

Employment Legislation Update

April 2010

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1 Introduction

Welcome to Youmanage's Employment Legislation Update for April 2010. Most employment law changes are introduced in April and October, and April 2010 sees the introduction of a raft of new legislation. Employers need to ensure they are aware of these and that they meet their new legal obligations.

We recommend that those responsible for HR within your business should consider whether they need to:

- make changes or additions to your policies and procedures and Employee handbooks;
- train managers and others on certain areas of the new legislation eg.how to handle a request for time off to train;
- plan for future changes where relevant

For those clients utilising Youmanage's managed content service, the guidance information contained within your site has automatically been updated to reflect these latest changes.

2 Additional Paternity leave

This regulation will be introduced in April 2010, but will only apply to parents of babies born on or after 3 April 2011. Currently, employed fathers are entitled to two weeks paid paternity leave and mothers to 52 weeks maternity leave (of which up to 39 weeks are paid). Under the new law, mothers would be able to transfer the final 26 weeks of their maternity leave to the father once the mother has returned to work.

Further information on this regulation can be found in the Absence section (Absence – Other) if you have purchased the Managing Absence and Holidays module.

3 Statutory Maternity, Paternity & Adoption Pay Rises

Statutory rates will increase from £123.06 per week to £124.88 per week (or 90% of an employee's weekly earnings, whichever is the lesser amount).

NB. the rate of statutory sick pay will remain at £79.15 per week.

This information will also be held in the Absence section (Absence – Other) if you have purchased the Managing Absence and Holidays module.

4 The Right to Request Training

A right to request time off to undertake study or training is being introduced for employees in organisations with 250 or more employees and will be extended to cover all businesses from April 2011. Employees will need a minimum of 26 weeks continuous service to qualify for this right, and they must believe that the training will make them more effective and productive in their job. Employers are not obliged however to pay for the training.

This right is similar to the right to request flexible working in that employers will be obliged to consider seriously requests that they receive, but will be able to refuse a request where there is a good business reason for doing so. The Regulations prescribe a procedure to follow once an employee has made a request, and a maximum compensation level where an employer does not comply with the procedure or refuses the training on grounds that are not considered reasonable.

5 Reduction in the number of years contribution to receive a full basic State Pension

From April 2010, new reforms will make pensions fairer and more generous for women. Men and women reaching state pension age on or after 6th April will only need 30 qualifying years to receive a full basic state pension. Currently entitlement to the full state pension is based on the number of years of NI contributions made by employees, workers or those on certain state benefits. This is currently 44 years for men and 39 years for women.

6 'Fit Note' to replace 'Sick Note'

Under the Social Security (Medical Evidence) and Statutory Sick Pay (Medical Evidence) Amendment Regulations 2010 the new 'Fit Note' replaces the current 'Sick Note' that has been used by GP's in the UK for over 60 years. The purpose of the 'Fit Note' is to encourage employers and doctors to work together to keep people in work and reduce the number of people on incapacity benefit. The GP can now indicate on the Fit Note that even if an employee has a disability or condition that prevents them from doing certain types of work it may still allow them to do other types of work with appropriate support (eg. Reduced hours).

To view more information on the new 'Fit Note' framework, please see Appendix 1 of this communication. Initial changes to reflect the new Fit Note process will be made to the Youmanage system in early April and more extensive changes will be made in subsequent releases.

7 Increase in Data Protection penalties

From April, the Information Commissioner can apply a civil monetary penalty of up to £500,000 for a serious breach of data protection principles.

8 Normal minimum pension age rises to 55

As part of pension reforms announced in 2003, the minimum age from which people can receive pension payments rises from 50 to 55 from April 2010, except where a pension scheme member has severe ill health problems or a protected pension age.

9 Appendix 1 - The New Fit Note Regime

9.1 What is the new Fit Note?

From 6 April 2010, the format of medical statements - also known as medical certificates or sick notes - will change.

Medical statements are issued by doctors to employees when they are ill or injured and are used by employers as evidence for sick pay purposes. With the current 'sick note' statement, doctors describe an individual's condition and indicate whether or not they are fit to work and if not, when they should return to work.

From 6 April 2010, the new statement - known as a statement of fitness for work or 'fit note' - will mean doctors can advise that the patient either:

- is not fit for work
- may be fit for work

A doctor will give a 'may be fit for work' statement if they think that the employee's health condition may allow them to work in certain circumstances/situations - as long as they are given the appropriate support.

If a doctor uses this option, they will give advice about the effects of the patient's health condition and, if appropriate, some suggestions about the types of adjustment or adaptations that could be made to help get the employee back to work.

For example, this might mean looking at any of the following options:

- a phased return to work
- flexible working
- amended duties
- workplace adaptations.

While the employer won't have to act on the doctor's advice in a 'may be fit for work' statement, it may help to make simple and practical adjustments to help the employee return to work and reduce unnecessary sickness absence.

If for any reason the changes that are suggested can't be made to support the employee's return to work, the employer should - treat the statement as if the doctor had advised that the employee is 'not fit for work' (ie. The employee can't return to work until they are fully fit).

The government's purpose for the introduction of the fit note is to reduce the number of individuals on incapacity benefit, for British industry to lose less time to sickness, and to help those that want to work get back to work.

Please note:

- that the fit note is not required until after the 7th calendar day of sickness;
- the information given in the statement is not binding on the employer, it's purely advisory;
- the requirements for the payment of Statutory Sick Pay have not changed and;
- the employers obligations under the Disability Discrimination Act have not changed.

9.2 How to use the Fit Note

When receiving a Fit note we suggest that you either:

1. **Scan it into the Youmanage system and upload it to the Documents section of the employee's record OR** (if you do not have a scanning facility);
2. **Fill in the Fit Note template (in Example documents) with the exact detail given in the doctor's Fit note and upload it to the employee's record**

The aim of the new Fit note is to give employers and employees greater flexibility in managing sickness absence. A doctor can now suggest ways to support an employee in returning to work.

A doctor can still indicate that an employee is unfit to return to work but now has an additional option – that of indicating that the employee 'may be fit for work taking into account the following advice'.

On the new form, the doctor can advise one of two options:

- **That the employee is not fit for work:**

This means that the doctor believes that the employee has a medical condition that prevents them from returning to work for the stated period of time (like the 'old' sick note).

- **May be fit for work taking into account the following advice:**

This means that the doctor believes that the employee could return to work in some way, and that their condition does not necessarily stop them coming back to work. However some adaptations need to be made.

This might mean discussing:

- **A phased return to work**
 - Where a doctor recommends this course of action, they believe that a gradual increase in their working hours may be beneficial;
- **Altered hours**
 - The doctor believes that a change to the normal working hours will support the employee (eg starting later/leaving earlier);
- **Amended duties**
 - The doctor thinks a return to work is possible if certain work duties are amended eg. Removing heavy lifting from the job;
- **Workplace adaptations**
 - Where the workplace can be adapted to accommodate the required changes, this may help the employee return to work eg. Arranging for a parking space near the entrance may help someone with restricted mobility.

If any of the above options have been indicated, as an employer, you will now need to decide whether you can accommodate these changes, for the appropriate period of time indicated on the Fit note. The doctor will also state if they need to see the patient again.

You will now need to discuss with the employee and if a return to work is deemed possible:

1. Agree the return to work date
2. Agree what workplace adaptations are necessary
3. Agree a review date.

If a return to work is not possible:

1. Agree the next review or a return to work date
2. Pay contractual sick pay or SSP as per the terms of your contract.