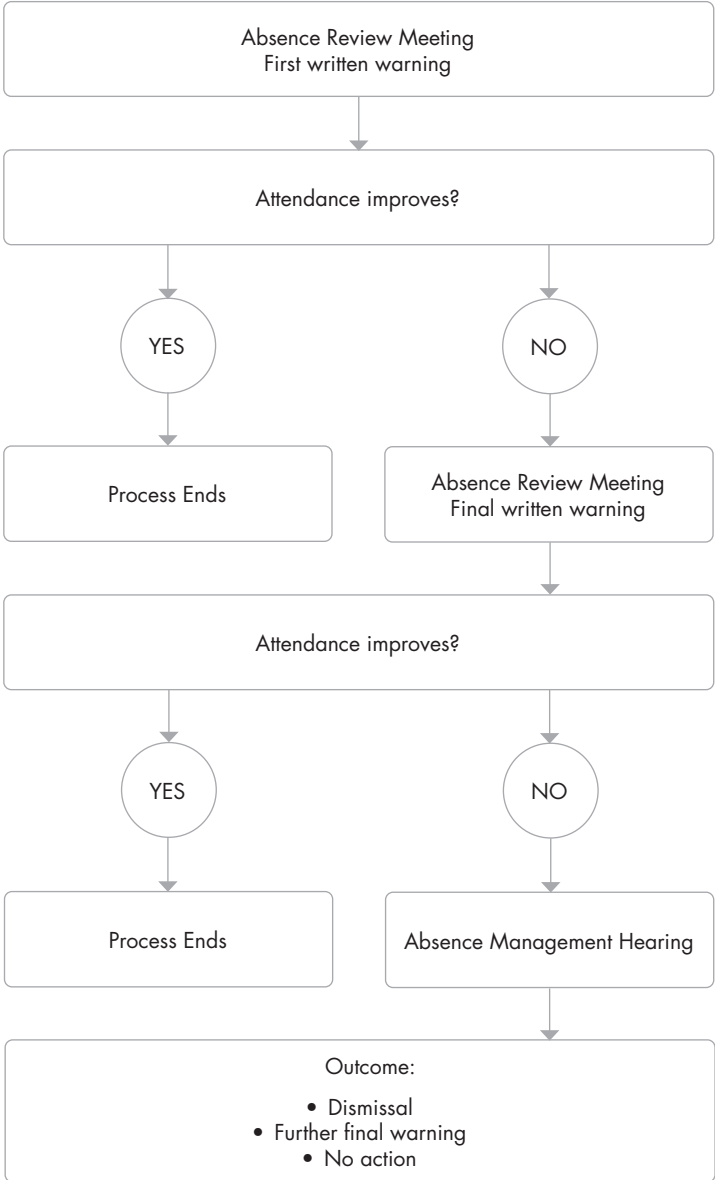
There comes a time when the disruption caused by persistent short-term absence can no longer be tolerated and dismissal must be considered. The good news is that persistent short-term sickness absence can be a fair reason for dismissal. This can be either on grounds of 'capability' (when it is because the employee is too ill to carry out their job) or 'some other substantial reason' (for example, failure to meet reasonable attendance targets or unacceptable disruption to the business).

However, whatever the ultimate reason for dismissal, for this to be fair, the employer must act reasonably. This means that before dismissing, employers should:

- carry out a fair review of the employee's attendance record and reasons for their absence
- give the employee an opportunity to make representations
- warn the employee that they may be dismissed if things don't improve

These steps should be reflected in the employer's formal sickness absence procedure (referred to earlier). Once this procedure has resulted in at least two or three warnings (including a final written warning), an employer may move to dismissal.

For example:



When considering dismissal for short-term absence, the Employment Appeal Tribunal in *Lynock* said that employers should take into account the:

- nature of the illness
- likelihood of it recurring or some other illness arising
- length of the various absences and the spaces of good health in between them
- need for the work to be done by the particular employee
- impact of the absences on others who work with the employee
- adoption and use of proper policies and procedures
- emphasis on the personal assessment in the ultimate decision
- extent to which the difficulty of the situation and the position of the employer has been made clear to the employee such that the employee is aware when the point of no return is approaching

In Appendix 4 of its 'Discipline and Grievances at work' guidance, Acas suggests that employers should take into account the employee's length of service and, if the employee is disabled, the availability of suitable alternative work or reasonable adjustments. If

an employer dismissed a disabled employee without having first explored these options, it could end with an expensive tribunal claim.

If the upshot of the employer's deliberations is that dismissal is likely, it should take the following steps.

### **Invitation to meeting**

The employer should write to the employee to let them know that the employer is considering dismissal and invite the employee to a meeting to discuss. The letter should include:

- the employee's absence and reasons why it is unacceptable
- any steps that have been taken to deal with the absence to date
- the impact of the absence on the business
- confirmation of the employee's right to be accompanied by a work colleague or trade union representative
- the fact that the meeting may result in the employee's dismissal

The letter should enclose copies of any relevant documents (such as the sickness absence policy and any medical evidence) and any other information the employee will need to respond to at the meeting.

## Meeting

This should be chaired by the employee's manager, preferably with a member of the HR team to support and take notes.

Similar to the earlier meetings under the formal sickness absence procedure (referred to above), it is only fair to give managers who carry out these meetings some training first, particularly where the end result is likely to be the employee's dismissal.

At the meeting it is important to review (and explain where necessary):

- the employer's attendance/sickness policy
- the employee's attendance records
- any medical evidence
- evidence of other matters the employer wishes to consider, particularly the impact of the employee's absence on the business and the steps the employer has taken to address the absence to date
- the employee's past record and length of service

It is important that the employee is given the opportunity to ask questions and discuss and challenge the evidence. If the employee comes up with any new evidence or reasons for their absence, it could be best to adjourn the meeting and investigate this. For example, if the employee claims for the first time that

their absences are because of an underlying medical condition, the employer should adjourn to obtain medical evidence about this.

At the end of the meeting, the employer should sum up and let the employee know when they will receive a decision.

### **Decision**

The employer should confirm the decision in writing to the employee. If the outcome is dismissal, the letter should explain:

- the reasons the absence led to dismissal, particularly the failure by the employee to meet the required improvements in attendance
- the negative impact of the absences on the employer
- why alternatives to dismissal were not viable (for example, why it is not appropriate to instead extend the duration of the final written warning)
- the employee's right to appeal
- the notice period

The employee should be given their contractual notice (or payment in lieu) as the absences will not amount to gross misconduct justifying summary dismissal without notice. If the employee is unable to work their

notice due to illness - even if their right to sick pay has expired - they have the right to minimum rates of pay during their statutory period of notice.

# Chapter 3

## Dealing with Long-Term Absence

### **What is ‘long-term’ absence?**

Long-term sickness absence is often defined as a continuous absence of four or more weeks. That said, there are undoubtedly times when the employee is pulling an extended sickie and is ‘malingering’ - which is not what this book is concerned with (see book 11 in the Employment Law Library, ‘Spotting Malingering’, for more on this). For the purposes of this book, it is assumed that the absence is caused by undisputed ill health. In these circumstances, Acas - and no doubt most employers’ intuition and experience - advises that employers take a more sympathetic approach.

### **Acas guidance**

In Appendix 4 of the non-statutory ‘Discipline and Grievances at work’, Acas offers guidance on handling long-term sickness absence, including:

- keeping in regular contact with the employee

- keeping the employee fully informed if there is any risk to their employment
- obtaining a medical report (from the employee's doctor or occupational health) and complying with the *Access to Medical Reports Act 1988* (AMRA)
- considering - on the basis of the medical report - whether alternative work is available
- considering whether the employee is disabled and whether reasonable adjustments at the workplace might enable them to return to work
- informing the employee in writing that a decision will be taken on the basis of the information available and that it could result in dismissal if they refuse to cooperate in providing medical evidence
- informing the employee of the likelihood of dismissal if their job can no longer be held open and no suitable alternative work is available
- giving the employee notice (statutory or contractual) and informing them of the right of appeal if they are dismissed

These factors should be reflected in the employer's sickness absence policy as they are central to handling long-term sickness absence in a fair and consistent manner.

## **Keeping in contact**

As recommended in Chapter 1, it is important to keep in contact with the employee throughout their illness, while being sensitive to their need for space to recuperate. It is particularly helpful to do so once it is clear that an employee's absence has become 'long-term'. This helps check on the employee's welfare and is helpful at an early stage to try to get a good understanding of the reasons for the absence, the nature of the illness or injury, the likely time scale for recovery and what support the organisation may be able to provide to assist a return to work. For example, it may be feasible to make temporary or permanent adjustments to the workplace that are practicable and straightforward without the need for detailed medical evidence. These could instead be signed off by the employee's GP in the 'may be fit for work' section of the fit note.

However, on many occasions, a return to work will not be so straightforward and a longer, more complex process will lie ahead. As soon as it becomes clear this is likely, or the length of absence reaches the relevant trigger point, it is best to instigate the formal sickness absence procedure.

## **Formal sickness absence procedure**

Similar to short-term sickness absence (discussed in Chapter 2), the procedure for long-term sickness absence generally involves a series of formal

meetings (at which the employee has the right to be accompanied) and review periods. However, the emphasis in this process is less on warnings and time scales for improvement and more on understanding the employee's medical condition and prognosis.

## **Meetings**

Similar to short-term sickness absence meetings, these can be complex and need sensitive handling – preferably by a manager who has had training and has access to HR support. If the employee is seriously ill, they may prefer to be accompanied to the meeting by a friend or family member to help them explain their case. Allowing this will likely be a reasonable adjustment if the employee is disabled and, in any event, will help to show a compassionate approach. Other reasonable adjustments may also need to be made, such as meetings taking place at the employee's home or by telephone.

It is best to invite the employee to these meetings in writing with a summary of the issues to discuss. The focus of the meeting is likely to vary depending on the complexity of the employee's medical condition and progress towards a return to work, but will generally include:

- the nature of the employee's condition and any changes that may impact their ability to return to work
- the likely date of return (if known)

- whether (further) medical evidence is required and the arrangements for obtaining this
- whether the employee may be disabled (and how medical evidence may assist with this)
- whether the employee perceives they can return to their previous job with or without adjustments
- whether such adjustments can be made
- exploring the potential that the employee may be dismissed in the future and possible alternatives to this (for example, redeployment, ill-health retirement or permanent health insurance)
- the effect of the absences on the employee's colleagues, team and department, and on the employer in general
- the position regarding contractual sick pay or SSP (in particular if this will continue and if so, for how long)
- any potential return to work programme (including whether any government agencies, charitable bodies and other industry and specialist organisations may be able to help)

Where the absence is lengthy and dismissal is contemplated, several meetings will likely be required with the focus shifting more towards the effect of the absence on the employer, the potential for dismissal and possible alternatives to dismissal. Again, notes

should be taken and handled in accordance with data protection laws.

## **Medical evidence**

Medical evidence is often invaluable in cases of long-term sickness absence to navigate the path to an employee's successful return to work or to dismissal. Although the employer usually foots the bill, it is well worth the money for a detailed and reliable medical report on:

- the nature of the employee's condition
- the impact on the employee's ability to carry out their job
- whether the employee is disabled
- what adjustments could be made
- the likely prognosis for recovery and/or return to work

## **The provider**

To maximise the chances of obtaining a relevant and useful medical report, employers should take care when deciding from whom and how best to acquire it. Specialist hospital doctors can provide a detailed report on a complex health condition, its prognosis and the prospects of recovery. However, if the crux is whether the employee is disabled and how best to support their return to work, an occupational health practitioner is likely more suitable,

particularly if there is a concern that the employee's own doctors may not provide a subjective opinion.

That said, not all occupational health reports are helpful, so it is worth taking some time to choose the right practitioner. In particular, check they are a member of the Faculty of Occupational Medicine by looking for MFOM or FFOM after their name on their CV. You can also check the [www.hrinnercircle.co.uk](http://www.hrinnercircle.co.uk) members' website for a list of providers recommended by members - you'll find this under the 'Recommendations' tab.

### **Requesting the report**

There are various issues to take into account. For a start, employers need to consider whether AMRA applies and if so, they must comply with it.

In summary, AMRA applies where an employer seeks a report from a medical practitioner who is or has been 'responsible for the clinical care of the employee'. This covers the employee's own doctors (including GPs and specialists) and also independent medical practitioners (such as occupational health) who have met the employee more than once. AMRA gives employees the right to:

- get notice from their employer if a request for a report is to be made and notice of their AMRA rights
- refuse to give consent to obtaining the report

- see the report before it is sent to their employer
- refuse to allow the report to be sent to their employer

Even where AMRA does not apply, all doctors have a duty of confidentiality to patients, and they are advised by their regulatory bodies to discuss reports with patients and obtain consent before sending them to the employer.

If the employer is given the go-ahead to request a report, asking the right questions is central to ensuring it is useful and relevant. For long-term sickness absence, two of the most decisive questions to ask are whether the employee has a disability under the *Equality Act 2010* and what adjustments can be made to support the employee to return to the workplace. These should connect to the legal test for disability (see below) and how any suggested adjustments would help the employee carry out their job. Importantly, if the medical practitioner does not include a response, or gives an ambiguous reply, it is within the employer's rights to write back and request that they do so before the report is paid for.

Members of [www.hrinnercircle.co.uk](http://www.hrinnercircle.co.uk) can listen to my May 2022 audio seminar on 'Obtaining a medical report on an employee' inside the members' area (and download the transcript) for more detail on what questions to ask a medical expert.

## **Withholding consent**

If the employee refuses to attend an occupational health assessment or withholds consent to the release of the report, the employer should approach this carefully. It would likely be a breach of AMRA and of the Article 8 right to privacy under the *Human Rights Act 1998* to force the issue, and a doctor would, in any event, most likely refuse to assess the employee or provide a report.

Instead, the employer should encourage and reassure the employee about the benefits of medical advice to help better understand and support them with their condition. The employer could take a tougher line if the employee is contractually required to agree to a medical examination, as their refusal will be a breach of contract. However, before taking action in this respect (such as warnings or dismissal), it is important to note that this approach does risk employment tribunal claims such as disability discrimination or unfair dismissal. Instead, it may be better for the employer to explain to the employee that if the employee continues with their refusal, the employer may need to draw a negative inference from this and a decision on the employee's continued employment will need to be taken without such medical advice. Tribunals have been understanding of such an approach in the past, even if it ends in dismissal.

## **Data protection**

Remember that the report will contain 'special category data' under the GDPR and the DPA and should be

collected, stored and processed in accordance with those laws. For more information on this, see Chapter 1.

### **Meeting the employee about the report**

Before taking any action on the basis of the report, the manager (with support from HR) should meet the employee to discuss its content and recommendations. This can either take place during a formal sickness absence meeting or separately. In any event, it is normally desirable to write to the employee in advance to explain the nature of the meeting so they have time to prepare.

### **Disability**

Hopefully, the medical report will help the employer reach an informed opinion on whether the employee's condition is likely to meet the definition of disability under section 6 of the *Equality Act 2010* - 'a physical or mental impairment that has a substantial and long-term adverse effect on their ability to carry out normal day-to-day activities'.

However, the employer should also take into account any other information it may have about the employee's condition before making a decision on this as it is ultimately the employer's responsibility to make the call. In other words, an employer should not simply rubber stamp the opinion given in the medical report if, in fact, the existence of the disability should have

been clear from the (greater or different) detail the employer had about the employee's medical condition. In these circumstances, a tribunal is likely to find that the employer knew, or ought to have known, the employee was disabled (section 8 of the Act) and will find the employer liable for any discriminatory treatment as a result.

If the employee is likely disabled, the employer should be careful to avoid the usual forms of discrimination (direct, indirect, victimisation and harassment). However, the employer should also watch out for 'discrimination arising from disability', which is less favourable treatment because of things arising from their disability. Unlike direct discrimination, there is no need for the employee to compare their treatment with an employee who's not disabled or has a different disability. They just have to show they were badly treated and that this was linked to their disability.

**Example 1:** Samantha is dismissed by her employer because she has had six months' sick leave. The employer is aware that Samantha has Parkinson's disease and that most of her sick leave is disability related. The employer's decision to dismiss is not because of Samantha's disability itself. However, she has been treated unfavourably because of something arising as a consequence of her disability (which is her need to take a period of disability-related sick leave).

**Example 2:** Matt has taken long periods of sickness absence due to back pain and his condition amounts to a disability. Matt is given a formal warning relating to his absence, which means he does not qualify for a bonus. Although the decision not to award Matt a bonus is not because of his disability itself, he has been treated unfavourably because of something arising as a consequence of his disability - namely, his disability-related absence.

The good news is that employers can seek to justify this form of discrimination as a 'proportionate means of achieving a legitimate aim'. In Example 2, the legitimate aim could be to operate a bonus scheme that rewards good performance and attendance. Whether the non-payment of the bonus is justified will depend on balancing that aim (and how the scheme operates) against the discriminatory effect on the employee.

In the context of long-term sickness absence, the most likely form of disability discrimination is the failure to make reasonable adjustments. An employer has a duty to make adjustments to the workplace where these would have helped the employee overcome a substantial disadvantage (compared with a non-disabled person) as the result of an employer's 'provision, criterion or practice' (PCP) (section 21 of the *Equality Act 2010*), and it is a reasonable step to take.

Many types of an employer's formal or informal policies, rules, practices, or arrangements may amount to a PCP, and to avoid discrimination, employers need to take such steps as are reasonable to overcome the disadvantage.

**Example 3:** The employer requires employees to maintain good attendance at work to avoid warnings and potential dismissal. This is the PCP (it is a provision, criterion or practice). Amita has been on long-term sickness absence due to a disability, and she is finding it difficult to achieve the attendance required by the PCP. She is at a substantial disadvantage compared with a non-disabled person. Therefore, the duty to make reasonable adjustments arises. The employer must make reasonable adjustments to the policy to help Amita overcome the disadvantage, such as extending the length of absence allowed before warnings are given – but only 'reasonable' adjustments. The employer does not need to ignore the policy entirely.

Whether it is reasonable for the employer to make an adjustment will depend on the size and financial and administrative resources of the employer and on the likely effectiveness of the adjustment – that is, whether

the adjustment will actually work to alleviate the disadvantage experienced by the disabled employee.

What is reasonable from the point of view of the employee and the employer may well differ and, as a result, failure to make reasonable adjustments is one of the most common discrimination claims brought in the tribunal. Employers must be able to demonstrate that they have meaningfully engaged with disabled employees on the subject of adjustments and considered and implemented adjustments where possible.

The most relevant time to meaningfully engage with the employee about reasonable adjustments is when discussing the employee's (potential) return to work.

## **Return to work**

The primary focus when dealing with long-term sickness absence will likely be facilitating the employee's return to work. Central to this will be making adjustments to the employee's role and workplace, particularly where an employee is disabled, but also when they are not. In fact, the government is currently consulting on proposals for non-disabled employees to have the right to request that their employer make workplace adjustments to assist their return to work.

### **Reasonable adjustments for return to work:**

*Phased return to work:* An employee coming back part-time for an initial period before gradually increasing their working hours to their usual rate.

*Varied working hours:* For example, allowing an employee to start late as they find it difficult to travel in rush hours due to fatigue as a result of their illness.

*Alteration or reallocation of duties:* Reassigning duties to colleagues, either temporarily or permanently, where they cause the employee difficulties (albeit with agreement from those other staff).

*Redeployment to a new role:* This should be approached sensitively, as an employee may see it as a demotion. Where the role attracts a lower salary, it may also be a reasonable adjustment to continue to pay the employee at their existing rate.

*Changing the workspace:* For example, moving the employee to a different location (for example, to the ground floor to avoid the need to use stairs) or allowing them to work from home.

*Buying or modifying equipment:* For example, an adapted keyboard for someone with arthritis or a large screen for a visually impaired worker.

When deciding what adjustments to make, it is important to consider the employee's view and to try to agree on the adjustments to be made. That said, it is not enough for an employer to simply rely on suggestions made by the employee. Employers also need to put their own mind to what could be done and, in particular, take into account any recommendations made in the medical report and action these - unless there is good reason not to do so.

In respect of the timing of adjustments, it is best practice to start considering what could be done as soon as practicable in the sickness absence process. However, the duty to actually make adjustments for a disabled employee only generally arises when they would enable the employee to return to work.

When the time comes for the employee to return, the employer should hold a return to work meeting (or 'interview') with the employee, during which the employee can be reintroduced to the workplace and final arrangements made for any adjustments. It is then advisable to hold a trial period to monitor the effectiveness of the adjustments and to identify any further requirements (which may require additional medical advice).

## **Dismissal and alternatives**

Unfortunately, in some cases, it will be unclear when (if at all) the employee might be able to return to work.

In these situations, the employer will likely consider dismissal. However, this should be the last resort and only considered once the employer has explored all the alternatives outlined below.

### **Permanent Health Insurance (PHI)**

Permanent health insurance provides income to employees unable to work due to long-term ill health via a policy held between the employer and third-party insurer. If employees satisfy the criteria under the policy, they usually receive a fixed percentage of their usual salary (for example, 50%) for a set period. These criteria are sometimes difficult to meet, for example, that the employee is wholly unable to carry out their normal (or sometimes any) occupation (supported by medical evidence) and that this has been the case for a specified period. Pre-existing conditions are also usually excluded.

Employers should be very careful before dismissing an employee who may qualify for PHI as doing so may end up disqualifying the employee from receiving the benefits. Instead, the employer should work with the employee to establish whether they qualify, and if so, how to recover the benefits. The employer should continue to remain cautious of dismissal while the employee receives the benefits, as dismissal may deprive them of these and could lead to a substantial breach of contract, unfair dismissal or a disability discrimination claim. To help avoid such claims, it is

best to expressly reserve the right to terminate within the contract of employment despite the impact on the employee's PHI benefit. Also, the employer should avoid dismissal when the sole intention could be interpreted as depriving the employee of PHI benefits.

This is an area where it might be wise to take advice from an experienced employment lawyer.

### **Ill-health retirement**

If the employer's pension scheme offers the option of early retirement due to ill health and the employee is a member, it is best practice (but not a duty) to raise this with the employee. To qualify for ill-health retirement, a medical practitioner will usually need to confirm that the employee is incapable of continuing in their current occupation. Ill-health retirement is usually at the discretion of the pension scheme trustees, the employer or both. However, this discretion must be exercised rationally and in good faith.

That said, when an employer contemplates dismissing the employee, the bar is raised, and the employer risks an unfair dismissal claim if it does not first consider ill-health retirement. For example, in *First West Yorkshire Ltd (t/a First Leeds) v Haigh*, the Employment Appeal Tribunal found that the employer, which provided an enhanced pension on retirement through ill health, should have taken reasonable steps to check whether the employee would be entitled to its benefit.

## **Alternative employment**

Before deciding to dismiss, the employer should consider whether there is any alternative work that the employee may be able to do. This does not mean the employer needs to create a new job, but it should consider whether any alternative existing job is suitable for the employee (including potential changes to that job or to any relevant selection process).

## **Dismissal**

Once the exploration of alternatives to dismissal has been exhausted, the employer will be left to decide whether to dismiss. This can be an intimidating prospect, particularly when faced with an employee with the required two years' service to bring an unfair dismissal claim.

The good news is that dismissal for long-term absence because of long-term ill health is potentially fair under section 98 of the ERA on grounds of (in)capability.

However, as usual, for the dismissal to be fair, the employer must act reasonably. This includes following the steps referred to in this book. Also, similar to dismissal for short-term absence (see Chapter 2), it is important to hold several formal absence review meetings with the employee before making any decision to dismiss and to follow the steps in respect of holding the final meeting, including:

- inviting the employee to the meeting in writing
  - consider the best location for the meeting to encourage attendance, including a virtual meeting, particularly where it is a reasonable adjustment
- allowing them to challenge the proposal to dismiss and to raise any objections to any steps taken (or not taken) to avoid dismissal
- making sure any medical evidence relied on is up to date
- explaining why it is not considered possible to hold their job open any longer
- confirming the decision in writing with a right to appeal and the relevant contractual or statutory notice period

Remember that if the employee is disabled, their dismissal could be found by a tribunal to be an act of discrimination, for example, where the employer has failed to sufficiently take into account disability-related absence or make reasonable adjustments where these may have enabled the employee's return to work, such as adhering to the formal sickness absence procedure or making changes in the workplace.

# Chapter 4

## Tackling Tricky Day-to-Day Challenges

This guide to managing long-term absence concludes with a look at a few of the trickier issues employers and HR teams often have to manage.

### **Stress absence**

Many managers will sigh when an employee is signed off as absent with 'stress', not only because of suspicions about whether the stress is genuine but also because of how challenging the situation can be to deal with. However, this is a people management issue that is here to stay.

Year on year, stress - and its consequent mental health conditions - continues to be a top cause of absence. Indeed, 90% of large organisations with more than 250 employees reported some stress-related absence in their organisation in 2021 (CIPD Health and Wellbeing at Work Survey 2022).

## **What is stress?**

The Health and Safety Executive (HSE) defines stress as ‘the adverse reaction people have to excessive pressures or other types of demand placed on them’. Although this reaction does not normally amount to an illness itself, it may result in a trigger for illness. The effects of stress may manifest themselves in both mental conditions, such as anxiety and depression, and physical health problems, such as heart disease.

## **Causes of stress**

Employers’ discussions about stress usually focus on work-related causes, such as workload or management style, as this is understandably of most concern. However, stress may also be caused by external, personal factors, such as financial or relationship difficulties.

Whatever the cause of the stress-related absence, it will need to be handled with care.

## **Managing sickness absence due to stress**

### *Acas guidance*

In ‘Managing staff experiencing mental ill health’, Acas recommends that managers should:

- agree with employees when and how regular contact will be maintained during

their absence - this is vital, and meetings can take place at a neutral venue

- be positive, professional and supportive at all times
- agree with the employee what they would like their work colleagues to know about their absence and how they are doing
- not pressure the employee to return to work before they feel ready
- encourage a phased return
- use occupational health where practicable to look at ways the organisation can support the employee's return to work

### Contact

Acas particularly emphasises the importance of keeping in contact and that not doing so can lead to misunderstandings or the employee feeling that they are not missed, which can, in turn, make it much harder for them to return. This applies right from the start of the absence, even if all the manager has at this stage is a fit note containing the word 'stress'.

Although undoubtedly a difficult conversation, it is important to try to understand - direct from the employee - the nature of their condition, its cause and seriousness and the likely length of absence. This will

be key to deciding how to manage the absence. That said, if the employee is not ready to discuss these issues, the manager should not try to rush the employee or pressure them to talk.

### *Medical evidence*

Given the limits of the fit note and complexities of mental health conditions, it is particularly important to obtain further medical evidence. It makes sense when managing stress absence for a medical report to be provided by an occupational health practitioner, particularly if there is a chance that the employee's illness is not genuine, or their condition is caused - or made worse - by issues in the workplace.

Whichever medical practitioner prepares the report, it is particularly important that they comment on whether the employee is suffering from a disability and, if so, what reasonable adjustments can be made. This is because the complexity of mental health conditions will make it difficult for both the employer and employee to analyse this without medical advice.

### *Adjustments*

Chapter 3 explored making reasonable adjustments. However, there are particular types of adjustments that a medical report may recommend in respect of stress. These may include the following (taken from 'Acas - Common adjustments for staff experiencing mental ill health'):

<b>Reasonable adjustments</b>	
Adjustments to the work schedule	<ul style="list-style-type: none"> <li>• allow more breaks when needed</li> <li>• earlier or later start and finish times</li> <li>• phased return to work</li> <li>• part-time work on a temporary or permanent basis</li> </ul>
Adjustments to role and responsibilities	<ul style="list-style-type: none"> <li>• adjustments to workload or type of work and re-assign duties</li> <li>• transfer to a different role or team (temporarily or permanently)</li> </ul>
Adjustments to the working environment	<ul style="list-style-type: none"> <li>• reserved parking space</li> <li>• hybrid or homeworking (and provide equipment)</li> <li>• increase the size and/or privacy of personal workspace and/or enhance soundproofing and visual barriers between workspaces</li> </ul>
Policy changes	<ul style="list-style-type: none"> <li>• adjust timescales in formal sickness absence procedure to account for disability-related absence</li> <li>• allow (certain) personal phone calls during the day</li> </ul>
Ways to provide additional support and assistance	<ul style="list-style-type: none"> <li>• assign a mentor or buddy for support</li> <li>• regular one-to-one meetings with a manager to discuss and prioritise tasks</li> <li>• offer additional training on the skills and duties their job requires</li> </ul>

One request an employee may make is to change the sick pay policy so that the rate of pay does not reduce in accordance with the length of the absence. The good news is that employers are unlikely to be under a duty to take such a step as it does not help facilitate a return to work and is instead a form of ‘wage fixing for the disabled sick’ (*O’Hanlon v Revenue & Customs*).

That said, where the employer has previously failed to make a reasonable adjustment that led to the employee’s absence, a reduction in sick pay can amount to disability discrimination. This was the case in *Meikle v Notts County Council*, where the Court of Appeal decided that the employer’s decision to halve a disabled employee’s sick pay due to her length of absence was discriminatory as it was the employer’s own failure to make reasonable adjustments to her working patterns that caused the situation. This is another area in which it might be wise to take advice from an experienced employment lawyer.

### **Return to work**

When an employee with a mental health condition is able to return to work, Acas suggests in ‘Managing staff experiencing mental ill health - Helping a team member return to work’ that it is important to ensure the employee feels supported and understands what is expected of them. To do so, the employee’s manager should meet with them away from the workplace before their return.

Once the employee is back in the workplace, their manager should hold a further return to work interview to confirm working arrangements and ensure adjustments are in place to support the employee in their work. The manager should then continue to monitor the employee's return and not leave them to navigate their return by themselves. The manager should also be mindful that mental health can fluctuate and intervene as early as possible if the employee seems to relapse.

Indeed, the Health and Safety Executive (HSE) suggests that it is helpful to have a written plan for the employee's return to work and reintegration into the workplace, including an agreement as to when the employee will have reached the stage of 'business as usual'.

### *Dismissal*

If it does get to the stage that dismissal is the only way forward, much the same process applies as we set out earlier. However, there may need to be some adaptation where the employee has a mental health condition, as it will be particularly important for the employer to be able to show that:

- it consulted the employee.
- it did what it could to make the employee fully aware of what was happening and the possible outcome.
- steps were taken to ensure as far as possible that the employee was able to participate in the consultation process.

Adjustments to the dismissal process might include:

- giving the employee more time than usual to reply to correspondence
- holding meetings at the employee's home or at a neutral location (if they are off sick)
- allowing a friend or family member to attend meetings with them

One of the trickier decisions when dismissing an employee on sick leave (whether for stress or any other condition) is the rate at which to pay the employee during their notice period.

## Notice and sickness absence

When an employee is dismissed for reasons of capability, they are entitled to contractual or statutory notice. The rate at which the employee is paid (or not) for this will depend on how much, if any, sick pay they have left and the terms of their employment contract. Somewhat strangely, the term of the contract the employer particularly needs to look at in these circumstances is the notice clause.

**Scenario One:** Where the employee is entitled to contractual notice which is at least one week **more** than the statutory notice that applies to their period of continuous service and they have:

- exhausted their sick pay entitlement (SSP and contractual), the employer does not

need to pay them anything during their notice period (unless there is some provision in their contract that says otherwise).

- not exhausted their sick pay entitlement, the employer should pay based on the rate of sick pay they are currently receiving.

**Scenario 2:** Where the employee is entitled to contractual notice which is **less** than one week more than the relevant statutory notice, the employer must pay them **full pay** for their statutory notice period even if they have used up their contractual and/or SSP entitlement.

The upshot is that the more contractual notice an employer is bound to give, the less notice pay the employee is entitled to. This can all be pretty confusing, so it's best to explain by way of examples:

**Example 1:** Raj has 10 years' service with his employer, so his statutory notice entitlement is 10 weeks. However, his contract of employment provides that the employer must give him three months' notice of termination. Raj is dismissed after a period of long-term sickness, and he has exhausted his SSP and contractual sick pay entitlement. The employer will not need to pay him anything during his notice period because his entitlement to contractual notice is at least one week more than his statutory notice. (If he had been receiving half pay, for example, he would only be entitled to be paid at this rate.)

**Example 2:** Sabine has three years' service with her employer, so her statutory notice entitlement is three weeks. However, her contract of employment provides that the employer must give her 3.5 weeks' notice of termination. Sabine is dismissed for long-term absence and the reason for dismissal is capability. She has exhausted her SSP and contractual sick pay entitlement. Nevertheless, the employer will need to pay her a week's full pay for each week of her statutory notice period (and for the remaining 0.5 weeks her contractual rights apply) and she is not entitled to any sick pay.

This right to full pay is because her entitlement to contractual notice is less than one week more than her statutory notice. (If her contractual notice entitlement had been four weeks, the employer would not have needed to pay her anything.)

That said, this all depends on the contractual notice period being stipulated in the contract. An employer cannot simply decide at the relevant time to give one week's extra notice in order to avoid liability. The better news is that if the employer does end up needing to pay full pay to an employee who is off sick, if the employee is still receiving SSP or contractual sick pay, this will count towards their entitlement to full pay.

## **Holidays and sickness absence**

Although long-term sickness absence can sound like a great escape from work, in most cases it really is not.

However, there are those occasions where sympathy for an employee can fade, particularly if they post ‘holiday’ snaps on social media of sunning themselves abroad when they haven’t even asked to take annual leave.

### **Sick leave or annual leave?**

Before getting too upset when a sick employee goes on holiday, it is worth remembering that there is no legal requirement for an employee signed off sick to stay at home. This means that taking holiday does not immediately indicate that an employee is, in fact, fit to work and that they are acting dishonestly. In fact, in many cases, particularly those involving stress-related illness, the holiday may have been ‘prescribed’ by the employee’s doctor as a way of improving their health. So, being supportive of this may nudge the employee ever closer to their return to work – and reduce the risk of future absences.

In these circumstances, employees may wish to label their time away as ‘sick leave’ and for it not to be used as – and reduce – annual leave entitlement. It is likely that they are legally entitled to do so if they remain unfit to work, even if they have travelled overseas. While this may seem particularly unfair to employers, Court of Justice of the European Union (CJEU) case law has made it clear that employers need to allow the employee to take their annual leave at a later date and not force them to take it during sick leave.

However, if an employer does have a strong suspicion (hopefully with evidence to back it up) that the employee is acting dishonestly, is not sick and is instead ‘malingering’, then disciplinary action is likely appropriate. However, employers should make sure they carry out a thorough investigation first and, if appropriate, take medical advice to inform any decisions. The risk of getting this wrong is that dismissal, or action short of dismissal, could lead to an actual or constructive unfair dismissal claim for employees with two or more years’ service, and/or to a disability discrimination claim if the employee is disabled under the *Equality Act 2010*, for which no length of service is required.

### **Employee’s request to take annual leave**

In other cases, an employee may be upfront about their wish to take annual leave and request to take this as part of their annual leave entitlement. They are likely to have plenty of leave to take as employees continue to accrue their 5.6 weeks’ statutory annual leave entitlement under the Working Time Regulations (WTR) during sick leave. The legal position (following the House of Lords decision in *Stringer and others v HM Revenue & Customs*) is that they have the right to do so and to be paid for it, whether or not they have exhausted their right to statutory and/or contractual sick pay.

The upshot is that employees can use their statutory annual leave entitlement either to go on holiday or

to just nominate days as annual leave for financial reasons. This is because they will be paid for these days at their full pay rate instead of their (likely reduced or exhausted) rate of sick pay. If an employer is not happy with the employee taking their holiday at the requested time (perhaps due to the extra cost of paying at full pay), it is open to the employer to give 'counter-notice' under the WTR requiring the employee to take their holiday at another time, such as on their return to work. However, this may not be ideal timing either as it may cause disruption to the employee's return to work plans and impact their team (and budget). There are also legal risks to this approach, due to the fact that:

- delaying the employee's holiday risks acting in breach of the WTR. This is because if the employee continues to be on sick leave until the end of the annual leave year, the employer will be viewed as having used its counter-notice to prevent the employee from exercising their statutory right to take annual leave that year.
- the employee may view the rejection of their holiday request as a breach of the implied term of trust and confidence, resign and claim constructive dismissal.
- if the employee is disabled, they may bring a claim for disability discrimination under the *Equality Act 2010*.

That said, in respect of any contractual annual leave provided in excess of the statutory minimum, it is up to

the employer whether employees can take this during sick leave and employment contracts should set out the position on this.

### **Carrying over annual leave**

Of course, there are also many employees on long-term sick leave who never take holiday at all. Importantly, if an employee has been unwilling or unable to use their holiday because they have been on long-term sick leave, they are entitled to carry over their unused holiday into the next leave year. This is irrespective of whether they have made a carry-over request (as decided by the CJEU in *Pereda v Madrid Movilidad SA* and confirmed as reflected in the WTR by the Court of Appeal in *NHS Leeds v Larnier*). However, this only relates to the four weeks' annual leave provided by the Working Time Directive (WTD) rather than the full 5.6 weeks given under the WTR, meaning the additional 1.6 weeks' WTR annual leave does not need to be carried over unless the employment contract states otherwise.

The good news for employers is that there is a limit to the extent of time during which employees are allowed to use this carried-over leave. The CJEU held in *KHS AG v Schulte* that it was appropriate for there to be a cut-off point at which the leave needs to be taken or lost, and the Advocate General's opinion was that this is 18 months from the end of the leave year in which it accrued. The Employment Appeal Tribunal applied this decision in

*Plumb v Duncan Print Group Ltd* and concluded that the WTR should be interpreted accordingly.

The upshot of this is that it is safest to amend sickness absence and annual leave policies to allow employees on sick leave to carry over up to four weeks of annual leave, but make it clear that this must be taken within 18 months of the end of the leave year in which it accrued.

### **Payment in lieu of annual leave**

Employees are entitled under the WTR to payment in lieu of accrued but untaken statutory annual leave once their employment is terminated. For staff not on sick leave, this does not usually pose a problem as the payment will only generally relate to the annual leave accrued but untaken during the leave year in which their employment ends. This is because carry-over of statutory annual leave to the next leave year is not permitted under the WTR, although carry-over may be allowed in respect of any additional contractual holiday.

However - as explained above - employees who have been unable or unwilling to take holiday due to ill health are able to carry over the four weeks' WTD annual leave (to be used within 18 months or lost). Further, the current legal position is that they are entitled to be paid in lieu of all this accrued outstanding annual leave at the end of their employment. The result is that calculating payment in lieu on termination for these employees gets rather more complicated and expensive.

**Example:** Arti went on sick leave in February 2019 and his sickness absence continued until his dismissal on 1 November 2021 for reasons of capability. The annual leave year runs from 1 April to 31 March. Arti is only entitled to statutory annual leave (he has no additional contractual entitlement). Before he went on sick leave in February 2019, Arti had taken his full annual leave allowance.

From 1 April 2019 to 31 March 2020, Arti accrued 28 days' annual leave. As he was on sick leave for the entire leave year, he carried over 20 of these outstanding days (the four weeks provided by the WTD) into the next leave year. He had until 1 October 2021 to take this annual leave (18 months after the end of the relevant leave year).

From 1 April 2020 until 31 March 2021, Arti accrued a further 28 days annual leave. As he had been on sick leave for the entire period, he carried over a further 20 days annual leave and had until 1 October 2022 to take this annual leave (18 months after the end of the relevant leave year).

From 1 April 2020 until his dismissal on 1 November 2021, Arti accrued 16 days holiday (based on the full 28 days provided by the WTR).

On termination, Arti will be entitled to pay in lieu of 36 days accrued but untaken holiday (20 days accrued from 1 April 2020 until 31 March 2021 and 16 days accrued during the current holiday year). The 20 days leave he carried over from 1 April 2019 to 31 March 2020 is expired.

Note that the status of much of this caselaw after 31 December 2023, which the government has confirmed is the date when all EU-based case law will cease to have effect in the UK, is unclear.

## **Reducing absence**

Finally, although there is no way to cure all absence, taking steps to monitor and manage absence in the ways described in this book should help reduce it. Even better is to minimise absence by having a healthy, happy workforce. Although consistently meeting this goal is likely an unachievable utopia, there is no harm in aiming high, and the CIPD in particular encourages employers to do so by developing a well-being strategy.

Although well-being is another topic in itself, and beyond the scope of this book, it is worth referring to the CIPD advice. In particular, it recommends that employers base their strategies on seven inter-related ‘domains’ of employee well-being:

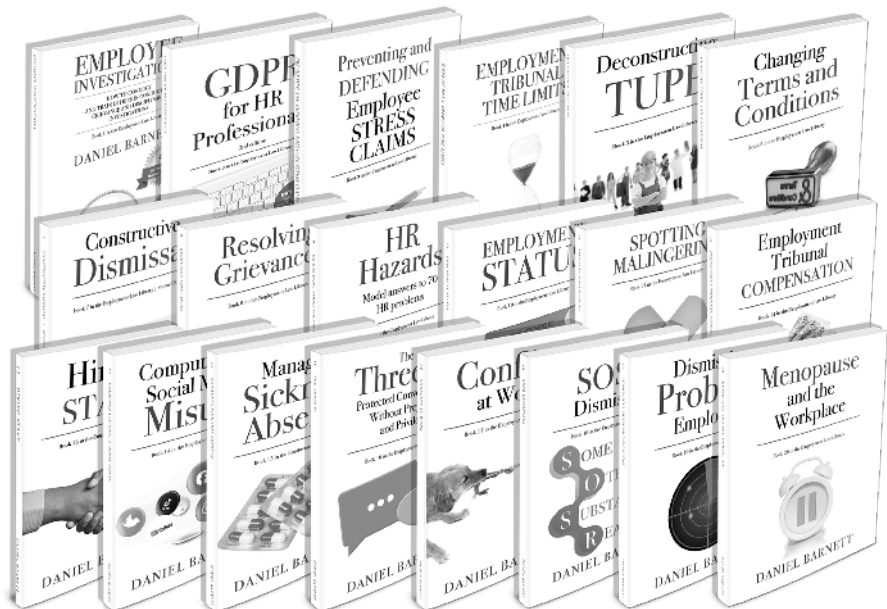
1. Health (such as health checks, occupational health support, safe working practices and equipment, employee assistance programmes, and good stress management practices)
2. Good work (effective people management policies and training for line managers with good job design, including quality,

manageable workload with control,  
and ability to raise concerns)

3. Values/principles (values-based leadership with a clear mission, goals and ethical standards)
4. Collective/social (good communication and employee involvement in decision-making, encouraging positive and healthy relationships by management style, team-working and dignity and respect)
5. Personal growth (career development and training, personal resilience training and an open and collaborative culture)
6. Good lifestyle choices (walking or yoga clubs and healthy menu choices in the canteen)
7. Financial well-being (fair and transparent pay and benefits policies, retirement planning and signposting to external sources of free advice). There's more on developing a well-being strategy at [www.cipd.co.uk/knowledge/culture/well-being](http://www.cipd.co.uk/knowledge/culture/well-being).

Given that this is a comprehensive list that draws on the majority of the tools in HR's box of tricks, it is understandably likely to (already) be a long-term project. In the meantime, having a good sickness absence policy and managers who are trained and able to manage day-to-day sickness absence issues should go a long way towards dealing with the problem.

Also by  
Daniel Barnett



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**SATURDAYS, 9PM**

**Dear HR Professional,**

I take my hat off to you.

Having supported the HR community for so many years, I know It's a challenging job you do, sometimes under really difficult circumstances.

The tricky HR issues you have to handle must take up a tremendous amount of your time, your energy and your brain power. I bet it can be exhausting for you to work under that level of pressure.

## **Being An HR Professional In Today's Business Environment Is TOUGH!**

Maintaining your high standards of professionalism must be a real struggle, especially when your efforts and expertise often go unappreciated.

I'll wager you have to make decisions on challenging HR situations you've sometimes never encountered before. Even if you're part of a team, it must sometimes feel like you're working in isolation.

With so much complexity and ambiguity, do you ever find you're not clear whether you're doing the right thing when there's so much to think about?

I expect it can be draining too. You've got to make tough decisions which may be unpopular.

The pressure's on you to ensure people are treated fairly while the business complies with its legal obligations.



It's a thankless task, especially if you've got grief coming at you from all sides.

Doubt can creep in too. Even though you're an extremely competent professional, you might even begin to question yourself... What if you've got it wrong?

You've got to cope with all that, whilst constantly having to convince any doubting stakeholders you're adding value to the business.

That pressure must take its toll on you.

You wouldn't be human if it didn't cause you tension, stress or even worse!

Being the caring professional you are, I bet you often take work home with you.

## **If You're Not Careful The Stress WILL Creep Up On You**

And I don't just mean opening your laptop on your couch when everyone else is watching Eastenders.

We all know of families and relationships that come a poor second to the pressures and challenges faced at work.

Yours too..?

But does it have to be that way?

Should you feel the responsibility of the HR world is entirely on your shoulders and that you've got to bear that burden alone?

The answer is a firm no.



It doesn't have to be like that.

## **There Is An Answer To Help Make Your Work & Your Life Much Easier For You**

There's a place you can get all the help, support, advice and encouragement you need to ease the constant pressure you have to bear.

**It's called the  
HR Inner Circle.**

It will lift the burden you're carrying by giving you swift access to comprehensive resources and live practical guidance you can implement right away.

It's information I know will save you time, energy and effort.

It's a vibrant, active community of caring, like minded HR professionals willing to help you.

There are resources packed full of practical, actionable advice for you that's difficult to find anywhere else.

And it doesn't matter what you're working on.

Whether it be workforce engagement, attracting and keeping talent, diversity and inclusion or employee health and well being, you'll find support for all of that.

You're covered even if you're working on one of those tricky, sensitive, people problems you never see coming until they land squarely on your plate.

# Timely Support To Make Your Job Easier, Can Be Rapidly Found In The HR Inner Circle

As a member of the HR Inner Circle, to get the support you want...

...just ask.

Your first port of call is the vibrant Facebook group, bursting at the seams with incredible HR professionals like you.

Just post your question and let it bubble and simmer in the collective genius of the group.

By the end of the day, you'll have at least 3-5 comments on your post, often more.

You'll get relevant, insightful and practical guidance that comes from the hard earned experience of your fellow members.

Often you'll get a response within a couple of hours. Sometimes you'll get an answer within minutes - even if it's late in the evening!

This highly active community never fails to astound me with just how willing they are to help fellow HR professionals like you.

They readily and generously share their hard earned knowledge and experience.

**You Can Get  
Answers From  
Real People  
Quickly AND  
From Our  
Extensive Resource  
Library Too**

...really important for someone working on their own who needs to check things out, or just bounce a few ideas around.

- Quentin Colborn  
Director, QC People Management Ltd

While you wait for a response from the Facebook group, you'll likely find answers in the resource-rich members' vault on our secure online portal as well.

It takes just 2 clicks and a quick keyword search using our Rapid Results Search Tool.

You'll instantly find precisely where your topic is covered in our extensive back catalogue of monthly magazines and audio seminars.

In under 30 seconds you can find exactly what you're after.

It's that quick and easy.

...And if you need a specific legal insight?

Then pose your question live to an expert employment lawyer in our monthly Q&A session.

It'll either be me or one of my prominent contemporaries. You'll get your answer immediately without having to pay any legal costs.

If you can't wait, you'll find where it's been answered before with a quick search of previous Q&A sessions.

Our clever index system means you can find a question, and in a single click get straight to the recorded answer.

But perhaps you need to dive deep and explore the different options open to you to solve a particularly tricky problem?

Then join one of our monthly HR Huddles. There you can run your specific situation past other HR professionals.

They'll offer their insights, share their experience and work WITH you to find a solution that works FOR you.

You'll find all of this in one convenient place - the HR Inner Circle.

**It's Been A  
Labour Of Love  
Putting The  
HR Inner Circle  
Together So It Works  
For Professionals  
Like You**

It's great to see that we all experience tricky cases from time to time.

- Annabelle Carey  
Managing Consultant, HR Services  
Partnership

I've spent years practising law and have become recognised as one of the UK's leading employment law barristers. I've even got my own radio show!

But more importantly for you, I've also developed another skill.

It's bringing useful employment expertise AND practical experience together in a way that supports busy, overworked (and sometimes stressed) HR professionals like you.

Everything you're likely to need is **literally at your fingertips**.

This will save you **time, energy and effort**.

Being a member also means your business and clients will see you as even MORE INFORMED about the intricacies of employment law.

They'll marvel at how well you keep up to date when you're busy working so hard for them.

You'll be seen making quicker decisions and implementing effective solutions to accelerate the growth of the organisation.

You'll make impressive time and cost savings for the business.

And those tricky, off-piste situations you've never come across before..?

Well, nothing will faze you, because you're backed up by an HR support system second to none.

But more importantly, you'll feel that pressure gently ease off.

With the relief you'll feel knowing that such great help and guidance is just a few minutes, you'll wonder how you survived without it!

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**WWW.HRINNERCIRCLE.CO.UK**



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### **Benefit #1- you'll get unlimited access to the hugely popular HR Inner Circle Facebook Private Group**

- Tap into the vast wealth of knowledge, experience, insight and wisdom of the top 0.5% of your profession at any time, day or night.
- In less than 5 minutes you can post ANY HR question and get insightful answers and suggestions in a couple of hours or less, from some of the best in your profession.
- Fast track your impact by discovering effective shortcuts and workarounds from HR people who've been "there" and done "it".
- Expand and deepen your network of like minded individuals, secure in the knowledge they're as dedicated and as ambitious as you.

- Increase your prestige with your colleagues and stakeholders by being part of such an exclusive and prominent HR community.
- Gain confidence in your judgment and decisions by using the highly responsive community as a sounding board for your ideas.

## **Benefit #2 - you'll receive 11 copies of the HR Inner Circular Magazine every year**

- Enjoy that satisfying “THUD” on your door mat every month when the postman delivers your very own copy of the HR Inner Circular magazine.
- Quickly discover exactly what the law says about key issues affecting HR professionals around the UK like you.
- Get concise and practical guidance on how employment law applies to the challenging situations and circumstances you deal with every day.
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- Benefit from a legal deep dive by the UK's leading employment law barrister into a topical employment question posed by a fellow member (perhaps you!).
- Review a summary of recent important Facebook Group discussions worthy of sharing, that you may have missed.
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**The magazine is really informative, the Facebook group such a community, and I think exceptional value for money.**

**- Lis Moore**

Head of Advisory & Support Services,  
Society of Local Council Clerks

## **Benefit #3 - Monthly Audio Seminars**

- A 60 minute legal deep dive by me into an important subject relevant to you and your practice.
- Professionally recorded content recorded exclusively for the HR Inner Circle - you'll not find this information anywhere else.
- Carefully structured content that's easy to consume, understand and apply in your work as an HR professional.
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- The convenience of listening to the recording online or downloading the mp3 for later enjoyment at a time suitable to your busy schedule (perfect for any commute).

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- Get answers to your knottiest employment law questions, and solutions to your trickiest HR problems, from some of the brightest employment lawyers in the UK.
- Avoid having to pay the £300-£400 it would cost you to ask a lawyer your question outside of the HR Inner Circle.
- Benefit from valuable insights from the answers given to other members.
- If you can't attend live, watch the recording when it's convenient for you.
- Quickly access the recorded answer to any question asked in the session by simply clicking the question index for that session.

- Save time by downloading the session transcription to scan-read at a time suitable for you.

## **Benefit #5 - join a live Monthly Huddle with other HR Professionals to solve your most challenging HR problems**

- Attend your very own mini-mastermind group of highly qualified, highly regarded and experienced fellow HR professionals to “group think” through an issue you’re facing right now.
- Develop bespoke solutions to the unique problems and challenges you have to deal with in a safe, supportive and confidential environment.
- Feel safe knowing these online zoom calls are NOT recorded to respect the sensitivity of issues addressed and the privacy of those involved. [NOTE - a professional transcriber attends and takes written notes. An anonymised summary is then made available to the membership]
- Recent Huddle topics included changing employee benefits, mandatory vaccination, career breaks, sickness during disciplinarys, effective worker forums and hybrid working arrangements.

## **Benefit #6 - access our Templates & Resources Centre**

- Gain immediate access to our library of the most popular and frequently used forms, assessments, agreements, checklists, letter templates, questionnaires and reports to help the busiest HR professionals save time and get things done quicker and easier.
- Download them as Word documents, so you can edit and personalise them to fit your business needs
- New templates added every single month



## **Benefit #7 - build your own Employment Law Library**

- We send you several brand-new books on employment law several times each year
- Acquire your own physical library of concise, easy-to-read and fully updated textbooks
- Recent titles include Hiring Staff, Managing Sickness Absence, Spotting Malingerers and Resolving Grievances

## **Benefit #8 - free Ticket to our Annual Conference**

- The perfect opportunity to extend your personal network of fellow HR professionals.
- Meet up face to face with the people who've been supporting you in the Facebook Group and HR Huddles so you can deepen those connections even further.
- Gather key insights and takeaways to help you personally and professionally from some of the best speakers on the circuit. Previous speakers have covered motivation, dealing with difficult people, goal setting and productivity, decision making and social media marketing.
- Get instant access to recordings of all previous conferences so even if you can't attend in person, you can benefit from the event in your own time.
- Includes probably the best conference lunch you'll ever have - a bold claim I know, but we use outstanding caterers.

“ It never ceases to amaze me the amount of time and effort people put into the Facebook group, sharing their experiences, advice, and sage words of wisdom.

- Emma Lister  
HR Consultant, SME HR Services

## **Benefit #9 - your Personal Concierge will help you get the best out of your membership**

- You get personal access to Nina who'll point you in the direction of exactly where to find what you need. She's supported hundreds of members over the 5 years she's been part of the team.
- Nina also works closely with the 11 back office staff that support the operation. In the extremely unlikely event she doesn't know where something is, she knows who will.

## **HOW MUCH DOES JOINING THE HR INNER CIRCLE COST?**

There's no doubt in my mind the annual value of membership benefits is in the many thousands of pounds range.

But you're not going to pay anywhere near that.

Let me remind you of what that small monthly fee gives you every year

Access to the private Facebook Group	INCLUDED
HR Inner Circular Magazine subscription	INCLUDED
Monthly Audio Seminars	INCLUDED
Live Q&A sessions	INCLUDED
Monthly HR Huddles	INCLUDED
Templates & Resources Centre	INCLUDED
Employment Law Library	INCLUDED
Free ticket to the HR Inner Circle Annual Conference	INCLUDED
Your Personal Membership Concierge	INCLUDED

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**TOTAL PRICELESS**

Another way of looking at your investment is this:

Because access to what you need is so quick...

Join today and that price is fixed for as long as you remain a member. You'll always pay the same, even if we increase the price to new members (which we regularly do).

**...it's like having your very own part time,  
legally trained, assistant HR Business  
Partner, just waiting to provide you  
with all the answers you need...**

**WWW.HRINNERCIRCLE.CO.UK**



**Plus, With Membership Of The  
HR Inner Circle, You'll Also Get These 4  
Additional Resources For FREE!**

### **Additional Resource #1 - Handling Awkward Conversations**

A video case study masterclass you can share with managers to train them to handle awkward staff disciplinary, performance and attitude problems. A huge time saver for you.

## **Additional Resource #2 - 6 x HR Employment Online Courses**

Immediate, on demand access to six thorough, online HR courses (with more constantly added), including Employment Tribunal Compensation, Chat GPT for HR Professionals, Deconstructing TUPE, Changing Terms & Conditions, Unconscious Bias At Work and Handling Grievances.

## **Additional Resource #3 - Free listing on the Register of Investigators**

Advertise your professional investigations service in our member's portal.

## **Additional Resource #4 - Significant discounts on sets of policies, contracts, and other courses.**

Get member discounts on my Getting Redundancy Right and HR Policies products as well as other price reductions as new products are released.

**WWW.HRINNERCIRCLE.CO.UK**

“  
It's a really good investment. The support you get from other Facebook group members is fantastic. Whatever your question, someone will know the answer. Access to Daniel's experience and knowledge through the podcasts and Q&A is invaluable too.  
”

- Tracy Madgwick  
HR Consultant, Crafnant HR

I'm So Confident Joining The  
HR Inner Circle Is The Right Decision  
For You, Here's My

**NO LIMITS**

**GUARANTEE**

Take action and join the HR Inner Circle **now**.

If you're not 100% satisfied with your investment, you can cancel at ANY time.

Just tell us, and your membership will end immediately. No long-term contracts. No notice periods. No fuss.

I'm comfortable doing this because I know once you join, you'll find the support, the information and the strategies so useful, you'll never want to leave.

Before you decide though, let me be very clear about membership of the HR Inner Circle.

It's only for ambitious and dedicated HR professionals who want to accelerate and increase their impact by plugging into an HR ecosystem with its finger firmly on the pulse of what's working right now in HR.

If you're just plodding along and are content with just getting by, then this is probably not for you.

But if you're drawn to benefiting from standing shoulder to shoulder with some of the giants in the HR community who will help you solve your toughest problems, then joining the HR Inner Circle is the RIGHT decision for you.

Join here now:

**WWW.HRINNERCIRCLE.CO.UK**



JOIN TODAY



A stylized, handwritten signature in black ink, appearing to read 'Daniel Barnett', with a long horizontal flourish extending to the right.

Daniel Barnett

P.S. Remember when you join you get unrestricted access to the private Facebook group, the monthly magazine delivered direct to your door, the monthly audio seminar, regular free books, templates, checklists and resources, on-demand video courses, over 100 audio seminars and back copies of magazines, live interactive Q&A sessions with a lawyer, focused monthly huddles with other HR professionals, a free ticket to the annual conference, your personal concierge plus a bunch of additional resources...